



# High-Level Radioactive Waste

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**LEGISLATIVE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE**

*Nevada Revised Statutes 459.0085*

**BULLETIN NO. 09-16**

**JANUARY 2009**



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**REPORT TO THE 75TH SESSION OF THE NEVADA LEGISLATURE  
BY THE LEGISLATIVE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE**

**I. INTRODUCTION**

Nevada's Legislative Committee on High-Level Radioactive Waste (HLRW) is a permanent committee of the Nevada Legislature whose authorization and duties are set forth in *Nevada Revised Statutes* (NRS) 459.0085 (see Appendix A), and include studying and evaluating:

- Information and policies regarding the location of a facility for the disposal of high-level radioactive waste in Nevada;
- Any potential adverse effects from the construction and operation of a facility and ways of mitigating those effects;
- Any other policies relating to the disposal of high-level radioactive waste; and
- Recommendations concerning appropriate legislation to be presented to the Legislature and the Legislative Commission.

The Committee also provides a forum for discussion of high-level radioactive waste issues with federal, state, and local officials; representatives of special interest groups; and the public.

**A. Committee Members and Staff**

The following legislators served on the Committee during the 2007-2008 Interim:

Senator Mike McGinness, Chairman  
Assemblyman Harry Mortenson, Vice Chairman  
Senator Warren B. Hardy II  
Senator John J. Lee  
Senator Dean A. Rhoads  
Assemblyman Joseph M. Hogan  
Assemblyman William C. Horne  
Assemblywoman Valerie E. Weber

The Legislative Counsel Bureau (LCB) provided staff services to the Committee. Research Division staff included Susan E. Scholley, Chief Principal Research Analyst; and Sally Trotter, Senior Research Secretary. Matthew S. Nichols, Senior Deputy Legislative Counsel, provided staff services from the Legal Division.

## **B. Meetings and Activities**

The Committee held two meetings during the 2007-2008 Legislative Interim. In addition to its mandated oversight functions, the Committee monitored the actions of the United States Department of Energy (DOE), and the progress of the State of Nevada's legal challenges to the Yucca Mountain Project. Committee members also participated in meetings of the National Conference of State Legislatures' (NCSL's) High-Level Radioactive Waste Working Group (HLWWG).

At this time, the Committee does not recommend legislative action. However, the Committee will continue to monitor: (1) the progress of the DOE's application for a license to construct a geologic repository as the U.S. Nuclear Regulatory Commission (NRC) begins its review of the application; (2) Nevada's legal challenges to various aspects of the Yucca Mountain Project; and (3) developments related to transport of nuclear waste to Yucca Mountain. If appropriate, the Committee may recommend action to the Nevada Legislature or Legislative Commission in the future.

The purpose of this report is to provide information on: (1) recent developments affecting the Yucca Mountain Project; (2) the activities of the Committee on HLRW; and (3) the activities of Nevada's Commission on Nuclear Projects, the Agency for Nuclear Projects (ANP), and local government oversight organizations.

For more information on the history of the Federal Nuclear Waste Program and Nevada's involvement in the Yucca Mountain Project, please see Bulletin No. 07-21, which is available at the Research Library of the Legislative Counsel Bureau in Carson City, Nevada, or online at: [www.leg.state.nv.us/lcb/research/2007intstudy.cfm](http://www.leg.state.nv.us/lcb/research/2007intstudy.cfm).

## **II. REVIEW OF RECENT DEVELOPMENTS AFFECTING THE YUCCA MOUNTAIN PROJECT**

### **A. Repository Design and Licensing**

On October 19, 2007, the DOE recertified its Licensing Support Network (LSN). The certification was challenged by the ANP but the certification was upheld by the NRC. Under the NRC regulations, the certification of the LSN must precede the submittal of an application for a license to construct and operate Yucca Mountain by at least six months.

Despite the 20 percent reduction in the DOE's budget for Yucca Mountain, the DOE met its target of June 2008 for the filing of an application for a license to construct and operate Yucca Mountain. The 17-volume application was filed on June 3, 2008, and contains over 8,600 pages. More information on developments at Yucca Mountain is available at [www.ymp.gov](http://www.ymp.gov).

On September 8, 2008, the NRC issued its determination that the application contains sufficient information to be docketed and that it will begin a technical review of the application. The NRC also determined that it would adopt, with further supplement, DOE's 2002 Final Environmental Impact Statement (EIS), as supplemented in 2008. The NRC staff concluded that additional supplementation is needed to address impacts on groundwater and surface discharges of groundwater.

