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September 23, 2005

Lee Bishop, EA Document Manager
United States Department of Energy
1551 Hillshire Drive
Las Vegas, Nevada 89134

Dear Mr. Bishop:

In response to the Federal Register Notice of August 29, 2005, attached please find the State of Nevada's comments on the U.S. Department of Energy's (DOE) "Draft Environmental Assessment for the Proposed Withdrawal of Public Lands Within and Surrounding the Caliente Rail Corridor, Nevada."

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux".

Robert R. Loux
Executive Director

RRL/cs
Attachment

**STATE OF NEVADA COMMENTS
ON THE U.S. DEPARTMENT OF ENERGY'S
DRAFT ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED
WITHDRAWAL OF PUBLIC LANDS WITHIN AND SURROUNDING THE
CALIENTE RAIL CORRIDOR, NEVADA**

September 23, 2005

General Comments

(1) Need for an environmental impact statement (EIS)

The proposed action requiring evaluation under the National Environmental Policy Act (NEPA) is not just any land withdrawal. The U.S. Department of Energy's (DOE) application to the Bureau of Land Management (BLM) for the withdrawal of 308,600 acres of public land is associated with, and has no utility independent of, what is arguably the most potentially impacting and controversial federal action in Nevada. The land withdrawal will permit DOE to evaluate – and potentially construct and operate – a high-level nuclear waste rail line that will have significant adverse effects far beyond the simple land withdrawal. Apart from causing impacts and disruption to existing land users within and along the corridor, the proposed action, with its ultimate goal of developing a nuclear waste rail line, has the potential to negatively affect the environment, grazing allotments, mining and energy development activities, property values, the economy, important cultural resources, and more. The level and scope of the draft Environmental Assessment (EA) prepared by DOE is wholly inadequate. The draft EA must be withdrawn and a full EIS prepared in order for there to be a complete assessment of the full range of impacts to the human environment.

(2) The EIS should be prepared by BLM, in cooperation with the Surface Transportation Board (STB), not DOE

BLM, as the federal agency charged with management and stewardship of public lands, is the federal agency that should be responsible for the conduct of NEPA analyses and the preparation of NEPA documentation supporting decisions dealing with the withdrawal of public lands and the uses of such lands by other federal agencies. The STB is the federal agency responsible for oversight of rail construction and rail operations. Legal briefs filed by the State of Nevada in the U.S. Circuit Court of Appeals for the District of Columbia address BLM and STB responsibilities and are available at <http://www.state.nv.us/nucwaste/news2005/pdf/nvag050324nepa.pdf> and at <http://www.state.nv.us/nucwaste/news2005/pdf/nv050621doe.pdf>. They are hereby incorporated by reference as part of these comments. It is especially important that BLM and STB not abrogate their responsibilities in light of the critical importance of the withdrawal decision DOE is asking its sister agency to make with respect to DOE's proposed Caliente rail corridor land withdrawal application. STB is not a party to the draft EIS at all. As for BLM, simply signing on as a "cooperating agency" for an EA or EIS prepared by DOE is not sufficient. Expecting DOE to objectively and comprehensively assess the impacts of this action is like permitting the fox to report on the safety and security of the chicken coop.

(3) Failure to identify and evaluate alternative corridors

DOE has suggested that it may consider variations to the currently-selected corridor. The EA, however, does not identify or evaluate those alternatives, or evaluate any other alternatives to the currently-defined Caliente Corridor. An EA, like an EIS, must consider a range of alternatives, particularly if DOE is considering utilizing different routes. This EA must be withdrawn, and an EIS that identifies and evaluates withdrawal of other corridor variations, including any variations DOE is considering must be prepared in its place.

(4) Premature Land Withdrawal

DOE has previously indicated that is considering rerouting the proposed rail corridor to address land use conflicts identified by affected stakeholders in comments made to DOE and BLM in 2004 in response to the initial public notices on the proposed withdrawal. However, DOE has recently stated that it would defer identifying potential route alternatives to the proposed corridor until spring of 2006, at which time additional public lands withdrawal would likely be needed. This approach creates considerable uncertainty and needless hardship for parties affected by the withdrawal. It also allows DOE to unnecessarily tie up public lands for a period of time that is not supported by facts or data documented in the draft EA.

Before proceeding with a land withdrawal application for a rail corridor, DOE and BLM must identify all of the potential corridors that are to be evaluated and eliminate those that are not considered feasible or practical. Proceeding, as DOE proposes, to withdraw 308,600 acres along the currently identified corridor, when DOE already anticipates changes to that corridor (and, very likely, major rerouting of the corridor) is unacceptable. DOE should be required to scrap the current draft EA, and BLM should prepare a full and complete EIS for the land it realistically expects to require.

