



NEVADA LEGISLATURE
LEGISLATIVE COMMITTEE ON HIGH-LEVEL
RADIOACTIVE WASTE
(Nevada Revised Statutes 459.0085)

SUMMARY MINUTES AND ACTION REPORT

The first meeting of the Nevada Legislature's Legislative Committee on High-Level Radioactive Waste (*Nevada Revised Statutes* 459.0085) was held on Tuesday, May 11, 2010, at 1 p.m. in the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 2134 of the Legislative Building, 401 South Carson Street, Carson City, Nevada, and Great Basin College, Greenhaw Technical Arts Building, Room 124, 1500 College Parkway, Elko, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/75th2009/committee/>. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Harry Mortenson, Chair
Senator David R. Parks, Vice Chair
Senator John J. Lee
Assemblyman Jerry D. Claborn
Assemblyman Joseph M. Hogan

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Mike McGinness
Assemblyman Don Gustavson

COMMITTEE MEMBER PRESENT IN ELKO:

Senator Dean A. Rhoads

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Patrick Guinan, Senior Research Analyst, Research Division

Matthew S. Nichols, Principal Deputy Legislative Counsel, Legal Division

Anne Vorderbruggen, Senior Research Secretary, Research Division

OPENING REMARKS

- Assemblyman Harry Mortenson, Chair, welcomed members, presenters, and staff to the first meeting of the Legislative Committee on High-Level Radioactive Waste, and introduced the members of the Committee and staff.

Chair Mortenson reported that he had recently attended a very informative meeting of the Office of Environmental Management, United States Department of Energy (DOE), in Nashville, Tennessee, regarding radioactive waste management. He also described his visit to Paducah, Kentucky, where the only plant still enriching uranium for reactor fuel is located.

Chair Mortenson stated that he will not be the Chair of this Committee after November 2010; however, he urged the Committee to consider the introduction of two bills, as follows:

- (1) Change the law that created Nevada's Agency for Nuclear Projects, of which Bruce H. Breslow is the current Executive Director, to give the Agency additional responsibility, as the Agency is unable to pursue funds available from the federal government that could compensate the State for some of the contamination at the Nevada Test Site. Chair Mortenson said there is also a question of the adequacy of Nevada's compensation for accepting low-level radioactive waste and low-level mixed waste at the Nevada Test Site, and that should be reviewed by the Agency for Nuclear Projects.
- (2) Continue the Legislative Committee on High-Level Radioactive Waste, but change the name to something more appropriate. Chair Mortenson commented that although a high-level nuclear waste repository apparently will not be developed at Yucca Mountain, there is a lot of contamination at the Nevada Test Site. Also, since low-level radioactive waste is being accepted at the Site, the Committee should have oversight in those areas. He further noted that, in the future, the Committee may be faced with the decision of whether to have a nuclear power plant in the State.

OVERVIEW OF COMMITTEE'S HISTORY AND DUTIES

- Patrick Guinan, Senior Research Analyst, Research Division, Legislative Counsel Bureau, provided an overview of the history and duties of the Legislative Committee on High-Level Radioactive Waste. (Please see [Exhibit B](#).)

UPDATE ON THE STATUS OF THE YUCCA MOUNTAIN LICENSING APPLICATION

- Bruce H. Breslow, Executive Director, Nevada's Agency for Nuclear Projects, reported that after the DOE submitted a license application to open a permanent geological repository at Yucca Mountain, the State has been successful in 223 contentions on environmental, legal, and safety issues that were approved to be argued as part of the licensing hearing.

Continuing, Mr. Breslow noted that in March 2010, at President Obama's suggestion, the U. S. Secretary of Energy filed a motion to withdraw the license application for Yucca Mountain, and that motion will be heard before the Nuclear Regulatory Commission's (NRC) Construction Authorization Board (CAB). Mr. Breslow stated that on June 3 and 4, 2010, all parties will present their case in oral arguments on whether or not they support the DOE's proposal to withdraw the license application with prejudice. Mr. Breslow stated that another issue in front of the CAB is whether all the parties must preserve their records and documents in a form that can be retrieved and searched for information in the future. He noted that the decision of the CAB will most likely be appealed to the NRC by one of the parties.

Mr. Breslow further reported that many people in Congress have said they plan to propose new legislation after the fall elections, to change the Nuclear Waste Policy Act to order the project to go forward and to fund it. Mr. Breslow provided three documents containing information regarding the disposal of high-level radioactive waste at Yucca Mountain. (Please see [Exhibit C](#), [Exhibit D](#), and [Exhibit E](#).)

