March 6, 2012

The Honorable Dr. Steven Chu
Secretary, U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Subject: Consent to Host the Proposed Repository at Yucca Mountain

Dear Dr. Chu:

Nye County wants to acknowledge the Department of Energy’s FY2011 payments to the Yucca Mountain “Affected Units of Local Government” (AULG) and your “Payment Equal to Taxes (PETT)” to Nye County for the period through FY2011. Nye County has considered itself a partner of the Department for many years as we have undertaken our role as host county to the only site designated by law as the Nation’s geologic repository. We look forward to working with you in the ongoing quest for solutions to the challenges associated with the disposition of spent nuclear fuel (SNF) and defense high level waste (DHLW).

As you know, the first recommendation of the Blue Ribbon Commission on America’s Nuclear Future (BRC) calls for a new, consent-based approach to siting future nuclear waste management facilities. This recommendation goes to the heart of the purpose for this letter. Nye County, Nevada hereby provides notice to you, the Secretary of Energy, that we consent to host the proposed repository at Yucca Mountain consistent with our previous resolutions (attached) that support the safe and successful development of the Yucca Mountain Repository. Our detailed comments on the BRC Final Report are also attached.

Importantly, the BRC report states, “The approach we recommend also recognizes that successful siting decisions are most likely to result from a complex and perhaps extended set of negotiations between the implementing organization and potentially affected state, tribal, and local governments, and other entities.” We acknowledge that opposition by the State of Nevada has been challenging. Up to this point in time, Nevada, represented by the Nevada Commission on Nuclear Projects, has been steadfast in its belief that there are no serious incentives to be had for hosting the Yucca Mountain Project. However, we, like the BRC, believe that (1) assurances from the Federal government of an enduring and significant role for State and Local government involvement in the project to assure safety, and (2) a significant federal incentive package to the State and Local governments could alter the status quo and lead to a resolution of the decades long dispute.

Since the BRC members have testified that the Nation may well need more than one repository,
Since the BRC members have testified that the Nation may well need more than one repository, and that the need is urgent, Yucca Mountain should not automatically be excluded. The fact that over 30 years of scientific and technical work has already been successfully conducted leads us to conclude that Yucca Mountain could be ready to safely receive waste years ahead of any other site. This specifically addresses the “promptness” issue of the fourth BRC recommendation “...that leads to the timely development of one or more permanent deep geologic repositories...”

We ask that you invite Nye County to meet with you or your designated representatives to initiate the cooperative negotiation process the BRC recommends. We want to explore and define potential incentives, and move this urgently needed program forward as promptly as possible. Thanks to the additional AULG oversight funding you provided, we are ready to start that process now. In order to establish our mutual negotiating teams, we propose an initial meeting at the time and place of your choosing in March or soon thereafter. Let us start the dialogue now. We do not need to wait. We look forward to your prompt reply.

Sincerely,

Lorinda Wichman, Chairman
Nye County Board of County Commissioners

Nye County BRC Final Report Comments, March 5, 2012

CC: The White House
Governor Sandoval
Nevada Congressional Delegation
Nevada Commission on Nuclear Projects
Senate Committee on Energy and Water
Senate Committee on Environment and Public Works
House Energy and Commerce
House Science Committee
House Sub Committee on Energy and Environment
House Sub Committee on Science and Technology
NARUC
NEI
USNRC
Nye Board of County Commissioners
Nye County Manager
AULGs
NV4CFE
NWSIC
NWTRB
NRC
DOE/NE
DOE/GC
DOE/EM
Resolution No. 2002-07
Nye County Board of Commissioners

BOARD OF COUNTY COMMISSIONERS
COUNTY OF NYE, STATE OF NEVADA

RESOLUTION SETTING FORTH NYE COUNTY’S
POSITION REGARDING THE PROPOSED HIGH LEVEL
NUCLEAR WASTE REPOSITORY AT YUCCA MOUNTAIN
AND THE SITUS COUNTY COMMUNITY PROTECTION PLAN

WHEREAS, the President of the United States has now formally recommended Yucca Mountain, in Nye County, as the site to which the federal government would transfer the Nation’s highly radioactive wastes for interim storage, waste handling, and permanent disposal; and

WHEREAS, Nye County is the location of the Nevada Test Site where, for over 40 years, the Nation conducted nearly 1,000 atmospheric and underground nuclear weapons tests which permanently contaminated large tracts of land and groundwater; and recent studies reveal that radiation released in 828 underground nuclear detonations is migrating in poorly understood regional groundwater systems; and

WHEREAS, the program instituted by the United States Department of Energy (USDOE) to clean up the Nation’s defense complex relies heavily on the disposal of low-level radioactive wastes at the Nevada Test Site, in Nye County;

WHEREAS, these low-level wastes arrive by truck on two-lane roads that go through four Nye County communities; in fiscal 2001, about 600 shipments containing 750,000 cubic feet of low-level wastes traveled 107,000 shipment miles on rural highways in the destination county; and

WHEREAS, Nye County also is the site of the Nellis Test and Training Range, a premier training range where the Nation trains its best fighter pilots for combat preparedness; and

WHEREAS, Nye County also is the site of the Tonopah Test Range, a restricted facility where the Nation has developed and based new-technology combat aircraft; and

WHEREAS, these activities (the Nevada Test Site, the Nellis Test and Training Range, and the Tonopah Test Range) have made major contributions to national defense but meager contribution to the Nye County’s economic or revenue base; and

March 28, 2002 (1:45PM)
WHEREAS, the management and use of 11 million acres of public lands, comprising 98% of the Nye County’s total land area, by a variety of federal land management agencies contributes very little to the Nye County’s economic or revenue base, and forecloses opportunity for local community development; and

WHEREAS, Nye County has not sought to provide the site to which the federal government would transfer the Nation’s highly radioactive wastes for interim storage, waste handling, and permanent disposal; and

WHEREAS, the USDOE claims that the proposed Yucca Mountain Project will be good for national health and safety, good for the nuclear power industry and their ratepayers, good for 80 communities in which highly radioactive wastes are now stored, good for 35 states that do not want to become permanent storage locations for highly radioactive wastes, and/or good for the federal government which has legal obligations to dispose of commercial spent fuel; and

WHEREAS, it is clear that the Yucca Mountain Project, if implemented as proposed, will achieve the expected benefits for others by the transfer of the Nation’s highly radioactive wastes, along with all its attendant risks and uncertainties, from 80 sites in 35 states to a single community in Nevada—Nye County; and

WHEREAS, the elected government of Nye County has responsibility to protect local health, safety, and welfare, and is the only representative government whose first and overriding responsibility is to provide such protection in the situs county; and

WHEREAS, since 1995 Nye County has conducted independent scientific investigations in areas downgradient from the proposed Yucca Mountain repository, focusing on geologic and hydrologic conditions affecting the potential for contamination in the repository’s major exposure pathways; and

WHEREAS, these independent investigations have identified uncertainties and contingencies—in science, design, and in implementing organization and funding—that require continued independent inquiry and confirmation; and

WHEREAS, in recognition of all of the above, Nye County has prepared a “Community Protection Plan” that identifies the legitimate objectives of the situs county, and the protections it expects in the event that the federal government decides to transfer the Nation’s highly radioactive wastes to Yucca Mountain; and

WHEREAS, the Nye County Board of Commissioners deems it imperative that it set forth Nye County’s statement of history, policy and intent regarding this issue,

NOW THEREFORE, it hereby is resolved as follows:
1. Nye County has not sought to provide the site to which the federal government
would transfer the Nation's highly radioactive wastes for permanent disposal.