The review process is scheduled to occur over three years. If the DOE's license application is approved, facility construction would begin. However, the DOE will have to apply for and obtain a separate operating license from the NRC before any nuclear waste can be received. The DOE's current estimate on when shipments of nuclear waste could be received at Yucca Mountain is 2020.

## **B. Transport of High-Level Nuclear Waste**

If the NRC licenses Yucca Mountain as the national repository, it will be necessary to transport spent nuclear fuel and high-level radioactive waste located throughout the country to the site. In April 2004, the DOE announced its decision to proceed with a "mostly rail" waste transportation scenario, and to move forward with plans to construct a 319-mile rail line in Nevada to transport nuclear waste to Yucca Mountain. The Final Supplemental EIS on the Rail Corridor and the Final EIS on the Rail Alignment were issued in June 2008 and submitted to the NRC as part of DOE's license application. In October 2008, the DOE issued its Record of Decision selecting the Caliente rail corridor and deciding that shipments of general freight will be permitted on the rail line ("Shared-Use Option").

The Caliente corridor, which runs from the City of Caliente in southeastern Nevada, northwest across the state and around the Nevada Test Site (NTS) to a point near Tonopah, then turns south by southwest eventually entering the NTS from the south, just above Amargosa (see Appendix B).

The DOE has also filed an application for a Certificate of Public Necessity and Convenience with the Surface Transportation Board (STB) to construct a rail line from Caliente to Yucca Mountain. The DOE is seeking the STB's exclusive jurisdiction over the application on the basis of DOE's statement that the route may be a shared-use rail line. The State of Nevada has filed a motion asking that DOE's application for a certificate be rejected due to DOE's failure to commit to the shared-use status of the rail line, to provide a safety plan, and to identify an operator, all of which are alleged to be required elements of the application.

## **C. Federal Actions**

*Legislation:* As of October 2008, the 110th Congress has not passed any legislation that relates directly to the Yucca Mountain Project. Senate Bill 2589, titled the "The Nuclear Fuel Management and Disposal Act," failed to pass in the 109th Session of Congress. Known as the "Fix Yucca" bill, the measure sought changes to federal law to expedite the development

of the proposed repository at Yucca Mountain. Two similar bills—Senate Bill 37 and Senate Bill 2551—have been introduced in the 110th Congress and could affect Yucca Mountain. Both bills have been referred to the Senate Committee on Environment and Public Works. As of October 2008, no hearings have been held and the bills will die if not passed prior to final adjournment of the 110th Congress.

***Environmental Protection Agency (EPA):*** The EPA announced the establishment of radiation standards at Yucca Mountain consistent with the findings and recommendations of the National Academy of Sciences and a 2004 court decision that required an extension of the duration of the radiation standards. The standards call for a dose limit of 15 millirem per year for the first 10,000 years and 100 millirem per year between 10,000 and 1 million years.

***Global Nuclear Energy Partnership (GNEP):*** As part of the Advanced Energy Initiative announced by United States President George W. Bush in his 2006 State of the Union address, the DOE embarked on a new GNEP. The membership of the GNEP currently includes 21 nations and the Partnership is continuing to work on studies relating to closing the nuclear fuel cycle in the United States.

***Department of Energy Budget:*** Although the President's budget request for Yucca Mountain for Fiscal Year (FY) 2007-2008 was \$494 million, the final appropriation was only \$386 million; representing a budget cut of \$108 million. Due to the budget reductions, Edward F. Sproat III, Director of the Office of Civilian Radioactive Waste Management, DOE, reported to the Committee that there would be significant layoffs of personnel in Nevada and construction activities at the site would be severely curtailed. The President has requested nearly \$498 million for FY 2008-2009.

***Conflict of Interest:*** The Agency for Nuclear Projects protested DOE's hiring of a Washington, D.C., law firm, Morgan Lewis & Brockius LLP, to assist with the licensing process. The four-year \$47.7 million contract is under investigation by the U.S. Department of Justice to determine whether Morgan Lewis' representation of utility companies is a conflict of interest. Morgan Lewis is also representing utility companies in their lawsuits against the DOE for the federal government's failure to complete a repository by 1998.

### **III. ACTIVITIES OF THE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE**

#### **A. Background on the Committee on High-Level Radioactive Waste**

In 1985, the Nevada Legislature created the Committee on High-Level Radioactive Waste, along with Nevada's Commission on Nuclear Projects and the ANP to conduct State oversight of the Yucca Mountain Program. See Senate Bill 55 (Chapter 211, *Statutes of Nevada* 1985).