REVIEW OF PENDING FEDERAL LITIGATION RELATED TO THE YUCCA MOUNTAIN PROJECT

- Marta Adams, Chief Deputy Attorney General, Nevada's Office of the Attorney General, reported on the pending litigation related to the Yucca Mountain Project. She stated that most of the lawsuits were initiated in the Circuit Court of Appeals in the District of Columbia to challenge or block the DOE's decommissioning of the Yucca Mountain site. Those lawsuits include the State of Washington; State of South Carolina; Aiken County, South Carolina; and the National Association of Regulatory Utility Commissioners. Ms. Adams further stated that on May 3, 2010, a motion made by the State of Washington to halt the decommissioning effort was denied by the Court as too speculative and that the State of Washington had failed to show irreparable injury.

Ms. Adams reported that briefing will be complete by the end of August and oral arguments will probably be scheduled for September 2010, but there is a strong likelihood that regardless of the decision by the NRC regarding DOE's motion to withdraw its license application, it will be appealed.

Ms. Adams further reported there are five legal cases being held in abeyance that will not proceed if the project is terminated. Those five cases include the *State of Nevada v. EPA* (involving the radiation protection standard); one is a parallel case challenging NRC's licensing approval; two water cases are pending, one in federal court in Nevada and one in the District Court in Tonopah; and there is a challenge to DOE's transportation plan.

Responding to a question about whether ownership of the land could be transferred from the federal government to the State, Bruce H. Breslow, previously identified, stated that Yucca Mountain was chosen because it was a convenient location and was on the Nevada Test Site, which the federal government owns. He noted that the State had very little leverage or political power, and the only way Nevada could make any money was to forfeit the State's right to object to the waste coming to the State, in which case Nevada could receive the maximum amount of \$10 million each year while the waste is being put in the mountain and \$20 million a year thereafter.

Continuing, Mr. Breslow stated that now that the Nuclear Waste Policy Act will be amended or changed, rather than attempt to transfer ownership of the land to Nevada, which would be fruitless, he would prefer to negotiate a better Nuclear Waste Policy Act, so that if the nuclear waste were ever to come to Nevada, the State would be allowed to make sure it is as safe as possible, the State would have the right to object, and the compensation would be better.

- Chair Mortenson commented that the closest analogy to Yucca Mountain is the Waste Isolation Pilot Plant (WIPP) in New Mexico, which New Mexico accepted with the expectation of getting substantial benefits. The only benefits they have gotten to this point are improvements in roads that are used to ship the materials to the site. Chair Mortenson noted that New Mexico negotiated with the DOE to try to get the DOE to put money into a fund to close the WIPP site when it is filled and the DOE refused.

UPDATE ON ACTIVITIES OF NEVADA'S AGENCY FOR NUCLEAR PROJECTS

Overview of United States Department of Energy Transuranic Waste Shipments Along the Interstate 80 Corridor

- Bruce H. Breslow, previously identified, reported that transuranic waste is not high-level waste but it has more plutonium and higher levels of radionuclides and

actinoids than low-level waste, and the Western Governors' Association has developed protocols for how it is shipped. He noted that the DOE wants to use the Interstate 80 corridor for the transuranic waste shipments to the Idaho National Laboratory where it is repackaged and shipped to the WIPP in New Mexico. Mr. Breslow stated Nevada's Agency for Nuclear Projects has been designated by the Governor to work with other agencies to develop protocols to manage these shipments.

Continuing, Mr. Breslow reported that Nevada has completed its preparations involving: (1) inspecting the shipments; (2) escorting the shipments; (3) emergency preparedness; (4) shipment tracking; and (5) route conditions and safe parking. Mr. Breslow provided a fact sheet on shipments of transuranic waste ([Exhibit F](#)) and a WIPP shipments checklist ([Exhibit G](#)). Mr. Breslow noted that California may not be ready for the shipments as the Interstate 80 corridor over the mountain may be an issue this summer because the California Department of Transportation will be reducing the lanes over Interstate 80 to one narrow lane in each direction and their crews will be working on the highway at night when the shipments would be scheduled. In addition, California will be closing all the rest stops over the mountain on Interstate 80 for the next year.

Mr. Breslow further noted that the DOE has announced they plan to make between 13 and 15 shipments this summer.

- Chair Mortenson stated that the Blue Ribbon Commission on America's Nuclear Future, established under the authority of the DOE, will be looking for alternatives to Yucca Mountain, and their activities can be monitored at their website: brc.gov.
- Mr. Breslow reported that he attended the first meeting of the Blue Ribbon Commission on America's Nuclear Future and at the meeting he had offered to provide a briefing on the research conducted by Nevada and the lessons that were learned.