Specific Comments

Section 1.3 – Description of the Proposed Action

- The “casual use” issue – The draft EA states that DOE will not perform “any drilling or ditching operations” [p.2] on public lands along the corridor. It is entirely unrealistic to expect that DOE can prepare a legally sufficient EIS for the proposed rail line without conducting investigations that go beyond the BLM definition of “casual use.” In particular, surface-disturbing investigations are necessary for validating the Corridor Draft EIS regarding: (1) engineering feasibility and cost of the alignment design; (2) the estimated construction impacts, especially regarding cuts and fills, bridges and culverts, and overpasses and underpasses; and (3) potential conflicts with water resources, biological resources, and cultural resources. DOE’s assertion that it is deferring such activities until after the withdrawal has been approved casts considerable doubt on DOE’s motivation in seeking the proposed land withdrawal and proceeding with it in the manner DOE has chosen. Without conducting surface-disturbing investigations, DOE will not be able to achieve the ostensible purpose for the land withdrawal – identification and selection of the preferred alignment for a rail spur to Yucca Mountain. DOE will be in the position of potentially having to seek additional land withdrawals should subsequent geological and engineering investigations uncover unfavorable surface and subsurface characteristics for construction and operation of a rail line.

Section 1.5 – Relationship to Land Use and Resource Management Plans

- Failure to consider the Ely Resource Management Plan (RMP) – The draft EA makes reference to four approved BLM land use plans relevant to the proposed action, but it fails to reference the RMP for the Ely District. BLM is currently in the process of seeking public comments on major revisions to the Ely RMP, and the proposed Yucca Mountain rail line is addressed (although inadequately) as a cumulative impact in the draft EIS BLM has prepared to support plan revisions.

Section 2 – Alternatives

- Insufficient justification for selecting Alternative Two (10-year withdrawal) – Nothing in the draft EA substantiates 10 years being more advantageous, better, or less impacting than 3 years, 5 years, 20 years, or some other time frame. The draft EA contains no documentation supporting a 10-year time frame apart from an unreferenced declaration that reducing the duration of the withdrawal to a shorter time period makes any possible impacts under the alternative “of a lesser extent and degree.” If the time frame for the withdrawal was, in fact, the principle driver of impacts, it would seem logical for DOE to select the shortest workable time frame for the withdrawal, thereby reducing uncertainties for impacted land users and reducing the amount of time the land would be segregated from other uses. If, as DOE asserts, it does not need to conduct surface disrupting activities and only needs the land withdrawal long enough to narrow its land requirements to those needed for the actual rail alignment, there is no reason for a ten year withdrawal of all 308,600 acres. Certainly, a three-to-five-year time frame is reasonable and sufficient for making the alignment decision.

Section 3.1.2. – Known Mineral Deposits and Energy Resources

- Wind energy resources – The draft EA does not identify current and potential wind generation areas and facilities within or near the proposed withdrawal area. BLM has numerous applications pending for wind resource sites throughout central Nevada and has issued permits for other sites/facilities. DOE has not identified these in relation to the rail corridor.

Section 3.2 – Water Resources

- The draft EA does not identify surface water locations within or near the proposed withdrawal area. Such water resources are extremely important to ranchers and other land users. It is impossible to know how or if those resources will be affected by activities associated with the proposed action if they haven’t been identified or recognized.

Section 3.3 – Air Quality

- The data in the draft EA on air quality is wholly inadequate. The only data cited in the draft document is data from as much as 100 miles away (at Yucca Mountain). The EA does not contain location-specific data to support the statement that air quality meets federal and state requirements.

Section 3.6 – Cultural Resources

- Given the large number of prehistoric and historic sites potentially eligible for inclusion in the National Register, the identification and assessment of cultural resources contained in the draft EA is not legally sufficient. Moreover, this section makes no mention of the “City” project by world-renowned land sculptor Michael Heizer. The proposed DOE land withdrawal would completely surround the “City” site, one of the largest and most significant outdoor sculpture installations in the world. [Remarkably, it is only mentioned in a single sentence in the “land use” section of the draft EA on p.22] It should be identified and evaluated as a cultural resource of international significance that would be greatly and negatively impacted by the rail line, and even by the act of withdrawing land and evaluating the corridor.

Section 3.8.2. – Employment and Income

- The population data contained in the draft EA are aggregated data for Nye, Lincoln and Esmeralda counties, not for people actually living within or near the corridor. While aggregate county data has some utility, it is not a substitute for describing the population within and along the corridor as the basis for understanding impacts on that population.

Section 3.9 – Land Use and Ownership

- The draft EA makes no mention of the Western Shoshone land claim dispute, even though the proposed withdrawal lies within lands claimed by the Shoshone as part of their ancestral homeland. The withdrawal of land for a nuclear waste rail corridor has the potential to energize conflicts over the disputed land and result in a variety of possible impacts. The NEPA analysis should evaluate the impacts of the proposed withdrawal in light of the existing Shoshone claims to the land.
- The EA fails to identify military air operations corridors that crisscross the sky above the corridor. Military airspace and air corridors used for military training operations are extensive in central Nevada. Maps produced by the Air Force and Navy show large percentages of the airspace over and surrounding the proposed withdrawal area to be reserved for military operations corridors. The NEPA analysis should have clearly identified these corridors in relation to the proposed withdrawal area and assessed impacts of the proposed action on the military’s use of such airspace, and vice versa.

