July 31, 2000

DELIVERED BY HAND AT THE
ATTORNEY GENERAL’S OFFICE

Ivan Itkin, Ph.D.
Director
Office of Civilian Radioactive Waste Management
U. S. Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 20585

Dear Dr. Itkin:

I am writing to reiterate the concern expressed by the Agency of Nuclear Projects concerning the Department of Energy’s apparent unwillingness to recognize the Governor’s and the Legislature’s right to review and comment on the actual Yucca Mountain site recommendation report with the accompanying final environmental impact statement (FEIS). I am referring specifically to a letter sent to you from Robert Loux, Director of the Agency for Nuclear Projects, dated May 31, 2000 and to your response to him dated June 30, 2000 concerning this issue. My office has reviewed this correspondence as well as section 114 of the Nuclear Waste Policy Act.

It is my understanding that the Department of Energy intends to release a “Site Recommendation Consideration Report (SRCR)” on the proposed repository at Yucca Mountain for public review and comment before it issues its FEIS and before it makes its site recommendation. Not only is the SRCR not a statutorily-required document, but it will not contain the site recommendation report nor the accompanying FEIS. The SRCR simply cannot be construed to be a meaningful substitute for the site recommendation report. This is particularly apparent because neither the socioeconomic analysis nor the transportation analysis will be contained in the SRCR, but rather will be incorporated into the FEIS.

This office interprets section 114 of the Nuclear Waste Policy Act to require that it is the actual site recommendation report that is reviewed and commented upon by the Governor and the Legislature. The Secretary of Energy is then directed to respond to the State’s comments before the Secretary of

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Energy makes his recommendation to the President. It is our position that the Governor and the Legislature have a statutory right to review and to provide meaningful comments to the Department’s final site recommendation report as well as the FEIS.

I urge you to reexamine the Department’s views on this issue and not let concern over schedule result in a flawed interpretation of the statute. Thank you for your consideration.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

FSDP:MAA:srh
cc: Robert Loux