Discussion of Yucca Mountain Project Closure, Site Reclamation, and Possible Alternate Uses

- Bruce H. Breslow, previously identified, reported that when the Yucca Mountain Project is closed, his Agency will be working to ensure that the DOE archives its records properly and organizes them to allow the records to be searchable and usable for people who want to look at these issues in the future. Mr. Breslow further noted that the site reclamation plan prepared by the DOE was for after the waste was fully in the mountain and sealed, so the DOE has been asked to prepare a site reclamation plan for the mountain if it is not used, and the DOE has said they will turn that duty over to the U. S. Department of Interior.

On the subject of possible alternate uses, Mr. Breslow opined the only alternate use would be some sort of top-secret, well-protected, national data storage center.

- In response to a question from Chair Mortenson regarding the potential for receiving compensation for the contamination at the Nevada Test Site, Mr. Breslow stated that land owned by the federal government does not qualify for the Superfund program, but there is an opportunity for Natural Resource Damages. He said that he and others are spearheading a preliminary group to examine Nevada's options, mostly specific to the water under the Nevada Test Site. Mr. Breslow noted that the groundwater is owned by the State of Nevada and there is more than a million acre-feet of water under the Nevada Test Site.
- Chair Mortenson asked if Nevada gets compensated for accepting low-level waste and mixed waste, and how it compares with other sites that accept these types of waste.
- Marta Adams, previously identified, responded that Nevada's Division of Environmental Protection (NDEP) regulates low-level mixed waste, which has a hazardous waste component; and the strictly low-level waste is reported to the State, but the State does not exert any permitting or regulatory authority over it. Ms. Adams noted that the Office of the Attorney General did spearhead an effort to attempt to convince the DOE to conduct a site-wide environmental impact statement of the Nevada Test Site to look at both historic contamination and to address the issue of the low-level mixed waste disposal. In response to Chair Mortenson's question regarding compensation, Ms. Adams stated that various positions at the NDEP are funded under DOE grants and there has been some discussion of a tipping fee, but the State has not taken advantage of an appropriate tipping fee, although the DOE has indicated it would be amenable to that.

Ms. Adams stated she would obtain information for the Committee about the tipping fee compensation received by other sites.

Discussion ensued among the Committee and Gary Hollis, Chair of the Nye County Commission, regarding the compensation, including payments in lieu of taxes (PILT), received by Nye County from the federal government for the Nevada Test Site and the shipments across Nye County roads.

- Responding to a question from Senator McGinness regarding whether the DOE can withdraw their application or if it would have to go back to Congress to close Yucca Mountain, Ms. Adams stated the Office of the Attorney General would argue that an applicant cannot be forced to proceed if the applicant does not want to pursue its application. She noted there is not a precise finding that says that; however, there is ample case law that would suggest any applicant for a license before the NRC would have the right to withdraw its license application.

Ms. Adams opined it is very questionable whether benefits could be exchanged for the public health and safety, and Yucca Mountain is a disastrous site and will not solve the Country's problem of stockpiling nuclear waste.

- Chair Mortenson stated that when Yucca Mountain was first proposed as a place for the geological disposal of waste, it was anticipated that the geological barriers would be 95 percent of the containment and there would have to be 5 percent engineered barriers. He reported that after decades of study, that ratio has reversed and it is now anticipated the engineered barriers would have to be 95 percent and the geological barriers would be only 5 percent. Chair Mortenson also commented that when the low power cost of nuclear energy is quoted, all the costs are not being considered. Those additional costs include cleanup and the cost of a repository which is close to \$100 billion not including \$11 billion for titanium drip shields. He expressed that Yucca Mountain does seem to be one of the worst geologies in which a repository could be located.

PUBLIC COMMENT

- Former Nevada Governor Robert List, representing Esmeralda County, discussed his past involvement with the issues of nuclear waste in Nevada as Attorney General, as Governor, as a consultant to the Nuclear Energy Institute, and as a private citizen. Governor List stated that he currently serves as legal counsel for several rural Nevada counties and is appearing today in his capacity as a consultant to Esmeralda County.

Continuing, Governor List spoke to the changes that have occurred in technology and the economy since Yucca Mountain was first proposed, and urged the Committee to take a fresh look at the project. He stated that Nevada has to diversify its economy to provide the kind of education and public services necessary for its families, and it would be the opportunity of a lifetime for the State if they were to take a fresh look at the new realities, because anything could evolve and Nevada should be ready.

