

**MINUTES OF THE MEETING OF THE
NEVADA LEGISLATURE'S COMMITTEE ON
HIGH-LEVEL RADIOACTIVE WASTE
(*Nevada Revised Statutes 459.0085*)
October 8, 2002
Las Vegas, Nevada**

The third meeting of the Nevada Legislature's Committee on High-Level Radioactive Waste Committee (*Nevada Revised Statutes* [NRS] 459.0085) was held on October 8, 2002, commencing at 10 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Pages 3, 4 and 5 contain the "Meeting Notice and Agenda." The meeting was video conferenced to the Legislative Building, Room 2135, 401 South Carson Street, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Harry Mortenson, Chairman
Senator Lawrence E. Jacobsen
Senator Joseph (Joe) M. Neal, Jr.
Senator Raymond C. Shaffer
Assemblyman John J. Lee
Assemblyman Robert E. (Bob) Price
Assemblywoman Sandra J. Tiffany

COMMITTEE MEMBERS ATTENDING IN CARSON CITY:

Senator Mike McGinness, Vice Chairman

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Marjorie Paslov Thomas, Senior Research Analyst
R. René Yeckley, Principal Deputy Legislative Counsel
Nenita Wasserman, Senior Research Secretary

MEETING NOTICE AND AGENDA

Name of Organization: **Nevada Legislature's Committee on High-Level Radioactive Waste (*Nevada Revised Statutes 459.0085*)**

Date and Time of Meeting: Tuesday, October 8, 2002
10 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 2135
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

- I. Introductions and Opening Remarks
Assemblyman Harry Mortenson, Chairman
- *II. Approval of Minutes of the January 29, 2002, Meeting
- *III. Reports to Committee
 - A. Update on Status of the High-Level Radioactive Waste Program of the United States Department of Energy (DOE)
J. Russell Dyer, Ph.D., Project Manager, DOE Yucca Mountain (Nevada) Site Characterization Office
Topics to include:
 - 1. Status of current studies and research regarding Yucca Mountain
 - 2. Overview of the license application that must be submitted by the DOE to the United States Nuclear Regulatory Commission (NRC) for authorization to begin construction of a geologic high-level radioactive waste repository at Yucca Mountain
 - 3. Schedule of the DOE's license application to the NRC
 - 4. Plan to transport nuclear waste from reactor sites located throughout the United States to Yucca Mountain, including routes and mode selection through Nevada
 - B. Update on Status of the NRC Regulatory Process for Licensing a Geologic High-Level Radioactive Waste Repository
Robert Latta, Senior On Site Representative, NRC

Topics to include:

1. Overview of the NRC's licensing process regarding the DOE's application for authorization to construct a geologic high-level radioactive waste repository at Yucca Mountain, including a description of the three phases of the NRC's licensing process
2. Role of the NRC in the pre-licensing process of authorizing the construction of a geologic high-level radioactive waste repository at Yucca Mountain

C. Update on the Activities of the Nevada Agency for Nuclear Projects' (NANP)

Robert R. Loux, Executive Director, NANP

Marta A. Adams, Senior Deputy Attorney General, Office of the Attorney General

Joseph Egan, Special Deputy Attorney General, Egan and Associates

Topics to include:

1. Overview of New Mexico's experiences with the Waste Isolation Pilot Plant, including successes and failures in bargaining for benefits from the federal government
2. Status of pending court actions regarding Yucca Mountain in which the State is involved and the legal services for which NANP is contracting

D. Update on High-Level Radioactive Waste Activities of the National Conference of State Legislatures (NCSL)

Linda Sikkema, Program Principal, NCSL

E. Update on Oversight Activities of the Affected Units of Local Governments (*The Nuclear Waste Policy Act*)

Les Bradshaw, Manager, Department of Natural Resources and Federal Facilities, Nye County

Henry Neth, Commissioner, Nye County

Irene Navis, Clark County Nuclear Waste Division, Clark County

Representatives invited from Churchill, Esmeralda, Eureka, Lander, Lincoln, Mineral, and White Pine Counties in Nevada and Inyo County in California

IV. Public Testimony

V. Comments and Discussion by Committee Members

VI. Adjournment

***Denotes items on which the committee may take action.**

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Nenita Wasserman at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at www.leg.state.nv.us.

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OPENING REMARKS AND INTRODUCTIONS BY THE CHAIRMAN

Chairman Mortenson called the meeting to order at 10 a.m. and welcomed everyone to the meeting. He acknowledged members and public attending through videoconference. He also noted the meeting would be audio telecast and reminded everyone that any comments made in the room before or after the meeting adjourns may be heard live. The public may also to listen to meetings on the Internet, the Legislative Web site is: <http://www.leg.state.nv.us.com>.

The chairman noted that any statements made during testimony must be truthful and accurate; if not, that person may be guilty of a misdemeanor or gross misdemeanor. The secretary called the roll and announced a quorum was present.

APPROVAL OF MEETING MINUTES OF JANUARY 29, 2002, MEETING

**SENATOR JACOBSEN MOVED FOR APPROVAL OF THE JANUARY 29, 2002, MINUTES.
THE MOTION WAS SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.**

Chairman Mortenson stated that since the committee's last meeting in January, there had been a lot of activity concerning Yucca Mountain. On February 14, 2002, United States Secretary of Energy Spencer Abraham formally recommended to President George W. Bush that the Yucca Mountain site be developed as a long-term geologic repository for high-level radioactive waste. President Bush approved the recommendation made by Secretary Abraham on February 15, 2002.

Continuing his introductory remarks, Chairman Mortenson reported that:

- After President Bush approved the recommendation, Governor Kenny C. Guinn exercised his right to veto the Yucca Mountain project, becoming the first governor to veto a presidential decision.
- On April 8, Governor Guinn issued a notice of disapproval and statement of reasons supporting his veto, in which he called the project "extremely bad science, extremely bad law, and extremely bad public policy."
- Following Governor Guinn's veto, the proposed Yucca Project was sent to United States Congress. Under the *Nuclear Waste Policy Act* (NWPA) of 1982, 42 U.S.C. § 10136, Congress could override Guinn's veto with a simple majority in both houses. Both the House of Representatives and the Senate held committee meetings and listened to testimony.
- Ultimately, both houses passed House Joint Resolution 87, which directs the United States Department of Energy (DOE) to submit a licensing application to the United States Nuclear Regulatory Commission (NRC) for authorization to construct a geologic high-level radioactive waste repository at Yucca Mountain.
- If the NRC concludes that the proposed Yucca Mountain Repository meets the requirements as specified in the *Code of Federal Regulations*, a grant for authorization to begin construction would be given. The DOE will then begin to build the repository.