Based on past recommendations from the Committee, the Legislature has adopted resolutions protesting the development of Yucca Mountain: Assembly Joint Resolution No. 4 (File No. 75, *Statutes of Nevada 2005*) and Senate Joint Resolution No. 6 (File No. 17, *Statutes of Nevada 2001*). During the 2005-2006 Interim, the Committee made no recommendations for legislative action in the 2007 Session.

For information on the activities of the Committee in past interims, earlier bulletins of the Committee are available at the Research Division Library in Carson City or online at: [www.leg.state.nv.us/lcb/research/DivStudyLegReport.cfm](http://www.leg.state.nv.us/lcb/research/DivStudyLegReport.cfm).

### **B. Current Activities of the Committee on High-Level Radioactive Waste**

During the 2007-2008 Interim, the Legislative Committee on High-Level Radioactive Waste held two meetings in Las Vegas, Nevada, which were videoconferenced between the Grant Sawyer State Office Building in Las Vegas and the Legislative Building in Carson City. Minutes of the meetings and exhibits are on file in the LCB Research Library (775/684-6827) and online at the Legislature's website: <http://www.leg.state.nv.us/74th/Interim/StatCom/HLRW/index.cfm?CommitteeName=Committee%20on%20High-Level%20Radioactive%20Waste>.

### **C. The National Conference of State Legislatures' (NCSL's) High-Level Radioactive Waste Working Group**

Committee members also serve on the NCSL's HLWWG and Environmental Management Legislative Roundtable.

### **D. Meetings Monitored**

The Committee also monitored meetings of:

- ***The United States Nuclear Waste Technical Review Board:*** This board was created to advise Congress and the Secretary of Energy on the technical and scientific validity of the DOE's Civilian Radioactive Waste Program. Members are appointed by the President from a list of nationally recognized scientists recommended by the National Academy of Sciences.
- ***Technical Exchange Meetings Between DOE and NRC:*** Meetings are conducted regularly to share information on specific aspects of the Yucca Mountain Site Characterization Project.

#### **IV. ACTIVITIES OF NEVADA'S COMMISSION ON NUCLEAR PROJECTS, AGENCY FOR NUCLEAR PROJECTS, AND LOCAL GOVERNMENT OVERSIGHT AGENCIES**

##### **A. Commission on Nuclear Projects and Agency for Nuclear Projects**

Pursuant to the NWPA, the ANP was established in early 1983 by Executive Order of the Governor and placed within the Department of Minerals. In December 1983, the ANP was transferred to the Governor's Office. In 1985, Senate Bill 56 (Chapter 680, *Statutes of Nevada*) created the Commission on Nuclear Projects and the responsibilities of the ANP.

Major functions of the ANP include:

- Identifying health, safety, and environmental issues of concern to Nevada;
- Reviewing and evaluating the DOE's environmental, socioeconomic, and technical studies; and
- Performing selective independent studies of critical issues in order to confirm or negate DOE analyses.

According to Robert R. Loux, Executive Director, ANP, the Agency continues to perform its monitoring and oversight responsibilities. In September 2008, Mr. Loux resigned as Executive Director. He had been with the Agency since its inception and had served in a similar capacity in the Governor's Office since 1979.

Details of the ANP's oversight activities can be obtained by contacting the office at 1761 East College Parkway, Suite 118, Carson City, Nevada 89706; telephone: 775/687-3744; or by visiting the ANP's website at: [www.state.nv.us/nucwaste](http://www.state.nv.us/nucwaste). Copies of ANP reports and studies are available at most public libraries in Nevada.

##### **B. Nevada's Legal Challenges to the Yucca Mountain Project**

The State of Nevada has hired Egan and Associates, PLLC, of Virginia to represent its interests in court. Egan and Associates specializes in nuclear law and has handled many high-profile cases around the world. In May 2008, the lead attorney, Joe Egan, lost his battle with cancer. Prior to his death, Mr. Egan had developed a plan for continuity of representation and the firm will continue to represent Nevada.

Over the life of the Yucca Mountain Project, Nevada has filed several lawsuits against federal entities, including the DOE, the President of the United States, the EPA, and the NRC. Generally, these lawsuits have challenged various aspects of the federal government's decision to designate Yucca Mountain as the nation's sole nuclear waste repository and, subsequently,

have challenged actions taken or decisions made by these agencies relating to repository development.

Most recently, the Nevada Attorney General announced the filing of a lawsuit in the U.S. District Court of Columbia to invalidate the EPA's final radiation standards issued in September 2008. The EPA had previously issued radiation standards that were successfully challenged by the State of Nevada in 2004.

