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December 20, 2007

Via U.S. Mail

Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Secretary Samuel Bodman
U.S. Department of Energy
Forrestal Building
1000 Independence Ave. S.W.
Washington, D.C. 20585

RE: Nevada's Objections to EPA's and DOE's Proposal to dispose of legacy Plutonium Uranium Extraction (PUREX) solvent mixed waste at the Nevada Test Site

Dear Administrator Johnson and Secretary Bodman:

The U.S. Environmental Protection Agency (EPA) in cooperation with the U.S. Department of Energy (DOE) has recently proposed that 25,000 gallons of legacy Plutonium Uranium Extraction (PUREX) solvent mixed waste generated at the Savannah River Site in the 1960's -70's be disposed of at the Nevada Test Site.

As Nevada's chief legal officer, I am writing to inform you that DOE's proposal for using NTS as the disposal site for this waste constitutes a plain violation of law and is contrary to DOE's longstanding agreement with Nevada. For the reasons discussed below, this office is prepared to seek immediate injunctive relief to block any such disposal at NTS.

DOE's 1996 NTS site-wide Environmental Impact Statement (EIS)¹ did not analyze the impacts of disposal at NTS of such wastes. In addition, EPA's and DOE's prospective decision appears to violate established land use limitations for NTS. On June 28, 1994, Nevada filed a complaint in U.S. District Court² alleging, among other things, that the administrative land withdrawals³ for NTS are for weapons testing activities only and expressly do not include disposal of radioactive and mixed waste generated off-site. On April 17, 1997, Nevada and DOE entered into a Settlement Agreement⁴ resolving the litigation. A key component of the settlement includes DOE's commitment to initiate "consultation with the United States Department of the Interior ("DOI") concerning the status of the existing land withdrawals for the NTS with regard to low-level waste storage/disposal activities." Moreover, DOE agreed to "convey the results of its consultation with DOI...to the State of Nevada Attorney General's Office."

To date, this office has not been advised that the agreed consultation has occurred or that the process has been concluded. Thus, it appears that DOE has not fulfilled this essential condition of the court-ordered Settlement Agreement.

Further confirmation that DOE has failed to comply with applicable land withdrawal laws and the ten-year-old Settlement Agreement comes from the U.S. Congress. A 2005 House of Representatives committee report on the Energy and Water Appropriations Bill contains the following directive with respect to NTS:

The Committee supports the efforts of the NNSA to find expanded uses for the unique capabilities associated with the Nevada Test Site (NTS). . . . The Committee notes, however, that the original administrative land withdrawal in 1952 (Public Land Order 805) transferred land from the Bureau of Land Management to the Atomic Energy Commission for use as a 'weapons testing site.' Although the Nevada Test Site is presently being used for a number of other purposes, and is being proposed for new uses as outlined above, *the Department has not updated the original land withdrawal to reflect the multitude of existing and proposed uses in addition to weapons testing.* The Committee directs the Department of Energy to enter into formal consultations with the Department of the Interior regarding the multiple uses and, if necessary, *revise and update the land withdrawal to reflect those additional uses.*⁵ [Emphasis added.]

¹ *Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada*, DOE/EIS-0243 (1996).

² United States District Court, District of Nevada, CV-S-94-00576-PMP-(RLH).

³ Public Land Order 805 and associated land withdrawals

⁴ "Joint Stipulation to Dismiss Second Amended Complaint without Prejudice."

⁵ House Report 108-554, Energy and Water Development Appropriations Bill (2005), at ___.

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It is evident that Congress is aware that DOE's NTS waste disposal activities extend beyond the purpose of weapons testing and has instructed the agency to conduct the appropriate consultations with the Department of the Interior to resolve the

issue. Clearly, the disposal of PUREX solvent mixed waste strays far from DOE's authorized purpose at NTS and is flagrantly unlawful.

In summary, there appears to be no legal justification for EPA's and DOE's present plan. We trust, therefore, that this proposal will be withdrawn until the legality of the land status is resolved and additional National Environmental Policy Act (NEPA) documentation is prepared to assess the impacts of such disposal. I look forward to your prompt attention to this important matter.

Sincerely,



CATHERINE CORTEZ MASTO
Nevada Attorney General

CCM:MAA:vb

cc: Allen Biaggi
Leo Drozdoff
Bob Loux
Nevada Congressional Delegation
James I. Palmer, Jr.