Based on the events of this past year, Chairman Mortenson explained that he requested representatives of the DOE, NRC, and the Nevada Agency for Nuclear Projects to provide updates regarding their activities with respect to Yucca Mountain. Additionally, the committee would have an opportunity to hear from the National Conference of State Legislatures and the Affected Units of Local Governments (AULG).

REPORTS TO COMMITTEE

Update on Status of the NRC Regulatory Process for Licensing a Geologic High-Level Radioactive Waste Repository

J. Russell Dyer, Ph.D.

J. Russell Dyer, Ph.D., Project Manager, DOE Yucca Mountain Site (Nevada) Site Characterization Office, made a slide presentation to the committee. A hard copy of the slides are included. (see Exhibit A). The topics that the presentation covered are as follows:

Overview of the license application that must be submitted by the DOE to the US NRC for authorization to begin construction of a geologic high-level radioactive waste repository at Yucca Mountain.

- In 1982 Congress established the NWPA for the disposition of high-level radioactive waste and commercial spent nuclear fuel.
- The NWPA was amended in 1987 and eliminated all sites but Yucca Mountain to be characterized for a potential repository.
- The Congress directed the DOE in 1997 in the *Energy and Water Development Appropriations Act* to prepare a report assessing feasibility of developing a repository at Yucca Mountain.

Schedule of the DOE's License application to the NRC.

Dr. Dyer explained the next actions that would be taken by the DOE included:

- Enhance Quality Assurance (QA) program.
- Certify licensing support network (LSN) by 2004.
- Complete license application to the NRC for construction authorization by December 2004.
- Develop transportation capability to support waste acceptance in 2010.
- Construct initial repository and surface facilities by 2010.

Status of current studies and research regarding Yucca Mountain

Dr. Dyer reported that the scientific program at Yucca Mountain has been one of the most comprehensive earth science and engineering programs that has ever been attempted in the world. It is an unprecedented effort from the surface drilling to the underground data collection that has been going on for a number of years. He reported some of the scientific studies that are ongoing are:

- Continuing to understand the environmental characteristics of Yucca Mountain and the surrounding area.
- The physical characteristics of rock layers over a variety of environmental conditions.
- Physical properties of spent nuclear fuel and high-level radioactive waste as they decay.
- The groundwater-flow system and how radioactive particles could move from the repository to the human environment.

Plan to transport nuclear waste from reactor sites located throughout the United States to Yucca Mountain, including routes and mode selection through Nevada.

Moving onto the topic of transportation, Dr. Dyer made the following points:

- The United States has a very impressive safety record.
- The NRC and DOT regulations govern all aspects of nuclear waste transportation.
- Emergency responders would be trained prior to shipments.

- More than 70,000 metric tons of spent nuclear fuel have been shipped safely in densely populated Europe. They average 650 shipments of spent fuel a year.

Reviewing the “Mostly Rail Option” listed in detail on page 12 of Exhibit A, Dr. Dyer explained that if the spent fuel is shipped by rail (which is the preferred option on the Final Environmental Impact Statement), the DOE is looking at:

- A 24-year shipping campaign for a 70,000 metric ton repository. This assumes some consolidation and multiple casks being transported by train for reasons of economy.
- Annual shipments would be approximately 130 train shipments and 45 truck shipments for a total of 175 total shipments per year for a 24-year period.

Dr. Dyer defined “emergency response” as providing the technical assistance to states and tribes for training public safety officials in Emergency response procedure. The state, tribal and local government officials have the responsibility to respond to any accident within their jurisdiction. At the present time, the DOE provides a 24-hour on call emergency program through eight regional coordinating offices throughout the United States.

Regarding the budget, Dr. Dyer noted that there has not been any appropriation bills passed for any of the federal government agencies. The DOE is subsisting week-to-week on a continuing resolution at the Fiscal Year 2002 level. A detailed chart that describes issues and budget shortfalls for Fiscal Years 1995 – 2002 is page 14 of Exhibit A.

Addressing Senator Shaffer’s question as to how long heat from the spent fuel will keep canisters hot and when does the heat begin to dissipate once the fuel is stored, Dr. Dyer responded:

- That was a difficult question to answer because there would be heat produced from radioactive decay, as long as elements are decaying.
- The primary resource of heat generation radioactive decay is in the first 1000 years.

Responding to a question posed by Senator Shaffer regarding how long the spent fuel rods were monitored in the Nevada Test Site tunnel and what the results were, Dr. Dyer made the following points:

- Some fuel rods were placed in vertical boreholes besides the different emplacement scheme at that time.
- Small waste packages were placed in vertical boreholes. The boreholes contained live waste or heaters that were used to simulate the heat.
- The DOE was trying to observe the thermal effects from that emplacement but the test did not run long enough to see results. The thermal conductivity of rock takes a long time to propagate heat through rock.
- The drift scale test currently operating is an eight-year test. There is a four-year heat up on the rock and then a rock cool down.
- There was not very much useful data that resulted from the Climax test.

Addressing Senator McGinness’ questions as to when local governments will receive emergency response training and, what if, for example, Nye County does not wish to respond, Dr. Dyer noted that:

- His interpretation was that the DOE is backup to state emergency responders in all states.
- There are national and local agencies that could help with the emergency process.

- There is a requirement that the DOE provide technical assistance, funds, and training to the states and tribes to help train the public safety officials for first response training. That technical assistance would be done in consultation with local and state parties.

Senator McGinness requested Dr. Dyer of the DOE to provide information concerning the DOE Regional Coordinating Office (RCO) since this office is responsible for providing assistance to the State of Nevada if there is an accident involving the transportation of radioactive materials.