2. The Nation and the various parties who stand to benefit have a special obligation
to the single local jurisdiction to which they desire to transfer their unwanted radioactive wastes.

3. If the Nation decides to transfer its highly radioactive wastes to this single
community—Nye County—it has an obligation to do so under conditions that address the situs
county's concerns and that assist rather than jeopardize legitimate site county objectives, as these
are outlined Nye County's "Community Protection Plan."

4. Among these concerns and objectives are the following:

**Protection of Health, Safety, and the Environment**
The situs county—Nye County—should be empowered to conduct
independent oversight and monitoring of USDOE activity in the situs
county throughout Yucca Mountain site characterization, licensing,
construction, operations, and performance confirmation. Situs county
empowerment should be permanently financed, and should not be
dependent on annual federal appropriations over the expected 50-300 years
of repository operations.

Federal activities to confirm repository performance and to conduct
research and development related to waste handling and potential reuse
should be headquartered in Nye County—the only community in which
repository performance, and the potential consequences of poor repository
performance, would be an urgent daily concern throughout the expected
50-300 years of repository operations.

**Equity in Nuclear Waste Transportation**
Transportation of highly radioactive wastes in the situs county should be
conducted by rail, and under policies which minimize the risks for Nye
County communities of all high and low-level radioactive waste
shipments.

**A Viable Local Economic & Revenue Base**
Special federal actions should be taken to provide the situs county an
opportunity to develop a viable economic and revenue base, with facility
and service systems comparable to those in other communities hosting
USDOE nuclear facilities—even as the federal government plans to make
an extraordinary future imposition in addition to the extraordinary
impositions of the past.
5. The Nye County Board of County Commissioners intends to vigorously communicate situs county perspectives, concerns, and aspirations to officials in federal and state government and to other parties who have an interest in the Yucca Mountain repository decision, and to advocate its proposed protections in the event that the federal government decides to transfer the Nation’s highly radioactive wastes to Yucca Mountain.

6. Nye County opposes any program for repository implementation that does not fully and forthrightly address its situs county concerns and aspirations.

7. The Nye County Clerk forthwith shall send a copy of this Resolution to the Governor of Nevada, all Nevada Assemblypersons and Senators; and Nevada’s representatives in the U.S. House of Representatives and Senate.

DATED this 16th day of April, 2002.

PROPOSED on the 16th day of April, 2002 by Compton Moe.

VOTE: AYES: Compton Moe, NAYS: ___________________________

ABSENT: Richard Pena

ABSTENTIONS: ______

EFFECTIVE this 16th day of April, 2002.

ATTEST:

MARCH 28, 2002 (1:45PM)
By: [Signature]

Sandra L. Menino, Nye County Clerk
and Ex-Officio Clerk of the Board
RESOLUTION STATING THE INTENT OF NYE COUNTY TO ACTIVELY AND CONSTRUCTIVELY ENGAGE WITH THE U.S. DEPARTMENT OF ENERGY (DOE), THE ADMINISTRATION, AND CONGRESS AS THE YUCCA MOUNTAIN PROJECT PROCEEDS TO FINAL DESIGN, LICENSING, AND IMPLEMENTATION:

WHEREAS, the United States Congress has voted to move the Administration's proposed Yucca Mountain Project, located in Nye County, Nevada, towards final design, licensing, and implementation.

WHEREAS, since 1940 the federal government has selected sites in Nye County for nuclear weapons testing, air force fighter training, and low-level radioactive waste disposal in cleanup of other sites in the nation's weapons complex.

WHEREAS, these activities (the Nevada Test Site, the Nellis Test and Training Range, and the Tonopah Test Range) have made major contributions to national defense but meager contribution to the Site County's economic or revenue base.

WHEREAS, the management of 11 million acres of federal lands in Nye County, comprising 98% of the county's total land area, makes meager contribution to the Site County's economic or revenue base, and forecloses opportunity for local community development.

WHEREAS, while the President has recommended and the Congress has mandated that DOE should prepare and apply for a license from the Nuclear Regulatory Commission to construct a repository at Yucca Mountain, many questions and issues regarding the Yucca Mountain Project remain to be addressed—including the safety and equity of the Yucca Mountain Project as proposed, and whether the Yucca Mountain Project will be implemented as proposed.
Resolution No. 2002-22
Nye County Board of Commissioners

WHEREAS, the duty of the representative local government to ensure the health, safety, and welfare of its citizens requires the active engagement of Nye County to ensure that the questions and issues referenced above are addressed in design and licensing as well as in implementation, and to provide assurance of same for the residents of the single local entity to which the nation's highly radioactive wastes would be transferred.

WHEREAS, Nye County has prepared a "Community Protection Plan" that identifies the legitimate objectives of the site county, and the protections it expects in the event that the federal government transfers the nation's highly radioactive wastes from 131 sites in 39 states to a single site at Yucca Mountain, in Nye County.

WHEREAS, if implemented, the Yucca Mountain Project should be more than just a repository 12 miles north of Lathrop Wells in the Nye County community of Amargosa Valley, but the center for a community of synergistic scientific, engineering, educational, and entrepreneurial activities for management and possible reuse of the nation's highly radioactive wastes, and for the demonstration of alternative forms of energy for future generations.

WHEREAS, it is just such a vision for the Yucca Mountain Project that offers the best long-run prospect for converting long-standing resistance and mistrust within the State of Nevada to constructive engagement and cooperation.

WHEREAS, DOE can most effectively and efficiently implement the above-stated vision for the Yucca Mountain Project through close coordination and cooperation with its Nevada Site County, and Nye County intends to constructively engage with DOE to achieve this vision.

NOW THEREFORE, BE IT RESOLVED:

1. Nye County intends to engage energetically and constructively with the Department of Energy and the U.S. Congress as the Yucca Mountain Project proceeds to final design, licensing, and implementation.

2. Nye County intends to make constructive scientific, technical, and strategy contributions to address key issues in repository design, licensing, and performance confirmation, as well as transportation and project management.

3. Nye County anticipates constructive engagement by DOE, the Administration, and Congress in addressing such issues in ways that also address the concerns and aspirations of DOE's Site County in Nevada.

4. Nye County will use its "Community Protection Plan" as a resource and framework for its constructive engagement with DOE, the Administration, and
Resolution No. 2002-22
Nye County Board of Commissioners

Congress as the Yucca Mountain Project proceeds to design, licensing, and possible implementation.