Responding to Senator Lee about Esmeralda County's role in hiring Governor List and the benefits to the County, and what would happen if Yucca Mountain were closed, Governor List stated that Nye County and the eight counties surrounding it in Nevada each receive an annual allocation from the U.S. Congress to conduct what is termed "oversight activity" to prepare for impacts that would occur if the project were to proceed. The work he has done for Esmeralda County has been to prepare for the eventuality of how it might affect the County if the project were to go forward and to determine what it would take to mitigate the impacts.

- Assemblyman Claborn stated that he agreed with Governor List with regard to Yucca Mountain and supports his ideas. Mr. Claborn said he has a concern with the water contamination issue in Nye County. Mr. Claborn noted that he started

working at Yucca Mountain in 1957 and has been there representing the Operating Engineers until he ran for office in 1999.

Responding to Assemblyman Claborn's concern about the water, Governor List noted that the water issues have been raised by the State, Clark County, Nye County, and Inyo County, California, in the contentions pending before the NRC.

- Senator Rhoads commented he understands the possibility of some advantages but he is fearful that by supporting Yucca Mountain, Nevada will become the garbage dump of America.

Governor List opined that he does not view nuclear waste as garbage, but as a resource with tremendous value, and that it may entitle the State for PLT for a commercial enterprise that would have more than twice the value of the Las Vegas Strip.

- Assemblyman Gustavson asked for an explanation about the safety of reprocessing, nuclear power plants, and the water requirement. A lengthy discussion regarding these issues ensued among Governor List; Assemblyman Gustavson; and Bruce H. Breslow, previously identified.
- Gary Hollis, previously identified, commented that Nye County had requested a permit for approximately 14,000 acre-feet of water in Franklin Flats, which was available, and the federal government protested and would not grant access to drill a well. Mr. Hollis concluded that the test site is contaminated. He stated that the contamination has left the boundaries of the test site, and Nye County is in negotiations for oversight funds to put some wells in the valley floor to monitor the contamination.

Continuing, Mr. Hollis opined that Nevada may not get the spent fuel rods or any monetary benefits for the spent fuel; however, sooner or later, the Nevada Test Site will get the Navy fuel and the high-level nuclear waste from the Hanford Nuclear Reservation, the Savannah River Site, and the Oak Ridge National Laboratory, without any monetary benefit.

Mr. Hollis questioned why Nevada has not asked for damages for the contamination of water at the Nevada Test Site. He further stated that Nye County does not concede that the federal government owns the land.

Responding to a question by Assemblyman Gustavson about how the State will deal with the contamination, Mr. Breslow said that the State must conduct a Natural Resource Damage Assessment. He noted that various agencies and groups are working together to get to the point where they can deliver something that is a proper pathway with a good chance of success for the State to move forward and not only assess the damages, but receive compensation if the damage cannot be mitigated. Mr. Breslow said that it involves gathering not only the knowledge already obtained, but also involves working on a site they

do not have access to, and trying to find data that is protected, but they hope to have a plan ready by the end of the year.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Anne Vorderbruggen
Senior Research Secretary

Patrick Guinan
Senior Research Analyst

APPROVED BY:

Assemblyman Harry Mortenson, Chair

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Patrick Guinan, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is a memorandum dated May 11, 2010, to the Chairman and Members of the Nevada Legislature’s Committee on High-Level Radioactive Waste, titled “Overview of Legislative Committee on High-Level Radioactive Waste,” provided by Patrick Guinan, Senior Research Analyst, Research Division, LCB.

[Exhibit C](#) is a document titled “The Question of reprocessing nuclear waste at Yucca Mountain,” submitted by Bruce H. Breslow, Executive Director, Nevada’s Agency for Nuclear Projects.

[Exhibit D](#) is a document titled “Technical and Scientific Reasons Why Disposal of Radioactive Waste and Spent Nuclear Fuel at Yucca Mountain is Unacceptable and Not Adequately Protective of Human Health and Safety,” provided by Bruce H. Breslow, Executive Director, Nevada’s Agency for Nuclear Projects.

[Exhibit E](#) is a copy of Document No. 1243016 in Case No. 10-1050 Filed in the United States Court of Appeals for the District of Columbia Circuit In re: Aiken County, Petitioner, filed on May 3, 2010, submitted by Bruce H. Breslow, Executive Director, Nevada’s Agency for Nuclear Projects.

[Exhibit F](#) is a fact sheet titled “Shipments of Transuranic Waste From Storage Sites in California to Idaho National Laboratory Via Interstate,” dated February 2010, provided by Bruce H. Breslow, Executive Director, Nevada’s Agency for Nuclear Projects.

[Exhibit G](#) is a document titled “WIPP Shipments Checklist, Agency Readiness, I-80 Shipments,” dated April 5, 2010, provided by Bruce H. Breslow, Executive Director, Nevada’s Agency for Nuclear Projects.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.