Chairman Mortenson expressed concern that the DOE has conducted extensive thermal tests but the tests do not have the same conditions that would exist regarding the intense radiation on the rocks. Addressing the Chairman's inquiry on how the DOE would get the answers, Dr. Dyer responded:

- That the intense radiation field is something that cannot be duplicated under the current conditions (using electric heaters to drive the thermal field) but it can be duplicated in the laboratory.
- The DOE has exchanged information on this subject with the Russians who have compiled information in its system. The DOE is augmenting this information with other information provided from other sources throughout the world.

Update on Status of the NRC Regulatory Process for Licensing a Geologic High-Level Radioactive Waste Repository

Overview of the license application that must be submitted by the DOE to the United States Nuclear Regulatory Commission (NRC) for authorization to begin construction of a geologic high-level radioactive waste repository at Yucca Mountain.

Role of the NRC in the pre-licensing process of authorizing the construction of a geologic high-level radioactive waste repository at Yucca Mountain

N. King Stablein

N. King Stablein, Section Chief, Division of Waste Management, High-Level Waste Branch, Office of Nuclear Material Safety and Safeguards, NRC, provided an overview of the NRC's licensing process regarding DOE's application for authorization to construct a geologic high-level radioactive waste repository at Yucca Mountain. He noted that he had worked at the NRC for 18 years on the Yucca Mountain Project. Mr. Stablein reviewed the activities must take place prior to NRC's receipt of the license application. A hard copy of his slide presentation is attached to these minutes as Exhibit B. His review provided concise information on the roles and responsibilities of NRC prior to receiving the license application as well as discussion about how the NRC will review the license application.

- The NRC is an independent agency and is not part of the DOE, Environmental Protection Agency (EPA) or other cabinet level organization. Since the NRC stands alone, the agency is able to make decisions without the overtones of being part of another organization.
- The mission of the NRC is to protect the public health, safety, environment, common defense and security of the United States.
- The NRC is responsible for regulating commercial and industrial, medical, and other uses of radioactivity.
- The five commissioners of the NRC are the ultimate arbitrators. The commissioners are appointed by the President of the United States on a staggered five-year appointment. The commissioners are accomplished scientists, engineers, and attorneys.
- The role of NRC's professional staff is to carry out the Commission's policies, recommend health and safety regulations, evaluate license applications, advise the Commission on safety matters and communicate with the public.

- The role of the NRC at Yucca mountain is to set protective rules that are consistent with the EPA standards for Yucca Mountain.
- The NRC will carry out its role at Yucca Mountain by reviewing all information objectively, make decisions based on the facts, use a step-wise licensing process that takes into consideration construction, operation, retrieval period and closure and license termination. The NRC will also maintain an open public process.
- The NRC must decide whether to allow the DOE to construct a repository.
- The NRC will decide whether to accept an application for review based on whether:
 - All the required information included?
 - Does the application present enough documentation to support the DOE's safety claims?
 - Are document access requirements in compliance?
- If the answer is yes to all the above-mentioned questions, the application is docketed and detailed safety review begins.

In response to Senator Neal's question regarding the time period for a license application to be accepted and before moving to the next step in the application process, Mr. Stablein explained there is a three month acceptance period established by regulation.

Mr. Stablein summarized that the NRC's decision on a potential license application for a repository is based on a full and fair public hearing. If a hearing occurs, it would follow formal, well-established rules to ensure an open objective decision.

Addressing Senator Neal's questions, Mr. Stablien made the following points:

- Once the NRC receives an application from DOE staff has 18 months to complete the safety evaluation report. A hearing by the Atomic Safety and Licensing Board is next. He added that the overall period is three years.
- If the license application calls for a repository that will have environmental impacts that were not considered in the Final Environmental Impact Statement (FEIS), then the FEIS is lacking in that respect and the NRC could not adopt the FEIS in total.
- The FEIS statement would include transportation impacts that goes beyond the site and state boundary.

Update on the Activities of the Nevada Agency for Nuclear Projects

Overview of New Mexico's experiences with the Waste Isolation Pilot Plant, including successes and failures in bargaining for benefits from the Federal Government

Robert R. Loux

Robert R. Loux, Executive Director, Nevada's Agency for Nuclear Projects (NANP), provided a handout titled "Experience of New Mexico and Western States with DOE's Waste Isolation Pilot Plant (WIPP) Program. Lessons for Nevada" (Exhibit C-1). Mr. Loux provided an overview of New Mexico's experiences with WIPP and information on New Mexico's successes and failures to bargain for benefits. He covered the following topics in his presentation:

- Nevada has looked at the situation in New Mexico for 15 years. Several consultants had been hired from New Mexico who have written reports to the State of Nevada regarding the process in New Mexico beginning in 1978. He added there is detailed information available regarding this subject through his office.

- The Clark County Nuclear Waste Office has also conducted a major study about New Mexico as a part of their impact report.
- A brief synopsis of information garnered through these reports was provided to the committee titled “Experience of New Mexico and Western States with DOE’s Waste Isolation Pilot Plant (WIPP) program (Exhibit C-1).

Mr. Loux opined from the beginning that elected state officials in Carlsbad, New Mexico were heavily influenced both by the strong advocacy of local officials in the area and representatives to the New Mexico legislature. As a result, New Mexico never formally opposed the project. In 1981, New Mexico entered into agreements with the DOE for the project. It was agreed the state would consult with the DOE on the project. New Mexico’s agreement did not include specific compensation it would receive by DOE. In summary, DOE initially promised that the state would have: (1) absolute veto over the project; decisions regarding the type and mode of transportation to the project; and (3) the amount of federal compensation to the state. The DOE did not follow through on any of the initial agreements.