5. Nye County will vigorously pursue the objectives articulated in its Community Protection Plan: local empowerment for assurance of safety and health; equity in transportation; and development of community capacity and resources. The vision is that, if implemented, the Yucca Mountain Project should not be just a repository where the nation's highly radioactive wastes are transferred for storage in perpetuity, but the center for a community of synergistic scientific, engineering, educational, and entrepreneurial activities for management and possible reuse of the nation's highly radioactive wastes, and for the demonstration of alternative forms of energy for future generations.
Resolution No. 2002-22
Nye County Board of Commissioners

DATED this 16th day of August, 2002.
PROPOSED on the 16th day of August, 2002 by Henry Neth

VOTE: AYES: McRae
Eastley
Taguchi
Neth

NAYS: 

ABSENT: Carver

ABSTENTIONS: 0

EFFECTIVE this 16th day of August, 2002

BOARD OF COUNTY COMMISSIONERS
COUNTY OF NYE, STATE OF NEVADA

By: Jeff Taguchi, Chairman

ATTEST:
By: Sandra L. Merlinó, Nye County Clerk
and Ex-Officio Clerk of the Board
WHEREAS the Nuclear Waste Policy Act of 1982 as amended designates Yucca Mountain, located in Nye County, Nevada as the only site for consideration as the nation's repository for high-level nuclear waste and spent fuel; and

WHEREAS the site has been determined to be a suitable location for a repository, the U.S Court of Appeal dismissed all challenges to the site selection of Yucca Mountain, the scientific basis for the selection process and the constitutionality of the resolution approving Yucca Mountain; and

WHEREAS the Department of Energy is preparing a license application for the repository and expects to begin operation beginning in 2010; and

WHEREAS the Department intends to use rail transportation, the mode of transportation Nye County prefers, to the maximum extent possible and the Department has made progress in planning the transportation system by selecting the Caliente route; and

WHEREAS the Department is beginning the process of identifying repository and transportation facilities which could be located off-site and is considering other means of maximizing local economic opportunity; and

WHEREAS the Nye County "Community Protection Plan" has established a vision for protecting the community and for the local development of synergistic economic, scientific and educational activities for management and possible future reuse of material which will be stored at Yucca Mountain; and

WHEREAS it is just such a vision for the Yucca Mountain Project that offers the best long-term prospect for converting long-standing resistance and mistrust within the State of Nevada to constructive engagement and cooperation; and
WHEREAS Nye County intends to work cooperatively with communities along the Caliente route, the Department of Energy, and any other appropriate group for the purpose of achieving this vision.

NOW THEREFORE, BE IT RESOLVED that Nye County intends to fully, constructively and energetically support:

1. Development of a safe repository at Yucca Mountain,
2. Development of policy that empowers the County concerning repository and transportation safety and health,
3. Creation of synergistic scientific, engineering, educational and entrepreneurial economic opportunities in the County,
4. Assisting the United States of America in fulfilling the commitment to provide a geologic repository for spent nuclear fuel and high-level waste to protect the health, safety and welfare of the citizens of the United States,
5. Assisting the United States Department of Energy in meeting their timeline for the reception of spent nuclear fuel and high-level waste at Yucca Mountain,
6. Maximizing jobs and economic opportunities for Nye County citizens,
7. Working cooperatively with appropriate federal entities, rural Nevada communities along the transportation route and other parties willing to constructively engage in the development of a repository that is safe and offers significant economic benefit to Nye County and others most affected by the operation of a repository and related transportation systems.
APPROVED this 20th day of July, 2004

NYE COUNTY BOARD OF
COUNTY COMMISSIONERS:

Henry E. Neth, Chairman

ATTEST:

Sandra “Sam” L. Merlino, Nye County Clerk
and Ex-Officio Clerk of the Board
NYE COUNTY RESOLUTION NO. 2011-21

A RESOLUTION OF THE NYE COUNTY BOARD OF COMMISSIONERS RESOLUTION SUPPORTING COMPLETION OF THE NUCLEAR REGULATORY COMMISSION'S REVIEW OF THE YUCCA MOUNTAIN LICENSE APPLICATION

WHEREAS, the Nuclear Waste Policy Act of 1982, as amended, ("Act") selected Yucca Mountain, located in Nye County as the only site to be characterized as the nation's first high-level radioactive waste repository; and

WHEREAS, Congress in July 2002, in accordance with provisions of the Act, as amended, overrode Nevada's notice of disapproval; and

WHEREAS, Yucca Mountain was designated to be the site for development of a permanent repository for United States spent nuclear fuel and defense high level radioactive waste; and

WHEREAS, the U.S. Department of Energy ("USDOE"), in accordance with the Act, submitted a License Application (LA) to the Nuclear Regulatory Commission (NRC); and

WHEREAS, that LA, in accordance with NRC regulations, was accepted for review by the NRC; and

WHEREAS, the USDOE has since requested withdrawal of its submission of the LA "with prejudice"; and

WHEREAS, the request for withdrawal has been denied by the Atomic Safety and Licensing Board (ASLB) and challenged in Federal Court; and

WHEREAS, the Commissioners of the NRC have not issued a final ruling on their review of the ASLB decision that USDOE does not have the legal authority to withdraw the Yucca Mountain license application; and

WHEREAS, the nation needs to move forward on the established NWPA strategy that provides for the permanent storage of spent nuclear fuel and high level waste; and,

WHEREAS, the Nye County Board of Commissioners (Board) recognizes that further delays in the development of a permanent geologic repository will result in significant public expenditures and potentially jeopardizes the future expansion of nuclear power production and energy independence; and
WHEREAS, the Board is convinced that until such time as the NRC completes its review of the
LA, Nye County, the State of Nevada and the nation will be denied a scientific and technical
determination of the potential of the Yucca Mountain repository to be built and operated safely and
successfully; and

WHEREAS, Nye County adopted Resolutions 2002-7, 2002-22 and 2004-25 defining the
County's involvement as the site county for the nation's geologic repository for spent nuclear fuel and
defense high level waste,

NOW THEREFORE, it hereby is resolved as follows:

1. The Yucca Mountain licensing proceedings should be restarted and the NRC should
complete a thorough and detailed review of the License Application; and

2. If upon completion of the license application review by the NRC staff and the licensing
proceeding before the ASLB, the conclusion is that the Yucca Mountain repository can
be constructed and operated safely, Nye County reaffirms our prior resolutions and
supports such construction and operation consistent with these prior resolutions; and

APPROVED this 15th day of March, 2011.

NYE COUNTY BOARD OF
COUNTY COMMISSIONERS:

Gary Hollis, Chairman

ATTEST:

Sandra “Sam” L. Merlino, Nye County Clerk
And Ex-Officio Clerk of the Board
March 5, 2012

Timothy A. Frazier, Designated Federal Officer
U.S. Department of Energy
1000 Independence Avenue, SW.
Washington, DC 20585
brc@nuclear.energy.gov

Re: Nye County comments on the Final Report to the Secretary of Energy from the Blue Ribbon Commission on America’s Nuclear Future

I am providing the following comments on behalf of my client Nye County, Nevada, regarding the Blue Ribbon Commission’s Final Report on America’s Nuclear Future.