Other current legal challenges include:

- *United States v. State Engineer* (Fifth Judicial District Court, Nye County), No. 15722: Filed by the United States on behalf of the DOE following the State Engineer's denial of applications for permanent water rights as a protective measure while the United States pursues its constitutional claims in federal court. Case is pending.
- *United States v. State of Nevada* (U.S. District Court, District of Nevada), No. CV-S-00-0168-DWH-LRL: The United States challenges the Nevada State Engineer's decision that the DOE is not entitled to permanent water rights to construct and operate Yucca Mountain. The State Engineer found that the proposed use threatens to be detrimental to the public interest. By stipulation of the parties, the status quo is being maintained at Yucca Mountain. After a court-ordered stay, the DOE used water to conduct a bore hole drilling program. The State Engineer issued a cease and desist order and the DOE filed a motion for a preliminary injunction to enjoin the State Engineer's order. The District Court denied the DOE's motion and the DOE dismissed its subsequent appeal to the Ninth Circuit Court of Appeals.

The State of Nevada has several pending administrative petitions, including petitions to:

- Request the NRC to conduct rulemaking on its safeguards against terrorism as applied to shipments of nuclear waste;
- Revise the NRC's standards for reviewing and litigating National Environmental Policy Act issues in the DOE's environmental impact statement on Yucca Mountain to conform to the decision in *NEI v. EPA*, 373 F.3d 1251 (D.C. Circuit, 2004);
- Ask the NRC to address (by rulemaking) the issue of the DOE's "aging pad" for commercial spent fuel at Yucca Mountain; and
- Ask the NRC to fill the gap in its Rules of Practice by specifying issues for consideration in the "mandatory hearing" on the DOE's Yucca Mountain application.

A recent petition asking the NRC to reject the DOE's application as incomplete because the EPA radiation protection standard has not been finalized and there is no final repository design was rejected by the NRC.

Summary and full text versions of court decisions, as well as other information concerning Nevada's legal challenges and administrative petitions, are available on the ANP's website at: [www.state.nv.us/nucwaste](http://www.state.nv.us/nucwaste).

### **C. Affected Units of Local Government**

The Affected Units of Local Government (AULG) have been identified as the county in which the proposed repository site is being studied and the counties which surround it. The AULG for the Yucca Mountain Site Characterization Project are Churchill, Clark, Esmeralda, Eureka, Lander, Lincoln, Mineral, Nye, and White Pine Counties in Nevada, and Inyo County in California.

The oversight activities of the AULG include:

- Reviewing studies and materials for the purpose of determining any potential economic, social, public health and safety, and environmental impacts of a repository;
- Developing requests for impact assistance;
- Engaging in monitoring, testing, or evaluating activities with respect to site characterization programs;
- Providing information to residents regarding site-related activities of the DOE, the NRC, or the State; and
- Requesting information from and making comments and recommendations to the DOE regarding activities undertaken with respect to the site.

Details of the activities and the status of each AULG oversight program may be obtained by contacting a specific AULG directly (see Appendix C).

## **V. THE FUTURE**

Nevada's Legislative Committee on High-Level Radioactive Waste will continue to monitor the progress of the DOE application before the NRC, legislation in Congress, and litigation over Yucca Mountain, and will make recommendations for legislative action as appropriate.

**VI. APPENDICES**

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**APPENDIX A**

*Nevada Revised Statutes 459.0085*



## COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE

**NRS 459.0085 Creation; membership; duties; compensation and expenses of members.**

1. There is hereby created a Committee on High-Level Radioactive Waste. It is a committee of the Legislature composed of:

- (a) Four members of the Senate, appointed by the Majority Leader of the Senate.
- (b) Four members of the Assembly, appointed by the Speaker.

2. The Legislative Commission shall select a Chairman and a Vice Chairman from the members of the Committee.

3. The Committee shall meet at the call of the Chairman to study and evaluate:

- (a) Information and policies regarding the location in this State of a facility for the disposal of high-level radioactive waste;
- (b) Any potentially adverse effects from the construction and operation of a facility and the ways of mitigating those effects; and
- (c) Any other policies relating to the disposal of high-level radioactive waste.

4. The Committee shall report the results of its studies and evaluations to the Legislative Commission and the Interim Finance Committee at such times as the Legislative Commission or the Interim Finance Committee may require.

5. The Committee may recommend any appropriate legislation to the Legislature and the Legislative Commission.

6. The Director of the Legislative Counsel Bureau shall provide a Secretary for the Committee on High-Level Radioactive Waste. Except during a regular or special session of the Legislature, each member of the Committee is entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session for each day or portion of a day during which he attends a Committee meeting or is otherwise engaged in the work of the Committee plus the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207. Per diem allowances, salary and travel expenses of members of the Committee must be paid from the Legislative Fund.