Mr. Loux reviewed a document (see Exhibit C-2) titled “New Mexico and WIPP: A Litany of Broken Promises.” He highlighted broken promises made by the DOE to New Mexico during the time period of 1978 through 1999 as follows:

- 1978 - Secretary of Energy James Schlesinger promised New Mexico the right to veto the WIPP facility through a “right of concurrence.” The DOE also promised that the WIPP facility would be licensed and regulated by the NRC. In response, New Mexico did not actively oppose the project and the legislature declined to put a ballot question to the voters on the matter, reasoning that a veto over the project would be protection enough for the state.
- 1979 - The DOE supported WIPP legislation that rejected the principle of state concurrence or a veto, replacing it with a watered down and essentially meaningless requirement that the DOE would only “consult and cooperate” with New Mexico. The same legislation, again with the DOE’s support, also authorized WIPP to be developed as an unlicensed facility, not subject to NRC or any external regulation.
- 1981 – Despite the requirement in the law requiring the DOE to enter into an agreement with New Mexico and “consult” with the state prior to initiating construction at WIPP, the DOE announced it was proceeding with construction without having entered into an agreement and without consulting the state. New Mexico was forced to sue the DOE in court to stop the project from proceeding.
- 1981 – As a result of the suit, the DOE and New Mexico signed a “court stipulated agreement” that required the DOE to consult with the state before initiating “key events and milestones.”
- 1987 - In a modification to the agreement with New Mexico, the DOE committed a \$190 million appropriation for bypasses around cities in New Mexico.
- 1989 – The DOE included only \$43 million in the budget request to Congress with the proviso that no funds be released until Congress passed the WIPP Land Withdrawal Act.
- 1990 - The DOE announced that it could not support original dollar amount promised for compensation and that the \$43 million already allocated by Congress would have to suffice.
- 1991 – By this time, the DOE had reneged on all promises to New Mexico. According to Mr. Loux, researchers for Clark County found that to bring expediency to the project, the DOE does not always follow the law. The 1991 report published by the State of New Mexico regarding WIPP, found that officials of New Mexico were willing to negotiate with the DOE, but over the ensuing years the DOE delivered less and less to New Mexico. The DOE also attempted to open WIPP without consulting the state or obtaining congressional approval. New Mexico filed suit to stop the DOE from proceeding with the project.
- 1992 – Senator Dominici and the New Mexico congressional delegation included a provision in the WIPP Land Withdrawal Act to provide \$20 million per year to the state for 14 years for economic assistance.

- 1999 – In a dispute with the New Mexico Department of Environment over a state requirement for a surety bond for the DOE's WIPP management contractor, the DOE unilaterally withheld the \$20 million payment for that year and threatened to do the same with future payments. An act of Congress forced the DOE to release the funds.

Continuing his testimony, Mr. Loux stated that the NANP concludes keeping an adversarial relationship with the DOE is important. He highlighted the following points:

- The state no longer has a bargaining chip if it cannot resort to litigation. He added that the Nevada's Governor and Congressional delegation are in complete agreement with this position.
- Of the 127 facilities nationwide managed by the DOE that handle radioactive materials, 124 have failed completely.
- Congress cannot be legally bound by decisions made by previous Congresses. This makes it virtually impossible to have a legally binding agreement.
- Despite assurances from the NRC that DOE must obey the rules, at the Yucca Mountain site, the NANP and the State of Nevada do not have confidence that this will happen.
- In a 1991 report on WIPP conducted by Latir Energy Consultants of Santa Fe, New Mexico that because New Mexico gave its implied consent to WIPP, the state was committed to an irreversible path of negotiation due to a weak position and the loss of a right of refusal.

Responding to numerous questions posed by Senator Neal, Mr. Loux responded:

- The year that the WIPP site opened was 1998.
- The WIPP site is not governed by the NHPA.
- Yucca Mountain is governed by the NHPA.
- In formulating the report for this committee, discussions with people who are working at the WIPP facility did take place.
- The Urban Environmental Research Group is a consulting organization in Arizona that has been contracted by Clark County to study the WIPP site.
- Latir Energy Consultants is an organization located in Santa Fe, New Mexico that has been the consultants for the State of Nevada, and Affected Local Governments in Nevada since 1982.
- New Mexico was promised in writing by Secretary of Energy Schlesinger in 1978 to have an absolute veto over the project if they would agree to proposals by the DOE.
- Merle Leftcoff is a consultant for the State of New Mexico who has also worked for the State of Nevada and the DOE.

Addressing Chairman Mortenson's statement that Senator Reid had suggested that provisions of the licensing rules should occur, Mr. Loux commented that there have been at least three or four rule changes suggested since last fall.

Status of pending court actions regarding Yucca Mountain in which the State is involved and the legal services for which NANP is contracting

Marta Adams

Marta Adams, Senior Deputy Attorney General, Office of the Attorney General, stated that her primary client is NANP and concurs with all statements made by Mr. Loux. She said the State of Nevada is poised to win some of the

legal cases, and opined it is the wrong time to talk with the Federal government about money in exchange for the health and safety of Nevadans. Further, she concurred with Mr. Loux that this is a dangerous project and DOE's track record is not one of safety or environmental protection. Ms. Adams added there is not one DOE site that does not leak radiation.

Ms. Adams responded to Senator Neal's request, and stated that she would be happy to provide him a list of cases, which the state has won and lost. She noted that until an agency such as the NRC makes a final action, it is difficult to bring a viable lawsuit against the agency. Nevada is now in that position in court.

Mr. Lee stated that Nevada has filed a petition for rulemaking. He also expressed that the NRC's rulemaking uses its own safeguards against terrorism or shipping of nuclear waste. In response to Mr. Lee's question as to how long would it take for the petition and rulemaking, Ms. Adams stated that the State of Nevada filed the petition in 1999. However, as vital as the petition is, it has not been acted on yet by the NRC. The State of Nevada now is in a position to push the petition and it is expected that Nevada will eventually be recognized on this petition.

Joseph Egan

Joseph Egan, Special Deputy Attorney General, Egan and Associates, began his presentation by describing the six major issues the State of Nevada is bringing before the Court of Appeals, District Columbia:

- First, whether of the geology of Yucca Mountain is safe and lawful?
- Second, are the environmental impacts of this project acceptable and lawful?
- Third, are the health rules used to gauge this project safe and lawful?
- Fourth, are the safety rules for the repository lawful?
- Fifth, is the project in fact safe? and,
- Sixth, is the project constitutional?

