PART 1
INTRODUCTION

The Past as Prologue

In 1985, then-Governor Richard Bryan, commenting on the draft Environmental Assessment (EA) for the Proposed High-Level Radioactive Waste Site at Yucca Mountain, noted that “... the information and analyses contained in the draft EA itself fails, in most instances, to support conclusions drawn and findings made by DOE in evaluating [the Yucca Mountain site]. Time and again, conclusions are made that simply cannot be supported by information in the draft or in referenced materials that were compiled by DOE’s own contractors. On numerous occasions, conclusions and findings in one section of the document can be seen to contradict information presented elsewhere. The problem is compounded when these unsubstantiated conclusions and findings are used as the basis for comparing and ranking sites later in ... the draft.”

Governor Bryan went on to point out that “any objective, scientifically-minded observer reviewing the draft EA ... can come to but one conclusion based on the information contained in the document; namely, that there is simply not enough data available to allow any conclusion to be reached” about the suitability of the site or about potential impacts of the Yucca Mountain program. Almost fifteen years and approximately $7 billion later, this same criticism can legitimately be made with respect to DOE’s Draft Environmental Impact Statement (EIS) for the Yucca Mountain program.

It is both enlightening and disturbing to compare the major deficiencies cited by the State of Nevada in its review of the draft EA with findings made concerning the Draft EIS. In addition to the inadequate and incomplete information that characterizes each document, these two attempts at complying with National Environmental Policy Act (NEPA) requirements also share many other commonalities. Both documents inappropriately confine the area of influence for impact assessment and ignore impacts to the State as a whole; both are entirely deficient in the assessment of transportation impacts and ignore the effects of the program on states and communities nationwide; both fail to adequately evaluate cumulative impacts, especially the contributions of Nevada Test Site activities and contamination to both short and long-term impacts of the Yucca Mountain program; both contain cursory and inadequate socioeconomic impact assessments and completely ignore large potential economic impacts to Nevada’s principal economic sector, tourism and gaming; both dismiss consideration of Native American impacts and issues with platitudes and paternalistic pronouncements; and both present assessments about repository performance and potential environmental contamination through the use of unsubstantiated assumptions, limited and inadequate data, and grossly optimistic interpretations.
The fundamental and irreparable shortcomings of the Draft EIS are all the more disturbing because DOE should have known better. Thousands of pages of comments were provided on the draft and final EA. Nevada alone submitted over 300 pages of detailed, focused, and extremely helpful comments on the draft EA. Thousands more comments were made by hundreds of people and organizations during the scoping process for the draft EIS in 1995. For the most part, prior comments and criticisms that would have assured an adequate EIS were disregarded. DOE simply moved stubbornly forward in a manner designed to produce a minimalist environmental impact statement ratifying DOE’s predetermined and politically driven conclusion that the Yucca Mountain program will result in no significant impacts anywhere, at any time.

A Legally and Substantively Deficient Document

The comments contained in the following Parts of this document present, in both general and specific terms, compelling evidence that DOE’s Draft EIS is both legally and substantively deficient in numerous ways. In addition, the State of Nevada contends that the procedures used by DOE to notify those people potentially affected by the Proposed Action and to solicit public input as required by NEPA are likewise deficient and in violation of NEPA statutory provisions and implementing regulations.

The State of Nevada asserts that the Draft EIS fails to appropriately reflect the unique nature and scope of the Yucca Mountain program. It does not adequately assess impacts associated with the repository and related activities, and it is not in compliance with either the letter or spirit of NEPA. The State formally reiterates its assertion that a Programmatic Environmental Impact Statement (PEIS) for the high-level radioactive waste (HLW) program should have been, and still should be, prepared. The unique, first-of-a-kind nature, complexity, and unprecedented time scale of the federal HLW program require the preparation of a PEIS, with project-specific EISs for related program elements tiered to the PEIS. The HLW program is simply too massive in scope and overwhelming in complexity for DOE to attempt to use a single EIS as the vehicle for assessing impacts and making programmatic decisions. By preparing a narrowly focused, non-programmatic EIS such as the Draft released for comment (and then indicating that it will be the basis for some program decisions and not for others), DOE is circumventing the intent of the National Environmental Policy Act.

A Flawed Public Involvement Process

The State further contends that the public comment process for the Draft EIS, especially with respect to potentially impacted states and communities outside Nevada, clearly violates the spirit and letter of NEPA. Notices announcing the comment period and public hearings did not adequately describe the Proposed Action and its implications for people along transportation routes. Nevada believes DOE intentionally withheld crucial information, both in the Draft EIS
and in notices and communications about hearings and comments, indicative of the true national scope of the high-level waste program.