EXECUTIVE SUMMARY OF PRINCIPAL COMMENTS

1. Nye County, Nevada, agrees with a principal finding and recommendation of the Blue Ribbon Commission (“BRC”) that the United States should undertake “the timely development of one or more permanent deep geological facilities for the safe disposal of spent fuel and high-level nuclear waste.” In its previous draft report, BRC had acknowledged a need “to promptly” develop one or more deep geological repositories. Whether BRC’s concern is for “timely” or “prompt” development of a permanent repository, the only repository that can possibly be completed in the near term is the proposed Yucca Mountain repository. A neutral BRC recommendation could have called for the NRC to reach a final decision on the merits of the currently pending Yucca Mountain license application, which took billions of taxpayer dollars to produce. This added recommendation would have been consistent with the BRC’s support for “timely development” of a permanent deep geological repository and could be implemented while BRC’s other sweeping recommendations are considered.

2. The BRC suggestion that a new corporation be established to comprehensively handle spent fuel and high level waste disposal issues should be implemented prospectively only, if implemented at all. The call for new legislation should not interfere with the Yucca Mountain licensing proceeding pursuant to the NWPA. The complex BRC proposal recommending this and other major statutory, regulatory, and social changes, in addition to research programs, as a substitute for the current NWPA framework would take decades to implement, with no guarantee of success, and would be just as vulnerable to last minute political derailment as the Yucca Mountain proceeding.
3. Nye County opposes BRC’s recommendation that the NWPA be amended so that consolidated interim storage facilities may be sited and licensed before the first permanent repository is licensed. On one hand, all but the final site selection and construction of such a storage facility can be achieved under the NWPA. However, as BRC acknowledges, if interim storage is allowed to proceed ahead of the repository, it could become de facto permanent or long-term storage. The current staging required by the NWPA is therefore prudent and should be maintained.

4. The BRC report now briefly acknowledges that Nye County supports completion of the NRC licensing proceeding, and construction of the project if NRC determines it is safe. However, the report minimizes the extent of local support for the repository and asserts that the majority of the State of Nevada opposes the project without providing documentary support. Other adjoining counties have stated support for the project, which is opposed by Nevada’s federal and State politicians.

5. Nye County agrees that all affected levels of government must have, at a minimum, a meaningful consultative role in important decisions and that funding of active local participation in repository activities is essential to its success. Pursuant to the NWPA, Nye County has actively consulted with DOE on every step of the repository project, has provided meaningful oversight of all activities at Yucca Mountain, and is a full party participant in the Yucca Mountain licensing proceeding pending before the NRC. Nye County has informed DOE of its consent to serve as the host county for the Yucca Mountain repository.

OVERVIEW

For many decades, Republican and Democrat Administrations alike struggled to find a permanent solution for the safe disposal of high-level nuclear waste and spent nuclear fuel. When the political parties and other stakeholders finally reached an acceptable compromise on a policy direction for the Nation, that policy was embodied in law as the Nuclear Waste Policy Act ("NWPA"). Adhering to the statutory requirements and scientific and technical criteria for site selection, the Executive and Legislative Branches collectively narrowed site characterization to a single, geologically suitable location for the repository, Yucca Mountain, in Nye County, Nevada, about 100 miles from the nearest major population center, Las Vegas. After the State of Nevada failed multiple times to thwart that selection politically and in federal court, the Department of Energy ("DOE") finally filed a license application ("LA") to construct the repository with the Nuclear Regulatory Commission ("NRC") in 2008.

In accordance with carefully crafted statutory and regulatory licensing requirements, interested state, local government, tribal, and other parties intervened in the NRC licensing proceeding, ensuring that all sides on the key issue—whether or not the facility could be constructed and operated safely—would be fully heard in a neutral forum. The parties filed approximately three hundred environmental, health, and safety contentions with the assigned NRC Atomic Safety and Licensing Board ("ASLB"). The State of Nevada filed the vast majority of the contentions, re-raising many issues that had already been adjudicated in the past.
The LA adjudication was entering the discovery phase in 2010, and the ASLB was ready to rule on purely legal contentions and proceed with discovery, when DOE abruptly announced that it wanted to withdraw its LA with prejudice, even though DOE still maintained that the repository could be safely built and operated. The ASLB denied DOE’s formal Motion to Withdraw on June 29, 2010, and the NRC unilaterally requested parties to file briefs on the question of whether or not NRC should review the ASLB’s decision. Thereafter, NRC’s Chairman improperly halted staff development of Safety Evaluation Reports (SERs) essential to the licensing proceeding, even though the SERs were nearly complete and the ASLB adjudicatory process was still pending. An observer of the licensing proceeding need not be a cynic to conclude that the timing of the actions by the Secretary of DOE and NRC’s Chairman were based on the fear that the SERs, and the licensing proceeding itself, were about to add weight to the claim that Yucca Mountain could be constructed safely. On September 9, 2011, after more than a year delay, NRC issued a split 2 to 2 decision that left the ASLB decision intact as a matter of law. However, the NRC acted inconsistent with that decision in also ordering the ASLB to preserve its record of the proceedings and suspend the licensing determination until Congress provided additional funding. That decision is currently pending review by the United States Court of Appeals for the DC Circuit.

Prior to DOE’s filing the Motion to Withdraw, President Obama stated that advances in science and technology demanded a rethinking of the entire back-end of the nuclear fuel cycle and asked DOE to establish this Blue Ribbon Commission ("BRC") and directed it to consider all alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. The BRC published its draft report open for public comment until October 31, 2011. Nye County filed formal comments with the BRC on October 25, 2011. BRC then issued its Final Report on January 26, 2012.

BRC’s Final Report offers numerous suggestions for, in essence, establishing a revised policy and new program for nuclear waste disposal and restarting the repository site selection process. While Nye County agrees in principle with some of the BRC proposed recommendations and key strategies for the future, most of those changes can be made prospectively for future projects without further delaying the Yucca Mountain licensing proceedings under the NWPA. Nye County is deeply concerned that implementation of a new policy and the requisite statutory and regulatory changes will be costly, time consuming, and in the end, still dependent upon the cooperation of many diverse parties within the federal government and among state, local and tribal parties, and the public at large. In short, implementation of BRC strategies will assuredly take decades, and may not be implementable at all, given political realities. Therefore, Nye County strongly recommends completion of the

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1 Order of ASLB, In re Dept of Energy, NRC No. 63-001, ASLB No. 09-892-HLW-CAB04 (June 29, 2010) at 4 (hereinafter cited as “ASLB Order”)
2 The NRC Staff has now issued TERs on safety issues that presents staff findings short of conclusions regarding safety. See note 3 infra, and accompanying text.
ongoing Yucca Mountain licensing proceeding, regardless of whether the BRC’s recommendations are implemented for future nuclear waste programs.