The issue of "are these laws lawful and acceptable had been brought before the court before, but the court ruled that the case be deferred. The court's decision was that the case cannot be brought before the court until the Secretary of Energy has made a final decision. Nevada is now at the point where the Secretary of Energy has made his decision, the President has ratified the decision, U.S. Congress has overridden the Governor of Nevada's veto, and therefore, Nevada is now able, under the NWPA, to bring all of these issues to the court." Mr. Egan made the following points during his testimony:

- The Washington, D.C. Court of Appeals handles most administrative law cases in the United States.
- The judges assigned to the State of Nevada's cases are good.
- The main challenge Nevada faces is if it will be able to bring all these cases to the merit of the court. In every case, the Justice Department came forth and said it wants to rule on the merits of the cases. There is a scheduling order in all but one of the cases. Three consolidated cases will go to final briefing by May 6, 2003.
- The EPA case has gone to final briefing in September 2002 and will go to oral argument in February 2003.
- The NRC case is the only case that Nevada has not received a schedule date; the ruling will be made during 2003.
- One year from now these litigations will be concluded or close to conclusion and Nevada will know more about what will happen to this project.
- It was his opinion that these cases were very powerful on their merits.

- Nevada has been able to examine the administrative record (approximately 350,000 pages of documents). Nevada has amassed another 100,000 pages that are not on the record that should be. The State of Nevada has filed a Motion to Supplement the record to add these 100,000 pages. The judges have essentially ruled Nevada could include the information and if NRC or DOE objects to this, it can be discussed at the hearing level. It will be ruled on at that time. Mr. Egan interpreted this to mean that there is not a document that he cannot put in front of a judge. He also stated there seems to be a conscience effort by the DOE to hide the best documents.
- The court cases are determined through administrative proceedings, which must be filed originally in the court of appeals. He explained this means Nevada does not have an opportunity for a trial and there is no hearing where evidence could be presented, cross-examination, redirected, etc. Nevada must use the paper record that the agencies have created in developing various rules and regulations. Additionally, the state must use that record on the merits or to say that the agency did not comply with the statute that governs its conduct, or ultimately that the statute itself did not comply with the *Constitution*. **US OR NEVADA MARJI ASKS.**
- The most compelling arguments Nevada has do not require factual assessments, which are statutory violations.
- The court has also given Nevada a broad briefing opportunity. The court has expanded Nevada's brief to 20,000 words.
- There is not a single motion that Nevada has not yet excepted with the case of consolidation. Nevada has filed a motion to hear all of the cases in tandem so the courts can see the "big picture."
- The legal team that has been assembled includes highly skilled federal litigators, as well as skilled nuclear lawyers. A new attorney will be added later this year who is considered to be one of the best nuclear attorneys in the country.

Senator Neal stated that he certainly appreciated Mr. Egan's clarity of thought and explanation of this issue. He pointed out that:

- Mr. Egan cited the 1998 case that went against the DOE in terms of not being able to accept the high-level radioactive waste.
- Mr. Egan omitted from his testimony a recent case decided in the 11th Circuit Court of Appeals that dealt with the funds the DOE utilized to pay off some of the utilities for holding the waste at the site.
- It appears the burden is now on the country as a whole to pay for the delivery of the waste to the various sites, including Yucca Mountain, or whatever site is chosen.

Mr. Egan commended Senator Neal on his cross-examination skills. Addressing Senator Neal's statements, Mr. Egan made the following comments:

- There was a case where Exelon Corporation, the largest nuclear utility in America, and one of its subsidiaries, Piko Energy, made a deal with DOE in the year 2000. The deal allowed the DOE title to all the spent fuel at all the Peachbottom Nuclear Plant in Pennsylvania. Ultimately, it would force the DOE to build, operate and manage a spent fuel storage facility on site at Peachbottom. Essentially, the utility could fold up shop and go home. That agreement was to be paid for from the Nuclear Waste Fund. Several utilities sued DOE and Piko, on the grounds that it was robbing their fund to pay one particular utility. That case was heard in the 11th Circuit Court of Appeals in Alabama. The court recently struck the provision requiring that the deal be paid for out of the Nuclear Waste Fund. The court affirmed the deal itself. In other words, the court ruled it is legal for the DOE to enter into such an agreement, but it is not legal for DOE to pay for this out of the Nuclear Waste Fund.
- Because of this decision, taxpayers will be forced to fund the construction, operation, and management of the interim storage facilities all across America. He stated the implications for Nevada are profound.
- If the taxpayers have paid for 40 plus interim storage facilities, emergency plans, and the dual purpose casks can

last for hundreds of years, with a security plan, armed guards, etc., then an extra \$60 billion to \$100 billion does not need to be spent to transport the high-level radioactive waste across the country and put it into Yucca Mountain.

- This will create a lot of pressure on the system that the public does not yet comprehend because the cost has not yet come due.

Senator Neal asked if Mr. Egan could conclude from those particular facts that this decision could place pressure on sending the waste to Yucca Mountain.

Responding to Senator Neal's question, Mr. Egan concluded from those particular facts that it might place pressure on sending the waste to Yucca Mountain, but it could go either way. He stated that other the facilities will have to be built because Yucca Mountain cannot begin taking waste until the year 2011. It will take decades to transport all the waste to the Yucca Mountain site. He did not see how it would place pressures on the Yucca Mountain site development, but it would certainly pressure the taxpayers.

Mr. Lee asked if the legal case is the type of hearing where there is a 30 minute time period for the sides to speak to each other while the judges go back and write their opinions.

Mr. Egan responded it will be, but Nevada will likely have more time because some cases have been consolidated. He stated he would be surprised if the hearing took more than one day.

Mr. Lee asked if the President of the United States has the ability to call this a national security measure and write an Executive Order overriding Nevada's efforts. Mr. Egan responded that the President has already declared it a national security measure in his acceptance of the Secretary of Energy's recommendation and that the spent waste must be moved from the existing 131 sites and stored at the Yucca Mountain site. He added that the fallacy behind that logic is that the other sites are not going to be shut down. Mr. Egan stated it would be impossible for the President to invoke an Executive Order to override the NWPA.