(Added to NRS by 1985, 685; A 1987, 399; 1989, 1221; 1995, 1454)



**APPENDIX B**

Map of Proposed Caliente Corridor Rail Alignment



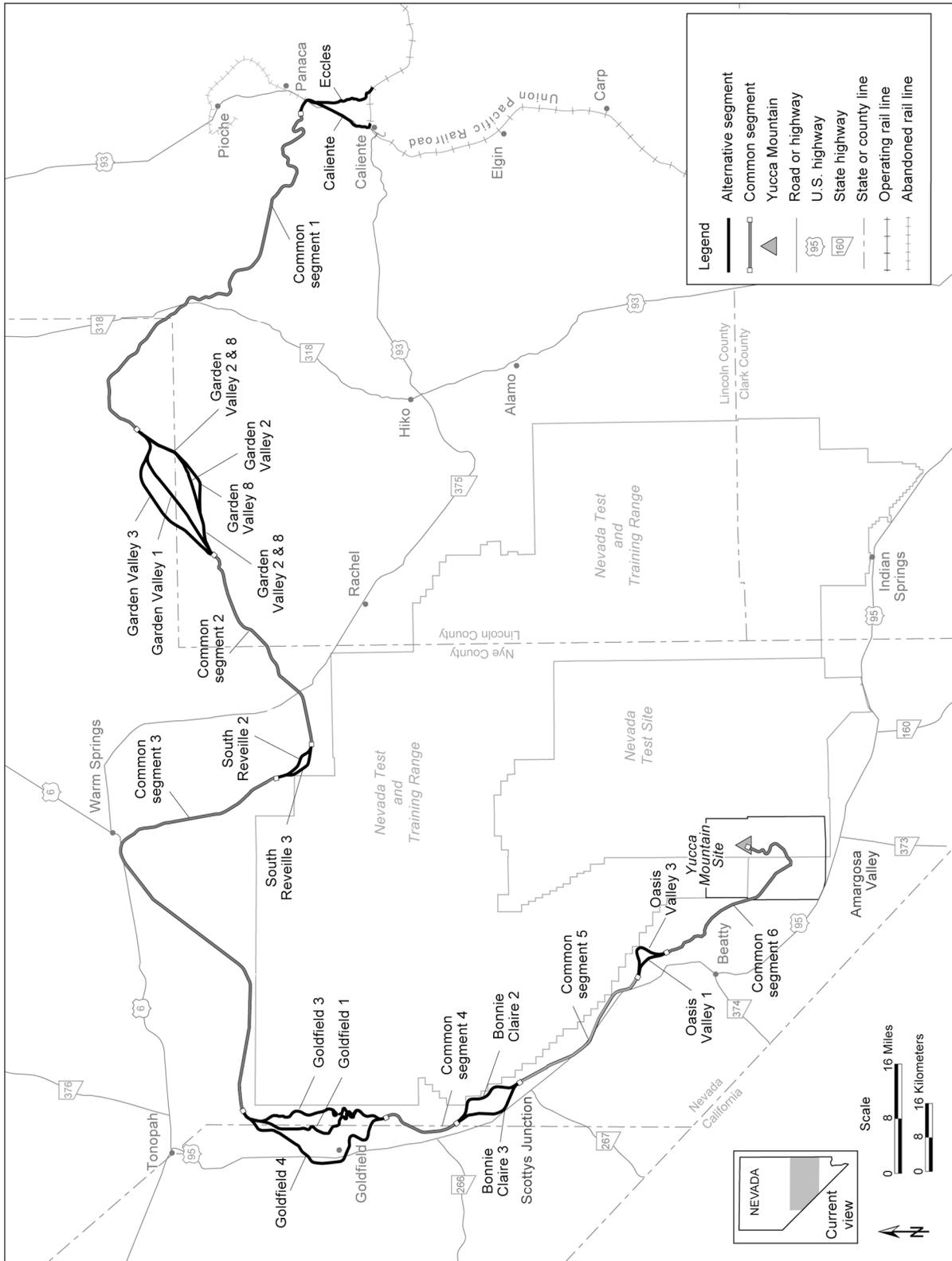


Figure S-3. Caliente rail alignment analyzed in the Rail Alignment EIS.



**APPENDIX C**

“Contact List for Affected Units of Local Government”



**CONTACT LIST FOR  
AFFECTED UNITS OF LOCAL GOVERNMENT**

August 2008

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[www.churchillnwop.com](http://www.churchillnwop.com)

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[www.co.clark.nv.us/comprehensive\\_planning/nuclearwaste.htm](http://www.co.clark.nv.us/comprehensive_planning/nuclearwaste.htm)

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