The irony of the situation is that DOE has, in fact, done the analyses needed to reveal specific highway and rail routes that would be used for waste shipments. However, that information was buried in data used to run computer models and was not made explicit in the Draft EIS. The document contains no maps or other information showing which cities and communities along transportation corridors will be affected by this massive and unprecedented high-level radioactive waste shipping campaign. Under substantial pressure from certain members of Congress and other interested parties, DOE belatedly posted maps of routes ostensibly used in the Draft EIS transportation analyses on its web site the last week of January, almost six months after the release of the draft document for public comment and after eighteen (18) of the twenty-one (21) public hearings had already been completed. No information on numbers of shipments or mode of transport was included with the DOE maps. Nor were the public notices for the remaining public hearings changed to make people in cities where the final hearings were held aware of the transportation implications of the Proposed Action.

Nevada believes that DOE has violated the National Environmental Policy Act by concealing crucial information used for analyses in the Draft EIS. Absent this information, persons affected by the transportation impacts of the Proposed Action have no way of determining the substantive and legal sufficiency of DOE’s analysis. Such concealment of information can only diminish public confidence in DOE’s ability to safely transport these highly radioactive materials. One can only conclude that such an oversight is intentional and designed to suppress public interest in the project and participation in these public hearings.

**The Absurdity of the No-Action Alternative**

Apart from the inadequacies of information and analyses and the many procedural deficiencies of the Draft EIS, the use of an unreasonable, even absurd, No-Action Alternative as the basis for comparison of impacts with the Proposed Action further contributes to the overall insufficiency of the Draft EIS. NEPA requires that federal agencies, in preparing environmental impact statements supporting major federal decisions and projects, consider alternatives to the action being proposed, especially the alternative of taking no action. In the Draft EIS, DOE has chosen two No-Action Alternative scenarios that are unrealistic, unreasonable, and legally deficient.

The Draft EIS postulates a situation where, in place of a repository at Yucca Mountain, spent nuclear fuel and high-level radioactive wastes are assumed to be stored on-site at reactor and generator locations for a period of 10,000 years. In the first No-Action Alternative scenario, DOE assumes that active institutional control is maintained for the entire time, while under the second scenario, institutional control ceases after the first 100 years.
Both scenarios are wholly inappropriate, even absurd. The Council on Environmental Quality interprets “no action” as “the federal agency not acting at all” (i.e., not constructing and operating a repository at Yucca Mountain). In the absence of a repository, it is unacceptable to assume that spent fuel and HLW would simply be left at reactor sites forever. The most plausible No-Action Alternative scenario is one where there would be some period (50 to 100 years) of at-reactor storage (most likely in dry storage configurations), combined with the application of waste reduction technologies, and followed by some form of revised (and, hopefully, dramatically improved) process to site and construct storage and/or disposal facilities.

DOE’s No-Action alternative cannot be defended on the basis of reasonably foreseeable courses of action in the absence of a decision to move ahead with the development of a repository. Instead, what DOE appears to have done is select scenarios designed to generate the greatest public alarm and political pressure in favor of its Proposed Action. In so doing, DOE has violated the clear intent of NEPA that a realistic and reasonable No-Action Alternative be evaluated and compared to the Proposed Action.

**Conclusion: Need for a New Draft PEIS and Public Comment Period**

After an extensive review of the Draft EIS and associated reference materials, the State of Nevada finds the document so inadequate and deficient as to require its withdrawal and the immediate announcement by DOE of the intent to prepare a new programmatic EIS sufficient to evaluate program-wide impacts and support program-level decisions that are reasonable and defensible. PEIS development process should begin with a new scoping process designed to actively and meaningfully obtain public input on the content and nature of the data and analyses necessary to define alternatives at the program level and to identify and assess potential impacts to the physical and human environment.

The impacts associated with the proposed high-level radioactive waste repository at Yucca Mountain, thousands of miles distant from the majority of U.S. nuclear power reactors, will affect the State of Nevada as well as at least 42 other states, hundreds of cities, and thousands of communities located along highways and rail lines that would be used for waste transportation. The program that the PEIS must address is unprecedented for a federal project in its scope, time frame, and the geographical area it encompasses. It is also unique in that the EIS must assess not only the more traditional effects of a large and complex project - impacts to the environment, to public health and safety, to area populations, and to state and local economies - but the EIS must also address those impacts that derive from the highly controversial nature of this activity and the fact that the program involves the handling, movement, storage, and disposal of extremely hazardous nuclear materials. It is the nuclear nature of this undertaking that makes it different from more traditional federal projects and requires an EIS that fully examines a broader range of impacts (including those related to risk, risk perception, and stigma) in Nevada.
as well as in states and communities through which spent nuclear fuel and HLW must pass en route to a Yucca Mountain repository.

The existing Draft EIS fails to undertake this type and level of analysis. DOE must reconsider its entire approach to NEPA compliance and commit itself to a producing a comprehensive and adequate programmatic environmental impact statement. Schedule pressures and perceived political imperatives should not be permitted to obstruct the implementation of a truly adequate NEPA process and decision documents that must provide justification and guidance for a ten thousand year program.