Mr. Lee asked Mr. Loux, if Nevada prevailed in this litigation, what would the cost be to the state and have funds been set aside. He asked about the financial side of fighting this battle. Bob Loux, previously identified, stated that Nevada currently has \$3.8 million in the Nevada Protection Fund and he anticipates those funds are going to be active and available for the remainder of the state fiscal year and one year after that. He stated these cases can probably be argued and for the most part resolved within that time with one exception being the NRC case that has yet to be scheduled.

Senator Jacobsen stated that he continues to have reservations about any one of these issues and wondered how it relates to our federal land issues. He asked if Nevada is an equal partner in the land issues. Marta Adams stated that the land withdrawal remains an issue for new legislation.

Mr. Egan stated the land withdrawal was a big issue in the low-level waste site at Warren Valley in California. He said that a site was fully licensed but the land transfer was never made. Therefore, the project does not exist.

Addressing Senator Neal's question regarding Mr. Egan's previous experience in this particular area of law, Mr. Egan testified that he:

- Began his career as nuclear engineer at Massachusetts Institute of Technology (MIT). He worked in a nuclear power plant at Argon National Laboratory and was a licensing engineer for the New York Power Authority for the Fitzpatrick Nuclear Power Plant in Upstate, New York.
- Received his law degree from Columbia Law School University and started working in law school at LaBefeahm, Green and McCrae, which is a large law firm in New York that handles nuclear law cases.
- Handled his first big nuclear case one month after he passed the bar. It was a \$5.8 billion nuclear power plant prudence construction proceeding. He achieved the best result in the United States in that proceeding where they received a zero disallowance for the utility plant that was \$4.5 billion that was budgeted at \$293 million.

- Has been involved with decommissioning projects for nuclear reactors.
- Moved to Washington, D.C. where he was a partner at the law firm of Shock Pittman, who represents one-third of the installed nuclear capacity in America. At Shock Pittman he handled a number of large nuclear cases. He was lead attorney for the design certification of the ABB Combustion Energy System 80 plus nuclear power plant, which is an advanced nuclear plant. He has represented the City of Austin and City of San Antonio in a billion dollar litigation involving the South Texas nuclear project. He also represented the government of the Philippines against Westinghouse, Inc., involving steam generators and a nuclear power plant.
- Started his own firm because he was running into so many conflicts with Shock Pittman in terms of being asked to sue some of their own clients, which he could not do. He set up shop in Shock Pittman but had a different firm.
- Handled his first big case for his firm where he represented twelve countries in the return of bomb grade uranium spent fuel back to the United States. The United States sent old bomb grade uranium to 42 countries. A program was set up to re-import that bomb grade uranium back to the United States and store it at the Savannah River site in South Carolina so that it would no longer be a terrorist risk. He prosecuted that case through the Congress, Secretary of State, and the State Department. He got the contracts signed and got a temporary restraining order by the Governor of South Carolina. He had to appear before the Fourth Circuit Court of Appeals to lift that order, which was accomplished within four days.
- Was involved in the licensing of a low level nuclear waste site in Texas called Waste Control Specialists.
- Has been involved in a billion dollar anti-trust suit that involved Envirocare of Utah, which is a low-level radioactive waste site. The suit was settled in his favor.
- Was involved in various other activities including low level waste sites in Kansas, North Carolina and New York. He has been active in various nuclear regulatory issues such as license transfers, interventions on behalf of workers of nuclear power plants, mergers and acquisitions involving Powergen in Great Britain, who is attempting to buy nuclear assets in America.
- Represented EDS Corporation in outsourcing process implementation in nuclear power plants to the private sector.

Chairman Mortenson asked how much public money will be used to build the sites.

Mr. Egan stated that when the utilities were advocating against DOE, it was approximately \$50 billion. Since the utilities have won the issue, it has dropped to the \$8 or \$10 billion range. There is no question that it is much less than Yucca Mountain.

Chairman Mortenson asked how much money is in the trust that the nuclear energy power plants have accumulated over the years to build Yucca Mountain. Mr. Egan stated that there has been a total of \$20 billion collected and \$8 billion spent.

Mr. Loux affirmed that was essentially correct. He stated a consultant was hired to do a life cycle cost analysis of the Yucca Mountain project and looked at revenue streams that would fund it. In 1996, the DOE recommended the site cost of around \$58 billion. Subsequently, informal estimates have raised the cost of Yucca Mountain to close to \$100 billion. Nevada's calculations suggest that if every nuclear power plant runs through its existing life and has an additional license life, the maximum nuclear utilities will pay into this fund is approximately \$35 to \$38 billion. Recently DOE revealed there will have to be another \$65 billion spent to vitrify the liquid high-level waste at DOE's existing reservations. Including the cost of transportation, the cost of this overall effort will be approximately \$200 billion with the utilities paying as little as \$35 or \$38 billion and the remainder a taxpayer expense.

Chairman Mortenson thanked Mr. Egan for his testimony. The committee took a short lunch break.

Chairman Mortenson reconvened the hearing at 1 p.m.

UPDATE ON HIGH-LEVEL RADIOACTIVE WASTE ACTIVITIES OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL)

Linda Sikkema

Linda Sikkema, Program Principal, NCSL, Denver, Colorado, thanked the committee for inviting her to speak. Her update on High-Level Radioactive Waste activities of the NCSL included the following points:

- The NCSL had an annual meeting and recapped the High-Level Radioactive Waste project at Yucca Mountain. Mr. Loux, the Director of the Office of Civilian Radioactive Waste Management, and a representative of the NRC were all in attendance. Due to travel bans in many of the states after September 11 and budget issues, attendance at the meeting was down. However, the session was fairly well attended. She stated there are a number of legislators from eastern and southern states who have transportation concerns and issues. Once the activities begin for the coming year, there will be time spent discussing transportation.
- For the past couple of years, the NCSL High-Level Waste Working Committee has been inactive due mainly to funding issues. There is a small amount of money available this calendar year and the committee plans to hold one meeting to reformulate the group. It is tentatively being scheduled in conjunction with NRC's package performance study meeting that will be held early next year. The NCSL is hoping to schedule a meeting in Washington, D.C. or at Yucca Mountain so that new legislators may tour the facility.
- One of the main issues NCSL is currently working on is updating a transportation publication that has been done in the past. It is a compilation, comparison and analysis of all hazardous waste transportation legislation in the states.
- A transportation forum in conjunction with a number of other national organizations will be organized. The National Organization of Regulatory Utility Commissioners suggested holding a transportation forum for NCSL members.
- Invitations have been sent to legislators for the Idaho meeting. The meeting will focus on environmental management issues in Idaho. There is a defense component because they have some high-level waste that would be slotted to be sent to a repository site. The meeting will be November 12-14, 2002. Waste characterization and WIPP related issues would also be discussed.
- Security of nuclear materials has become an important issue. This includes power plants and the DOE weapons complex facilities. Compilation of information is being put together to see if security measures have been enhanced, refined or changed since September 11.

Addressing Mr. Lee's question as to the status of the decommissioning of the Hanford, Connecticut site, Ms. Sikkema said the DOE is at the tail end of the decommissioning process. Regarding the Savannah River Site, the Governor opposed shipments of plutonium coming from Rocky Flats. The courts ruled that the Governor could not hold up shipments. Therefore, the plutonium is being shipped from Rocky Flats.

Addressing Senator Jacobsen's inquiry, Ms. Sikkema stated that:

- Since September 11, obtaining funding for an international trip to Chernobyl has been difficult. There has been concern published about lack of security around nuclear materials in the former Soviet Union and how that could possibly be commandeered and used to create a bomb.
- There is a possibility of visits to the Oakridge (TN) and Hanford (WA).

Ms. Tiffany asked if any states would be shipping nuclear waste to Nevada. Ms. Sikkema stated there are a number

of states that are interested and watching what is going on in Nevada. Previously she averaged 100 information requests per year regarding spent fuel but since September 11 her information request load has increased to 150 requests. The states are of the opinion there has actually been movement terrorist threats and there is concern about transportation. The states want to be made aware and involved in the DOE's transportation plan.

Ms. Tiffany commented that Ms. Sikkema had remarked that new legislators from other states would like to visit Yucca Mountain, and asked if NCSL could take a poll to see how many would be interested. Ms. Sikkema responded if the NCSL were to take a poll it would be after the November elections but before the end of the year.

Chairman Mortenson asked if the decommissioning of commercial power plants is the responsibility of the utility or the Federal Government. Ms. Sikkema stated that the utilities have the financial responsibility for carrying out those activities.

UPDATE ON OVERSIGHT ACTIVITIES OF THE AFFECTED UNITS OF LOCAL GOVERNMENTS (THE NUCLEAR WASTE POLICY ACT)

Henry Neth

Henry Neth, Commissioner, Nye County, explained that he is one of two commissioners assigned to the Yucca Project. A copy of his detailed testimony is Exhibit D of these minutes. (Perspectives of a Site County Commissioner, dated Tuesday, October 8, 2002.) His comments covered the following points:

- He has visited with congressional delegates in Washington, D.C., and many federal agencies regarding this subject.
- Yucca Mountain is not a remote location. It is located in Nye County, which is a rapidly growing community. All of the aboveground packaging of the spent fuel will occur in Nye County. The county does not support this site. The community protection plan was approved in July 2001.
- Pahrump's population has grown faster than Las Vegas. In Nye County, the local communities are connected by hazardous two-lane roads and many streets that are still unpaved, which have resulted in increasing air quality problems. Additionally, Pahrump has limited groundwater supplies that must be managed efficiently.
- To assure future growth for Pahrump, action is needed. In a rapidly growing community such as Pahrump, it is still without a hospital or clothing store. Without a vital local economic base and adequate local revenue sources, Pahrump will always be behind.
- Reliable implementation of the PETT (Payment Equal to Taxes) funds is necessary. Further, the county must have oversight monitoring provisions as provided under the NWPA.
- Transportation solutions need to be satisfactory to the single destination county and a federal partner is necessary that would share the county's vision of what could make this project a success rather than just a long-term contentious imposition.
- If the Yucca Mountain repository occurs, it will be the site county that will have the most direct and long-term interest in the project. A successful project would mean that: (1) the waste is managed reliably and safely; (2) the residents of the county are convinced of this; and (3) the science of performance and confirmation of waste management is conducted at a location where the long-term risks would be occurring.
- If the Yucca Mountain Project proceeds, success requires a partnership between the DOE and an effective site county in Nevada. The county does not want handouts or payoffs but needs certain tools such as land already designated by BLM for public disposal, and a package of incentives to combine with land and water to help make potentials a reality.
- His efforts include consistent initiatives to maintain open and honest communications with the Governor of

Nevada and local legislators.

Responding to Mr. Lee's question as to what he is proposing, Mr. Neth stated that it is his opinion that any ongoing studies should happen in Nye County. His paradigm was that in the past 50 years, the DOE's operating procedure has been management is separate from ongoing activities. If the DOE were going to implement this project, the county would like all the management practices located where that project is. It is the county's opinion that the long-term hazards would be closely monitored if management was at the site.

Addressing Senator Jacobsen's question as to whether Douglas County Commissioners were being educated about this topic, Mr. Neth said discussions are taking place to put a group together to tour neighboring counties to discuss implementation of the project when and if it happens, and how it will affect all the counties in Nevada, not just Nye County.

Senator McGinness commented that every unit of government would be affected. He added that he liked Mr. Neth's idea of a tour of Nye County in coordination with the Nevada Association of Counties (NACO).

In response to Senator Neal's questions, Mr. Neth made the following points:

- Nye County receives \$2 million in funds per year for oversight, \$10 million in PETT, and a second independence science grant of \$5 million a year.
- As far as transmutation, discussions with DOE have focused on protections of people in the community.
- A poll has not been conducted of how the population would be affected by the Yucca Mountain Project. If polled, Nye County residents do not want to have a high-level radioactive nuclear waste located there.
- Nye County does not have the ability to say no to this project.
- This is the appropriate time to discuss how to implement protection for the citizens of Nevada.
- It is his opinion the waste will be coming to Nye County.