I. YUCCA MOUNTAIN IS THE ONLY REPOSITORY SITE THAT HAS THE POTENTIAL TO BE EXPEDITIOUSLY DEVELOPED

Nye County agrees with a principal finding and recommendation of the BRC that the United States should undertake “the timely development of one or more permanent deep geological facilities for the safe disposal of spent fuel and high-level nuclear waste.”

Given BRC members shared "sense of urgency" and their final determination that a geological repository is essential, it is difficult to reconcile the report’s treatment of the one repository that potentially could be developed promptly, namely Yucca Mountain. Acknowledging the central importance of finding a suitable geological “medium” for nuclear waste disposal; the considerable time it has taken to find such a location; and the fact that a final decision relative to the Yucca Mountain license application was about to be made, BRC’s recommendation regarding the need for one or more repository leads inevitably and logically to a single conclusion: the Yucca Mountain licensing proceeding should be completed as soon as possible. An objective assessment of all relevant factors demonstrates that no other site will be available for decades, even under the most optimistic view of the future.

The NRC has now finally ruled on DOE’s Motion to Withdraw the license application and left the ASLB denial of DOE’s Motion intact as a matter of law. Therefore, the ALSB is required by the NWPA to continue the licensing proceeding to determine if Yucca Mountain could be constructed and operated safely. Given the history of the long search for a suitable site for a repository, and the amount of effort and resources that have already been invested in the Yucca Mountain licensing proceeding, obtaining a final NRC safety determination is the only timely method to secure the first suitable site for a United States repository.

II. THE NWPA PROGRAM FOR DEVELOPMENT OF A PERMANENT NUCLEAR WASTE REPOSITORY, WHILE DELAYED, IS WORKABLE AND INCORPORATES THE VERY STRATEGIES RECOMMENDED BY THE BRC

While noting what the BRC views as numerous deficiencies in the current policy and repository requirements established by the NWPA, DOE, and NRC, the Final Report fails to emphasize that substantial progress was being made toward a final decision on the LA. Nor are

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5 Final Report at Ch. 4, p. 27. The Draft BRC Report at Ch. 4, paragraph 1, stated the goal in the following manner: “Our first recommendation, therefore, is that the United States must proceed promptly to develop one or more permanent deep geological facilities for the safe disposal of spent fuel and high-level nuclear waste.” (emphasis added).
6 Final Report at p. vi.
7 Final Report at p. xi.
8 NWPA, 42 U.S.C. § 10134(d). The Inter-Agency Group established by President Carter and the works of several National Academy of Science (“NAS”) committees have addressed delays in establishing a permanent repository, particularly in the 2001 NAS study, Disposition of High-Level Waste and Spent Nuclear Fuel: The Continuing Societal and Technical Challenges. All of these groups reached same conclusion: but for the politicization of nuclear waste issues, the solution proposed in the NWPA would be nearing completion of significant safety milestones.
the new strategies outlined by the BRC guaranteed to expeditiously achieve the ultimate goal of safe permanent disposal. Most importantly, if Yucca Mountain is abandoned, and the new strategy and processes outlined by BRC fail, the Nation will have wasted decades of progress achieved under the NWPA.

Proceeding with the ASLB adjudication of the LA would safeguard against such an eventuality and would not foreclose the improvements recommended by the BRC for consolidated interim storage, major organizational changes, modifications in the management of the nuclear waste fund, and a search for a suitable location for a second repository under an improved statutory and regulatory framework.

BRC’s draft and final reports both assert that the BRC takes no position on the proposed Yucca Mountain repository or the stalled NRC licensing proceeding. However, that position is undermined by the erroneous or unsupported BRC findings of flaws in the NWPA and Yucca Mountain repository program contained elsewhere in the report.

Both the BRC’s draft report and Final Report described the NWPA and the statutorily established Yucca Mountain repository program in the report as "troubled" and "deeply flawed." BRC still contends that "it will cost something to implement a successful U.S. waste management program; however, trying to implement a deeply flawed program is even more costly..." Despite the detailed comments and corrections provided to BRC by Nye County and numerous other sources regarding the draft report, BRC’s Final Report still does not present an even-handed or complete review of the existing NWPA programs, and consistently fails to provide adequate supporting evidence and analysis demonstrating that the current program is fundamentally flawed.

For example, the U.S. repository development program is not characterized by decades of failed efforts, despite BRC conclusion to the contrary. Rather, the program has advanced at least as far, if not further, than repository development programs in other nations. Currently, the U.S. repository program is thirteen years behind the schedule outlined in the NWPA, as amended.

9 The Final Report at p. vii-viii, and the Draft Report at p. vi., both state the following: "We have not: Rendered an opinion on the suitability of the Yucca Mountain site or on the request to withdraw the license application for Yucca Mountain. Instead, we focused on developing a sound strategy for future interim storage and permanent disposal facilities and operations that we believe can and should be implemented regardless of what happens with Yucca Mountain." See also Final report at xii. The Final Report asserts that an assessment of Yucca Mountain was not in BRC's charter. Final Report at pp. vii, xii. On the contrary, the Charter, which calls for a “comprehensive review” of “all alternative” for “nuclear waste disposal” would seem to require an assessment of the only currently existing permanent disposal option, not preclude such an assessment. Final Report, BRC Charter at p. 122. Simply because the BRC was “not a siting committee” does not foreclose an assessment of Yucca Mountain generally or consideration of whether or not the Yucca licensing proceeding should continue as a possible means to “timely develop” a permanent repository. BRC notes that, in any event, the NWPA limits the amount of spent fuel that can be disposed at Yucca until a second repository is built. However, that comment appears to be no more than an excuse to avoid directly addressing the Yucca Mountain option. The BRC knows full well that Yucca’s capacity was arbitrarily limited and could easily be expanded if the design and location are determined to be safe. Moreover, BRC was not hesitant to recommend changes in the NWPA in other areas where it supported its position. See, e.g., Final Report at Ch. 5.
10 Final Report at p. vii; Draft Report at pp. i, iv, vi, xiv.
However, significant annual progress to advance the repository development initiative was being accomplished until recent actions by the Administration sought to terminate the Yucca Mountain program without safety justification for such action. Rather than being viewed as failed efforts, the activities of the past 24 years could be viewed as the results of an "adaptive management" approach, coupled with "appropriate Congressional control," the very approach recommended by the BRC in its Final Report.¹²

Recent political opposition by the Administration and litigation by a single state have been the primary impediments to the timely implementation of the Nuclear Waste Policy Act. A neutral and balanced analysis would also have mentioned that many of BRC’s suggestions for future nuclear waste programs are already incorporated in the NWPA and were implemented during the process of siting the Yucca Mountain project.

For example, the BRC recommends an approach to siting and developing nuclear waste management and disposal facilities in the United States that is adaptive, staged, consent-based, transparent, and science-based.¹³ The NWPA and its implementing regulations contain a careful balance of all these elements. The siting criteria and identification of potential repository sites were based upon scientific assessments that took years to complete. Moreover, the NWPA and the NRC licensing process are staged to allow neutral consideration of design, construction, and operation issues. The NWPA also requires Congressional involvement at each critical stage to insure that any adaptive changes necessary in the national interest are properly taken into account. Federal, State, local and tribal involvement and oversight are provided for at every phase of the process.

