

**ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE**

100 North Carson Street
Carson City, Nevada 89701-4717

BRIAN SANDOVAL
Attorney General



ANN WILKINSON
Assistant Attorney General

January 26, 2005

Honorable James L. Connaughton, Chairman
U.S. Council on Environmental Quality
722 Jackson Place N.W.
Washington, D.C. 20503

Re: Follow-Up to My Letter of April 22, 2004

Dear Chairman Connaughton:

On April 22, 2004, I wrote to you pursuant to 40 C.F.R. Section 1501.5(e) requesting that the U.S. Council on Environmental Quality (CEQ) investigate what appears to be the Department of Energy's (DOE) broad usurpation of legal and regulatory requirements in assigning to itself lead agency status for the evaluation and construction of what promises to be the largest new rail project in North America in many decades. Because the proposed new rail line would be built in Nevada, the state is keenly interested in ensuring that appropriate laws and regulations are followed to protect the health and safety of her citizens.

Nevada has been extremely patient in waiting for over nine months for CEQ to respond to my correspondence. Unfortunately, I have received no written response from you or any other representative of CEQ.

CEQ regulations at 40 C.F.R. Section 1501.5(f) require that when a "person concerned," like the State of Nevada, files a request with CEQ for resolution of lead agency status, "CEQ shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies." Responses from affected agencies—here DOE and the Surface Transportation Board—are likewise due within 20 days under that section.

Insofar as nine months have elapsed since my request, it appears that CEQ may have overlooked or ignored its own regulatory deadline. I understand, moreover, that DOE is proceeding expeditiously and without independent oversight with its environmental impact statement for the new rail line. Indeed, DOE may be releasing a draft as soon as this spring.

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It is unfortunate that DOE is plowing ahead and expending such resources when there are so many health and safety questions to be answered and the primary issue of whose impact statement it is or should be has yet to be resolved.

Nevada's concerns about the process used by DOE are not mere abstractions. Less than two weeks ago, the Caliente corridor rail route, selected exclusively by DOE and with no meaningful participation by the Surface Transportation Board or Nevada, was literally washed out in heavy flooding. The enclosed photographs, taken January 12, 2005, illustrate the devastating and catastrophic impact of these floods and the imprudence of constructing a rail line there.

I respectfully ask you again to resolve this issue, pursuant to your authority, before any further prejudice results to Nevada and her citizens along the proposed new rail route. If we do not hear from you within 20 days, we will assume that the various agencies are at a stalemate and we will be compelled to seek alternative means for resolving the controversy.

Sincere regards,

BRIAN SANDOVAL
Attorney General

Enclosures

c/enc: Honorable Samuel Bodman, Secretary
U.S. Department of Energy

Honorable Roger Nober, Chairman
Surface Transportation Board