Irene Navis

Irene Navis, Planning Manager for Clark County's Nuclear Waste Program, Las Vegas, testified that other communities might be faced with the burden of high-level radioactive waste being transported through their counties, which has generated many inquiries about the level of transportation.

Exhibit E of these minutes is a brief outline of Ms. Navis' testimony. Ms. Navis reviewed the four main program components that include project oversight, transportation, legal action and outreach and stated that:

- Her office has spoken to over 1,000 people and has reached out to thousands more about Yucca Mountain through local public television. She said certain groups are underrepresented such as minorities and seniors. To address this issue, information is being provided at senior fairs, tours of the Yucca Mountain Project have been sponsored, and pamphlets have been translated into Spanish regarding the Yucca Mountain Project.
- Many people do not understand the process to develop a project like the Yucca Mountain Project. Information is being provided regarding that process and what steps will occur since the Congressional vote.
- Clark County, as a member of AULG, has moved into the arena of the license and support network. Clark County will be monitoring transportation decisions as they are made, congressional actions related to design, as well as actions at the state legislature.

Addressing Senator Neal's question, Ms. Navis stated that none of the funds are used to stop the process of the Yucca Mountain Project.

In response to Senator McGinness' questions, Ms Navis commented:

- An informational packet was put together listing impacts that were important for her office to study. These impacts are not necessarily exclusive to Nevada. Transportation scenarios that are laid out in the report would not necessarily be exclusive to Nevada highways or roadways. This information included the impact report, informational handouts and fact sheets. It has been sent as a package to the county commission chairs in those counties where the State of Nevada public outreach effort has been focused.
- There is coordination between her office and the AULG. Regular meetings are held where areas of common interests are discussed. It is the goal of the group to help everyone involved.

Chairman Mortenson asked if Mr. Neth's office was able to use the interest money from the endowment funds in manners that were restricted in the initial money. Mr. Neth, (previously introduced) stated:

- The money is received from the DOE is completely unrestricted.
- The money is renegotiated each year with DOE for a certain amount. The uses of the money are created by resolution.
- Of that amount (\$38 million) each year, a certain amount is used to fund the trust funds. The rest of the funds was used for capital improvements in the county.

Les Bradshaw

Les Bradshaw, Nye County, Nevada stated he wanted to clarify the use of the restricted versus unrestricted money. He testified that under the NWPA, the PETT money comes to Nye County calculated on the same basis as if the project were a private enterprise. The money comes to Nye County unrestricted. The dollars set aside by the Board of Commissioners for special uses, created the endowment funds. The other funds, the oversight money received by Nye County under the NWPA, has restricted uses and is used for oversight issues. The special science grant comes with many restrictions that the county adheres to.

PUBLIC TESTIMONY

Bill Vasconi

Bill Vasconi, ex-test site worker and Las Vegas, Nevada resident since 1964, stated that the special license plates were turned down for the historical foundation for the Nevada Test Site. If the license plate issue came up by the Department of Motor Vehicles during the 2003 Session, he hoped that the Legislature might consider it.

He testified regarding the benefits that the State of New Mexico has received for the WIPP project, which included:

- Over 800 high-tech jobs with offices in Carlsbad, Hobbs and Santa Fe with an annual budget of \$200 million.
- \$9 million for emergency response training equipment to date.
- Economic impact funding of \$20 million per year.
- Money for highway improvements.
- An Environmental Research Center, advance manufacturing and training center, employment of people, and projects and degrees being offered through the University of New Mexico.
- Construction relief routes around the communities of Santa Fe, Roswell, Carlsbad (\$51 million to date).

Mr. Vasconi commented there are benefits to be derived from nuclear waste. He added that no one wants nuclear waste where they live but if it becomes a reality tomorrow, something must be done. It was his opinion that it is time that elected officials go beyond saying that Nevada will not accept it.

COMMENTS AND DISCUSSION BY COMMITTEE MEMBERS

Chairman Mortenson commented that Senator Jacobsen, Assemblyman Price and Assemblyman Lee would not be returning to the Legislature as elected officials this year and wished all three members good luck.

ADJOURNMENT

There being no further business before the Committee, Chairman Mortenson adjourned the meeting at 2:43 p.m.

Respectfully submitted,

Nenita Wasserman
Senior Research Secretary

Marjorie Paslov Thomas
Senior Research Analyst

APPROVED BY:

Assemblyman Mike McGinness, Chairman
Date: 12/10/03

LIST OF EXHIBITS

Exhibit A was provided by Dr. J. Russell Dyer, Project Manager, Yucca Mountain Site Characterization Office, United States Department of Energy to the Nevada Legislative Committee on High-Level Radioactive Waste, titled "Yucca Mountain Project Update" dated October 8, 2002.

Exhibit B was provided by N. King Stablein, Section Chief, Projects and Engineering Section, Division of Waste Management, titled "NRC's Plan for Judging the Safety of a Proposed Repository," dated October 2002.

Exhibit C-1 was provided by Robert R. Loux, Executive Director, Nevada's Agency for Nuclear Projects, titled "Experience of New Mexico and Western States with DOE's Waste Isolation Pilot Plant (WIPP Program: Lessons for Nevada).

Exhibit C-2 was provided by Robert R. Loux, Executive Director, Nevada's Agency for Nuclear Projects (NANP), titled "Attachment, New Mexico and WIPP: A Litany of Broken Promises."

Exhibit D is a handout provided by Henry Neth, Nye County Commissioner, titled "DOE's Yucca Mountain Project: Perspectives of a site County Commissioner," dated Tuesday, October 8, 2002.

Exhibit E was provided by Irene Navis, Planning Manager for Clark County's Nuclear Waste Program, Las Vegas, which is an outline of her testimony.

Exhibit G was a letter submitted to Assemblyman Harry Mortenson for the record from Frank Perna, 4398 Fernbrook

Road, Las Vegas, NV 89103, dated October 8, 2002.

Exhibit H is the attendance roster for this Committee meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.

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