The BRC asserts that “[e]ffectively managing the back end of the nuclear fuel cycle requires a vision and a strategy. Both have been lacking in the U.S. waste management program to date.”¹⁴ This sweeping statement is unfair, misleading, and inaccurate. The NWPA is a carefully crafted national strategy and vision for disposal of high level waste that enjoyed bipartisan support until the current President and DOE unilaterally decided to withdraw the Yucca Mountain license application without first seeking Congressional approval. The NWPA policy had endured for more than two decades under changing political landscapes and numerous Administrations. The policies and procedures established in the NWPA were being followed and the waste repository program was gathering momentum. Just as the NWPA policy framework was about to reach fruition in the NRC licensing process, with a possible independent verification that the Yucca Mountain Repository could be constructed safely, the longstanding policy framework was undermined by Executive Branch actions that sidestepped Congressional approval. Had it not been for this political interference, which the BRC apparently will not, or cannot acknowledge, the NWPA licensing proceeding for Yucca Mountain, although delayed, should now be close to completion, with an NRC final decision on relevant safety issues.

The BRC’s appropriate insistence on "transparency" and "fairness"¹⁵ in nuclear waste decision-making is ironic. The most transparent and objective feature in the consideration of the

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¹² See generally Final Report at Ch. 2 (“Foundations of a New Strategy”)
¹³ See generally Final Report at Ch. 2; Draft Report at p. xv.
¹⁴ Final Report at p. 4; Draft Report at Section 2.1, p. 4.
¹⁵ Final Report at pp. 6-7
proposed Yucca Mountain repository is the ASLB licensing proceeding. The adjudication is conducted by neutral administrative judges and NRC technical experts. Any party with a stake in the licensing proceeding may intervene as a party and file safety and environmental contentions. Evidence is presented in a public adjudicatory forum governed by rules similar to those in federal court. The only non-transparent action under the NWPA to date has been the DOE's and NRC's politically motivated interference with the statutory ASLB licensing process for reasons unrelated to safety.

The assertion that had the Administration not halted the Yucca program, the LA would have led to "further controversy, litigation, and protracted delay"\(^\text{16}\) turns the current situation on its head. Yes, there is an opportunity for judicial review of a final NRC decision on the repository license application. However, it was DOE's attempt to unilaterally withdraw the application, on grounds other than safety, and NRC's inexcusable delay in ruling on DOE's Motion to Withdraw that led to "further controversy [involving NRC's Inspector General, Congress, and the Courts], litigation, and protracted delay". DOE and the NRC Chairman's actions prevented the ASLB and NRC from meeting their statutory responsibility to rule on the safety merits of the LA within the three or four year period required by law.\(^\text{17}\)

Regarding the setting of regulatory standards, BRC starts with the concession that EPA and NRC should retain their respective roles in setting the repository safety and environmental standards.\(^\text{18}\) Both agencies, together with the National Academies of Science, were directly involved in the setting of science-based standards and procedures for the Yucca Mountain repository under the NWPA, and the standard-setting process took from 1987 to 2005. There is no reason to believe that new, and presumably better, regulations could be promulgated and implemented, without litigation, any faster.

In this regard, the BRC recommends that safety and other performance standards and regulations should be finalized prior to the site-selection process.\(^\text{19}\) BRC also recommends that EPA complete this process in a thorough and timely way.

Nye County agrees with those goals for future projects, and notes that thorough and effective standards have been painstaking promulgated with respect to the Yucca Mountain repository, although not as quickly as many would have wanted. Despite the implications in the BRC Final Report, there is no reason to believe that the current safety and radiological standards for Yucca Mountain are inadequate for the current proposal or for future repositories.\(^\text{20}\) As noted

\(^{16}\) Final Report at p. vi; Draft Report at p. iii.
\(^{17}\) NWPA, 42 U.S.C. § 10134(d).
\(^{18}\) See Final Report at Ch. 6, 9, 10.
\(^{19}\) See, e.g., Final Report at Ch 10; Draft Report at Section 9.3, page 104.
\(^{20}\) During a discussion of the nature of radiation hazards, the BRC draft report correctly states, “Human beings are exposed continuously to very low levels of naturally-occurring and man-made radiation (see text box and figure 7).” Draft Report, Section 3.2, p. 14, Figure 7 shows radiation doses of varying levels and the hazard posed at higher levels. In particular, the figure shows a dental x-ray produces about a 5 microSievert dose; daily background radiation to an average individual is about 10 microSieverts; a chest x-ray exposes an individual to about 100 microSieverts; and at 100 milliSieverts (an annual dose 10,000 times background radiation), effects of lifetime risk of cancer become evident. To put this information in proper perspective, as documented in DOE's Yucca Mountain license application, the estimated highest annual dose to a hypothetical Nye County resident living closer than anyone actually does to Yucca Mountain would be less than 3 microSieverts for 10,000 years and less than 30
elsewhere in the BRC report, it took EPA 16 years to establish the current Yucca Mountain standard. While the BRC voices a preference for generic standards, the history of environmental, health, and safety regulations demonstrates that site specific requirements are usually needed to adequately protect human health and safety. Those standards should be left intact for Yucca Mountain licensing and construction.21

The BRC Report emphasizes that the public is entitled to a clear understanding of how decisions were reached and how different values and interests were considered and resolved in the process.22 Following its own advice, the BRC should demand that the Administration provide a fuller explanation of why it makes sense to abandon decades of work and tens of billions of dollars in the hope of devising "better" regulations and disposal options compared to those governing the proposed Yucca Mountain project, when the radiation levels anyone could possibly receive at the proposed Yucca Mountain project are much lower than the very low levels of naturally occurring radiation.

Given the BRC's commitment to research into fundamental issues related to storage and disposal of nuclear waste, expressed throughout the Report,23 it is difficult to understand why BRC did not support capturing the value represented by billions of taxpayers' dollars already expended in examining the Yucca Mountain proposal. That capture would be accomplished by a final determination by the ASLB on whether or not repository construction could proceed safely. Such information would prove invaluable to future repository efforts, regardless of the NRC decision on the merits, as even the Administration acknowledged in 2010.