Section 4 – Environmental Consequences

- The draft EA states, “The withdrawal of lands, in itself, is administrative in nature and would not result in any surface disturbance activities, and therefore would not have an impact on environmental and cultural resources within the proposed withdrawal area. The proposed land withdrawal would not affect other land uses such as grazing permits, water rights, and recreational uses. Potential consequences of a 20- or 10-year withdrawal to mineral resources, socioeconomic characteristics, and land use and ownership have been identified and are discussed below. Any activities to be conducted on withdrawn lands would be consistent with BLM’s criteria for “casual use” and would not significantly disturb the surface or require extensive removal of vegetation. Since these activities are of “casual use” nature, no authorization from the Department of the Interior is required

(see section 1.3 above). Due to the benign nature of these activities, impacts to environmental and cultural resources are not expected.”

This statement is not accurate. Even the administrative withdrawal of lands for a potential nuclear waste shipping corridor, without any physical disruption, could cause significant impacts due to the perceptions many people have of activities and facilities of things associated with nuclear power, nuclear weapons, and nuclear waste. It could cause people and institutions to change the way they perceive the lands, resulting in avoidance behavior, changes in the use of grazing patterns, alterations in property values, etc. – simply because the lands are withdrawn, considered “out of bounds,” and/or potentially risk prone for future activities.

- 4.1 – Mineral Resource Impacts: The draft EA is internally inconsistent in asserting, on the one hand that mining impacts are likely to be minor because mining claim locations and the filing of plans and notices with BLM have been declining in the withdrawal area [p. 25], while on the other hand asserting that under the no-action alternative, DOE might experience impacts from lands being opened to new mining claims and activities [p. 26]. If mining activity has, in fact, been declining, and if that trend is expected to continue, then the statement made with respect to the no-action alternative appears disingenuous. DOE cannot have it both ways.
- 4.5 – Cultural Resources Impacts: The draft EA fails to assess impacts to a unique, irreplaceable and major cultural resource, namely the Heizer “City” sculpture project that is located between two alternative corridor alignments proposed for withdrawal (see comment above). Withdrawal of land in close proximity to the project for a nuclear waste rail corridor – or even to study the land for such a use – could have devastating impacts, with the entire character of the area (so critical and foundational to the sculpture) changing dramatically. The potential exists for the perception of the project to be unalterably changed from pristine art to damaged goods. It would be akin to withdrawing land next to Mt. Rushmore to study as a site for a nuclear power plant. Yet the draft EA completely ignores any impacts to the Heizer sculpture project.
- 4.7 – Socioeconomic Impacts: The draft EA fails to consider mineral price impacts on establishment of new mining claims and future mining activities. The assertion of “low interest in mining development” [p.29] within the corridor ignores the impacts of current high market prices for gold, silver, and other mineral resources. During the comment period, the price for gold reached a seventeen-year high. Continuation of current and higher prices over the next 10-20 years will have impacts on new mining claims and future mining activities must be specifically evaluated, for areas within the corridor, and for areas near the corridor (at least within 20 miles).

The draft EA contains no evaluation of the perceived risk and stigma impacts of the proposed rail corridor or the land withdrawal. Even the act of withdrawing the land can have economic and other impacts due to the perception of risk (i.e., property value diminution, stigma, etc.). The Komis case in NM is a precedent. In that case, the owner of property that was being taken for future use as a highway bypass for shipments of transuranic waste around the city of Santa Fe was awarded damages based solely on the perceived loss of value to his property. Not only did the owner receive compensation for the land actually taken for the bypass, but he was also awarded damages for the reduction in value of his remaining property due to the perceived risks and stigma of a nearby

nuclear waste shipping route. The NEPA analysis should assess Komis-like impacts that may occur to any private property located along the proposed land withdrawal.

- 4.8 – Land Use and Ownership Impacts: The draft EA fails to consider impacts of the proposed land withdrawal on specific ranching operations. DOE acknowledges that at least thirty-three grazing allotments and twenty-seven permittees would be directly affected by the proposed action [Draft EA pgs. 22 – 22]. The proposed withdrawal of public lands will impact many different grazing allotments in many different ways. In Reveille Valley, for example, withdrawal of the 30-40 square miles of lands within the corridor will directly impact a total grazing allotment of almost 1,000 square miles near the corridor. DOE and BLM must identify the specific grazing allotments traversed by the corridor and assess the impacts of land withdrawal on each affected ranching operation.
- 4.9 – Cumulative Impacts: The draft EA does not address cumulative impacts of restricting alternative economic development. This should include the cumulative impacts of restricting existing economic activities, such as mining, ranching and recreation, plus restrictions on potential new activities, such as restricting wind generation development (i.e., restricting potential new energy sources).