Thank you for the opportunity to submit testimony to this Committee for the record. As one of ten units of local government designated by the Secretary of Energy as “affected” by the Yucca Mountain repository system, Lincoln County has a profound interest in the progress of the Yucca Mountain project. The County is situated immediately downwind from the Yucca Mountain site and is concerned about exposure to radionuclides resulting from atmospheric pathways. In addition, Lincoln County is one of only three Nevada counties directly impacted by the proposed Caliente Rail Corridor. Since the early 1980’s Lincoln County has sought to understand and minimize the potential adverse local impacts of the repository system while also seeking to understand and maximize any beneficial local economic affects which the project may produce.

As part of Lincoln County’s ongoing efforts to protect our citizens, I wish to call to the Committee’s attention an issue that is important to many of the counties in Nevada that will be directly or indirectly affected by the Yucca Mountain project. In a petition for rulemaking filed with the NRC last March, Lincoln County, Nevada has asked the NRC to redress the issue. However, for the past six months the NRC has essentially sat on Lincoln County’s petition, taking no action.

As presently written, the NRC’s regulations may be interpreted to require that county governments must be represented by attorneys in the NRC’s licensing proceedings. (In contrast, business entities including partnerships and corporations may be represented by an attorney or a “duly authorized member or officer.”)¹

This issue is of potentially great consequence to rural counties in Nevada that will be substantially affected by the proposed project but who cannot afford to pay for an attorney possessing the requisite experience and expertise to participate in the NRC licensing proceedings at a level that will be sufficient to adequately protect the county’s interests.

¹ (10 C.F.R. § 2.314(b). In the pre-licensing proceedings now underway before the NRC in the Yucca Mountain matter, the Pre-License Application President Officer Board has stated, in an Order dated December 2, 2005, that a majority of the Board believes that the regulation does require county governments to be represented by attorneys. However, the Board deferred a ruling on this issue until a later date when the issue might be of “greater practical significance to the conduct of the proceeding.” NRC Docket No. PAPO-00, ASLBP No. 04-829-01-PAPO.)
The example of Lincoln County, Nevada, is particularly instructive. Located in the eastern portion of the state, downwind of Yucca Mountain, it covers 10,637 square miles and is home to approximately 4,100 people, about 17% of whom are below the poverty line and whose annual average per capita income is approximately $17,000. The town of Rachel, located in the western portion of the county, sits about 65 miles northeast of Yucca Mountain -- closer to the site than the City of Las Vegas. Moreover, the DOE's preferred rail method for transporting nuclear waste to Yucca Mountain involves off-loading nearly all nuclear waste from around the country in Caliente, Nevada -- which is Lincoln County's only incorporated city -- and then shipping the waste from Caliente by rail to Yucca Mountain along a corridor that will run for 90 miles within the county.

Although Lincoln County likely will be the gateway for high-level nuclear waste entering Nevada and destined for Yucca Mountain, and will likely be affected by repository operations, it does not have the financial resources to pay experienced counsel to participate in the complex and lengthy licensing proceedings on a regular basis.

By way of comparison, DOE itself has retained special outside counsel to assist it in preparing for the licensing proceedings and to represent it in those proceedings when they commence. According to press reports, the DOE paid its first law firm, Winston & Strawn, approximately $16.5 million and may pay its current law firm, Hunton & Williams, as much as $45 million, in these matters.² The State of Nevada has been able to retain sophisticated and experienced outside counsel to mount a vigorous legal challenge to Yucca Mountain by raising many millions of dollars through standard and supplemental funding mechanisms that are not available to Lincoln County and other affected units of local governments (“AULGs”).

The situation faced by Lincoln County and other rural AULGs is dramatically different. Although these counties and their citizens are as vitally interested in Yucca Mountain as the state of Nevada, Lincoln County’s total annual operating budget from general revenues is $3 million. Its authority to levy sales and real property taxes is essentially tapped out. Ninety-eight percent of its land base is managed by the federal government, leaving a very narrow opportunity to expand its economic base. In order to participate in the NRC licensing proceedings, Lincoln County and similarly situated AULGs are entirely dependent on DOE grants from the Nuclear Waste Fund established by Congress as part of the Nuclear Waste Policy Act. But such funding is uncertain, has varied from year to year -- and may only be used by AULGs to hire attorneys if, in connection with each year’s authorization, Congress includes specific language authorizing the use of such funds for legal counsel. This fund is not only an unreliable basis on which to plan for participation in the NRC licensing proceedings; historical funding levels have been completely inadequate to permit Lincoln County to retain counsel to participate on a regular basis in the licensing proceedings.

In light of these considerations, on March 23, 2007, Lincoln County filed a Petition for Rulemaking with the NRC, asking the NRC to amend its regulations to allow AULGs to

² See Las Vegas Review-Journal, Feb. 5, 2002 (page 1A) and March 25, 2004 (page 4B).
be represented in the NRC licensing proceedings by attorneys or other duly authorized representatives. A copy of Lincoln County’s petition is attached as Exhibit A hereto. To date, however the NRC has taken no official action on that petition. It is completely inexcusable that the NRC has chosen to simply sit on Lincoln County’s petition for more than six months. If the NRC were to initiate a public comment period tomorrow on Lincoln County’s petition, it almost certainly would take at least a year from then before any rulemaking proceeding would be completed. Yet with the DOE moving apace to file its license application, AULGs must know soon whether or not they will be able to represent themselves through non-attorneys if they are to be able to prepare appropriately for the licensing hearings. The federal government having failed to ensure adequate funding for legal representation by AULGs, it should not further penalize those governments and their citizens by effectively preventing them from participating meaningfully as parties in the NRC licensing proceedings — or by simply deep-sixing Lincoln County’s administrative petition that would provide them with some relief.