III. NYE COUNTY OPPOSES BRC'S RECOMMENDATION THAT INTERIM STORAGE BE ALLOWED TO PROCEED BEFORE A PERMANENT REPOSITORY IS LICENSED SINCE THAT RISKS MAKING THE INTERIM STORAGE A DE FACTO REPOSITORY

A monitored retrievable storage facility ("MRS") allowed by the NWPA could serve as the type of consolidated interim storage facility advocated by the BRC.24 As the BRC has acknowledged, the NWPA currently allows DOE to pursue many activities in advance of final site selection for an MRS, including performing the systems analyses and design studies needed for a conceptual design of a highly flexible, initial federal interim spent fuel storage facility; assembling information that would be helpful to the siting process for such a facility; attempting to identify local governments willing to host the site; and working with nuclear utilities, the nuclear industry, and other stakeholders to promote the standardization of dry cask storage

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21 Nye County notes that requiring new standards to be completed upfront for the siting and construction of a second repository could also delay that process for decades.
22 Final Report at pp. 7-8.
23 Final Report Ch. 5.
system. However, any license issued by the NRC for a centralized interim storage facility under the current MRS provisions of the NWPA must specify that construction of the MRS cannot begin until after the NRC has issued a license for construction of a geologic repository. BRC recommends that the NWPA be amended to allow the siting and construction of interim consolidated storage before the first permanent repository is licensed.

Nye County opposes this recommendation. The authority to select a site for the MRS and to proceed with construction or expansion of the MRS facility is linked to progress on licensing and construction of a permanent repository for a very sound policy reason: Congress did not want the MRS to become a de facto permanent repository. While recognizing this problem, the BRC insists that interim storage is urgently needed and should not await the availability of a permanent repository. Nye County believes that the NWPA strikes the right balance and allows many elements of the consolidated storage program to proceed without serving as a potential roadblock to permanent disposal.

IV. THE BRC FAILS TO ACKNOWLEDGE THE FULL EXTENT OF NATIONAL AND LOCAL SUPPORT FOR THE YUCCA MOUNTAIN LICENSING PROCEEDING AND DRAWS A FALSE CONTRAST BETWEEN YUCCA MOUNTAIN AND WIPP

BRC insists that the siting of any repository be "consent based" with the support and cooperation of the local communities surrounding the project. BRC devotes major portions of its Final Report to the concept of a consent-based approach to siting and development of a nuclear waste repository, and the need for local involvement and acceptance of the project. Because Nye County is the local government host for the proposed Yucca Mountain project, the County has a unique perspective on this recommendation—a perspective that until the final Report was virtually ignored by the BRC.

BRC's Report falsely implies that such factors were not properly accounted for previously under the NWPA framework; nor does it fully concede that unanimous support for any major project is impossible in this era of "not in my back yard" ("NIMBY").

Regarding the first point, the BRC fails to provide a rigorous analysis of the numerous provisions in the NWPA that require just such local involvement. Congress may not have structured the provisions exactly as the BRC would have, but there is no assurance that any future legislation will strike closer to BRC's ideal. For example, several discrete provisions of the Act call for oversight of DOE's siting, construction, and operation of a nuclear waste repository by affected units of local government, tribes, and states at federal expense. The Final Report at least acknowledges what the BRC draft report entirely omitted: that Nye County, Nevada, which is the local County host for the proposed Repository, has from the outset supported the Yucca Mountain project, provided NRC ultimately determines that the project can

25 See generally Final Report Ch. 5; Draft Report at pp. 43-44.
26 NWPA § 148(d), 42 U.S.C. § 10168(d).
27 Final Report at p. 41.
28 Final Report at Ch. 6.
29 See, e.g., Final Report at Ch. 4 and Ch. 6.
30 But see Draft Report at section 2.3.8 at p. 8.
31 See, e.g., NWPA, 42 U.S.C. §§ 10136, 10137, 10138.
be safely constructed and operated.\textsuperscript{32} As now acknowledged by BRC, Nye County has been joined by other adjoining counties in support of continuing the Yucca Mountain project licensing proceeding. Indeed, broad national support over many decades for the NWPA framework persists, and is not counterbalanced by the State of Nevada's political opposition.\textsuperscript{33}

The fact that the State of Nevada and Clark County, Nevada, have consistently opposed the project should not prevent the licensing process from reaching a conclusion on the basic safety issues. The ASLB assigned to the proceeding has already dismissed the purely legal contentions filed by Nevada and supported by Clark County, and has yet to sustain a single safety contention filed by any party.\textsuperscript{34} NRC staff Safety Evaluation Reports, although stripped of their technical conclusions regarding the safety of the repository construction, and issued instead as Technical Evaluation Reports\textsuperscript{35} at the direction of the NRC Chair, leave little doubt that staff believed that there were no major irresolvable safety issues with the LA.\textsuperscript{36} For example, the various DOE calculations of possible radiation exposures from the repository meet the regulatory requirements in 10 C.F.R. Part 63, and, in fact, such exposures are much lower than required.

\textsuperscript{32} Nye County has informed BRC of its support for the licensing proceeding as early as February 2011. Nye County Letter to the BRC (February 7, 2011).

\textsuperscript{33} More than two dozen prominent national, state, local and Native American organizations have written to the U.S. Senate expressing their support for the resumption of the Yucca Mountain license review by NRC's ASLB and related licensing-support activities at DOE. The 26 organizations — which comprise a cross-section of energy consumers, regulators, elected officials, Native Americans and community entities and businesses — include the National Association of Regulatory Utility Commissioners, U.S. Chamber of Commerce, Prairie Island Indian Community, U.S. Nuclear Infrastructure Council, Institute for 21st Century Energy, Nuclear Waste Strategy Coalition, U.S. Nuclear Energy Foundation and the Sustainable Fuel Cycle Task Force. Referring to the above-stated findings by the BRC and by Congress, the letter states that "we agree that the need for the Federal government to meet its responsibility for commercial spent fuel and defense waste management under the Nuclear Waste Policy Act is a matter of urgency — and that further delay is only exacerbating taxpayer liability and diminishing confidence in resolution of this national concern." Letter from Sustainable Fuel Cycle Task Force to United States Senate (September 15, 2011) at p. 2.

\textsuperscript{34} Memorandum and Order of ASLB, In re Dep't of Energy, NRC No. 63-001-HLW, ASLB No. 09-892-HLW-CAB04 (Dec. 14, 2010) at pp. 1-35.

\textsuperscript{35} NUREG-1949, Volume 1, "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada; Volume 1: General Information" (Note that Volume 1 was issued as a Safety Evaluation Report. The title page includes the notation: "Manuscript Completed: August 2010, Date Published: August 2010"); NUREG-2107, "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Postclosure Volume: Repository Safety After Permanent Closure." (ML11223A273) (Note that this is what would have been Volume 3 of the SER had NRC issued the postclosure volume as an SER. The title page includes the notation: "Manuscript Completed: July 2011, Date Published: August 2011"); NUREG-2108, "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Preclosure Volume: Repository Safety Before Permanent Closure." (ML11250A093) (Note that this would have been SER Volume 2. The title page includes the notation: "Manuscript Completed: August 2011, Date Published: September 2011"); NUREG-2109, "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Administrative and Programmatic Volume" (ML11255A002) (Note that this would have been SER Volume 4. The title page includes the notation: "Manuscript Completed: September 2011, Date Published: September 2011")

\textsuperscript{36} In the Introduction to the TER on postclosure issues, the NRC staff notes that the "TER was developed using the regulations at 10 CFR Part 63 and guidance in the Yucca Mountain Review Plan (YMRP). The TER does not, however, include conclusions as to whether or not DOE satisfies the Commission's regulations." NUREG-2107, "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Postclosure Volume: Repository Safety After Permanent Closure." (ML11223A273) (The title page includes the notation: "Manuscript Completed: July 2011, Date Published: August 2011") at p.1, Introduction.
The NRC staff reviewed the SAR and other information DOE submitted in support of its calculations and concluded the following: "DOE submitted information consistent with the guidance in the YMRP. Specifically, NRC staff notes that the repository (i) is composed of multiple barriers; (ii) the Total Systems Performance Assessments (TSPAs) used for the individual protection, human intrusion, and separate groundwater protection calculations are reasonable; and (iii) the technical approach and results in DOE's TSPA, including the average annual dose values and the performance of the repository barriers, discussed in this TER, are reasonable." Thus, the NRC staff did, in essence, conclude that key safety features incorporated in DOE's license application met NRC regulatory safety requirements.

BRC is also well aware that unanimous backing, or even consensus support, for any major federal project is often unachievable, even if the project is located on federal lands, as Yucca Mountain is. The reasons are political, not sound science. A "consent based" approach advocated by the BRC is preferable, but hardly the most important siting factor. As the Final Report now acknowledges, the primary discriminator must be the scientific and technical suitability of the disposal medium. As our experience under the NWPA demonstrates, the technical site evaluation is a long and difficult process. Once that determination is made for one or more sites, then and only then, should cultural and political factors be weighed in the siting process. That is the approach taken in the NWPA.

When the NWPA was drafted, the Governors of the fifty States recognized this reality and recommended that the NWPA not grant the selected host state veto power over siting of the repository, knowing full well that political realities, rather than technical considerations, would make it virtually impossible for any governor to approve of the siting. Instead, the NWPA gave the governor of the host state the right to file an objection, and Congress and the President the ability to over-ride that objection. That is in fact what happened with the Yucca Mountain siting, and would almost certainly happen again with the siting in most, if not all, of the other forty-nine states.34

BRC's asserted differences between the local support for the Waste Isolation Pilot Project ("WIPP") in New Mexico and at Yucca Mountain in Nevada are not compelling.39 As BRC now acknowledges, both New Mexico and Nevada used litigation to oppose the nuclear waste projects in their respective state. The key difference between WIPP and Yucca are not the ones that are articulated by the BRC, but rather DOE's willingness to fully litigate the issues in WIPP and its determination to stay the course in New Mexico, but not at Yucca Mountain. EPA has been involved in the standards development process for both projects. The host local communities supported the project at WIPP, and from the outset at Yucca Mountain, so long as they were constructed and operated safely. The experts on the BRC are well aware of the difference between perceived and actual risks, but fail to emphasize that the local support in New Mexico measurably strengthened after the WIPP facility was constructed and operated safely for

37 Id. at p. xxii. (emphasis added)
38 Both the Final Report and the Draft Report discuss previous efforts to find a volunteer state for a repository site. The BRC notes there were several communities interested but, "In no case, however, was a host state supportive of having the process go forward." Draft Report at p. 24. A sober assessment of the future indicates state politics are unlikely to change in the future.
39 Final Report at pp. 3,57-58
several years. Once a project is completed, and benefits are accrued from a project, irrational fears and misunderstandings that persist before a project is built can be overcome. Sometimes even a vilified project becomes not only accepted, but welcomed by the community when its benefits become obvious once the project is constructed and operated.40

IV. IN ESSENCE, THE BRC RECOMMENDS STARTING OVER AGAIN WITH ESTABLISHING REPOSITORY POLICY AND THE SITING PROCESS WITH NO ASSURANCE OF SUCCESS IN THE END

BRC's recommendation in Chapter 6 for a new approach to siting and developing nuclear waste management and disposal facilities in the future is in essence a suggestion for starting over with the entire process of finding sites for repositories.41 To accomplish this goal, the BRC has made a series of sweeping recommendations regarding establishing and funding a new independent organization for the handling of nuclear fuel disposal, changes to the management of the nuclear waste fund paid into by the utilities, accelerated development of interim storage, new generic regulations and siting criteria for facilities, and research both nationally and internationally—all of which require time, resources, and in most cases, statutory changes.

BRC's recommendations collectively amount to starting over and, as a result, the Nation would face 20 or more years to simply get back to where the Yucca Mountain program is now—with no assurance of greater State or local support than is present now. Throughout its Report, the BRC criticized ways in which the Yucca Mountain project has progressed by making a false comparison with the idealized way the BRC postulates site designation should proceed in the future—without doing a reality check. Site designation under the BRC proposal will take enormous amount of time and resources with no more guarantee of success than under the NWPA.

For example, BRC calls for a new, single-purpose organization to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste in the United States.42 Presumably, DOE's credibility in nuclear waste management is irretrievably lost. Assuming BRC's proposal ever achieves Executive and Legislative Branch approval, and stakeholder support, the new organization will be confronted with all the same challenges that hampered the DOE. There will always be political control on spending. The constancy of leadership for the nuclear waste program is the single most important element of success for any entity responsible for the repository program. The tenure of the individual that heads the organization must be more than the one to two years characterized by the current NWPA program heads.

More importantly, there is nothing fundamentally new in most of the BRC recommendations. The history of the NWPA itself and the evolution of the process over time included each and every one of the five siting processes included in this BRC recommendation. The option for a state to veto the site recommendation was considered and rejected, with sound

41 Final Report at Ch. 6.
42 Final Report at p. vii, and Ch. 7.
justification, during deliberations on the NWPA. Any consent-based process must be subordinate to a rigorous scientific and technical process as discussed previously. BRC implies that the process of involving state and locals just needs to be done better, with greater efforts to involve and educate the host population. However, educating the general public on nuclear safety and risk has not been achievable, despite enormous effort by EPA, DOE, the National Academies of Science, and most of the independent academic community. Anti-nuclear advocates are willing to equate such disparate situations as Three Mile Island and Chernobyl in an effort to enflame public sentiment against all aspects of nuclear power and as a result public perception of risk for nuclear matters is much higher that actual risk. 

CONCLUSION

The Nation's resources, time, and money invested in developing the NWPA and the Yucca Mountain Repository license deserve more than the passing consideration given them by the BRC. Together, they remain the Nation's best hope for finally solving the problem of permanent disposal of nuclear waste in this century.

For all of the above-sated reasons, Nye County, Nevada, the host County for the Yucca Mountain Nuclear Waste Repository, recommends (1) that the Yucca Mountain licensing process should be allowed to continue as the only possibility for prompt development of a permanent nuclear waste repository in accordance with the BRC's goals; (2) that establishment of a new nuclear waste organization, generally applicable safety rules, uniform siting criteria, and other BRC policies be implemented prospectively only, and not be allowed to impact the NWPA requirements for the Yucca Mountain licensing proceeding; and (3) that interim nuclear waste storage not be sited or licensed until a permanent repository is licensed for construction.

Sincerely,

Robert M. Andersen
Counsel for Nye County

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