

Legislative Counsel Bureau

Committee on High-Level Radioactive Waste



Bulletin No. 17-16

In 1985, the Nevada Legislature created the Committee on High-Level Radioactive Waste along with the Commission on Nuclear Projects and the Agency for Nuclear Projects to conduct oversight of the Yucca Mountain Program. Created by *Nevada Revised Statutes* 459.0085.

January 2017

COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE

BULLETIN NO. 17-16

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SUMMARY OF RECOMMENDATIONS

COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE

Nevada Revised Statutes 459.0085

The Committee did not make any recommendations or propose any legislation for the 2017 Session of the Nevada Legislature.

**REPORT TO THE 79TH SESSION OF THE NEVADA LEGISLATURE
BY THE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE**

I. INTRODUCTION

The Committee on High-Level Radioactive Waste (HLRW) is an ongoing statutory committee of the Nevada Legislature whose authorization and duties are set forth in *Nevada Revised Statutes* 459.0085 (Appendix A). Duties of the Committee 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 2015–2016 Legislative Interim:

Senator Pete Goicoechea, Chair
Assemblyman Glenn E. Trowbridge, Vice Chair
Senator Donald G. Gustavson
Senator David R. Parks
Senator Michael Roberson
Assemblyman Richard Carrillo
Assemblyman Chris Edwards
Assemblyman James Oscarson

The following Legislative Counsel Bureau staff members provided support for the Committee:

Diane C. Thornton, Senior Research Analyst, Research Division
Matthew S. Nichols, Senior Principal Deputy Legislative Counsel, Legal Division
Roman Edwards, Deputy Legislative Counsel, Legal Division
Natalie J. Pieretti, Senior Research Secretary, Research Division
Maria de la Luz Aguayo, Receptionist/Research Secretary, Research Division

B. MEETINGS AND ACTIVITIES

The Committee held one meeting and participated in an informational tour of the Nevada National Security Site (NNSS) during the 2015–2016 Legislative Interim. The Committee provided a forum for the discussion of high-level radioactive waste matters with federal, State, and local officials; special interest groups; and members of the public.

The Committee also monitored the activities of the United States Nuclear Waste Technical Review Board (NWTRB); the U.S. House of Representatives Committee on Energy and Commerce (E&C), 114th Congress; the U.S. Department of Energy (DOE); Nevada's Commission on Nuclear Projects (CNP); and Nevada's Agency for Nuclear Projects (ANP), Office of the Governor.

The following developments took place during the 2015–2016 Legislative Interim:

- In March 2015, the U.S. Nuclear Regulatory Commission (NRC) notified the public that the NRC staff would prepare a supplement to the DOE's environmental impact statement (EIS) on the proposed geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada.
- In April 2015, six Congressional members, led by U.S. Representative John Shimkus (R-Illinois), Chair of the Subcommittee on Environment and the Economy of the Committee on E&C, 114th Congress, toured the Yucca Mountain site.
- In December 2015, the DOE submitted an invitation for public comment for the design of a consent-based siting process for nuclear waste storage and disposal facilities. The DOE stated that it is implementing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of commercial spent nuclear fuel and high-level defense radioactive waste. The DOE will work with communities, tribal governments, and states across the country that express interest in hosting any of the facilities identified as part of an integrated waste management system.
- On January 29, 2016, the NRC staff published the remaining two volumes of its safety evaluation report on the geologic high-level nuclear waste repository proposed for Yucca Mountain. Publication of these volumes completed the technical safety review of the DOE's Yucca Mountain application. The safety evaluation report included the staff's recommendation that the NRC should not authorize construction of the repository because the DOE has not met certain land and water rights requirements identified in Volume 4, published in December 2015, and a supplement to the DOE's EIS has not yet been completed.
- In April 2016, the Fiscal Year (FY) 2017 Energy and Water Appropriations bill approved by the Subcommittee on Energy and Water Development of the U.S. Senate Committee on Appropriations, 114th Congress, did not include money for Yucca Mountain licensing.

- On May 5, 2016, the NRC issued its final supplement to the EIS for the proposed Yucca Mountain permanent repository for used nuclear fuel and high-level radioactive waste in Nevada. The supplement analyzes potential impacts on groundwater and surface groundwater discharges and determines all impacts would be “small.”
- On July 7, 2016, the Committee on E&C held a congressional hearing titled, “Federal, State, and Local Agreements and Economic Benefits for Spent Nuclear Fuel Disposal,” which highlighted the Yucca Mountain Project.
- In July 2016, the State Board of Examiners approved extending the contract through September 2017 with the legal firm Egan, Fitzpatrick, Malsch & Lawrence to represent the State before the NRC on issues related to the DOE’s license application for the proposed Yucca Mountain repository and litigation arising under the Nuclear Waste Policy Act (NWPA).

The Committee will continue to monitor: (1) activities related to the U.S. Court of Appeals for the District of Columbia Circuit’s writ of mandamus directing the NRC to resume the licensing process for the Yucca Mountain repository; (2) the DOE’s attempt to permanently withdraw its Yucca Mountain license application and the related legal challenges; (3) progress made by the White House Administration and Congress on implementing the recommendations of the Blue Ribbon Commission on America’s Nuclear Future; and (4) any other pertinent activity in these or related areas.

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: <http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/index.html>.

II. REVIEW OF DEVELOPMENTS AFFECTING THE YUCCA MOUNTAIN PROJECT

A. STATUS OF THE UNITED STATES DEPARTMENT OF ENERGY’S MOTION TO WITHDRAW THE LICENSE APPLICATION

On March 3, 2010, the DOE filed a motion with the Atomic Safety and Licensing Board Panel, NRC, to withdraw “with prejudice” its application for a permanent geologic repository at Yucca Mountain. The DOE motion states that “a geologic repository at Yucca Mountain is not a workable option for the long-term disposition” of high-level radioactive waste, and dismissal of the application with prejudice will “provide finality” in ending the project.

On June 29, 2010, the three-judge Licensing Board Panel ruled that the DOE could not withdraw the Yucca Mountain license application. The DOE appealed the ruling to the full NRC, which in September 2011, announced that it was evenly split (2:2) on whether to

overturn or uphold the Licensing Board Panel's ruling. Because of the split decision, the Licensing Board Panel ruling stands. Congressional action to allocate zero funding to both the Yucca Mountain Project and the NRC's licensing activities for the past two fiscal years means that both the project and the licensing review remain suspended.

Aiken County, South Carolina; Nye County, Nevada; several individuals from the State of Washington; and the National Association of Regulatory Utility Commissioners are all parties to a lawsuit filed in the federal Court of Appeals for the District of Columbia asking the Court to require the NRC to restart the suspended Yucca Mountain licensing hearing and render a decision regarding the granting of a license to construct the repository within 14 months. The NRC, the U.S. Department of Justice, and the State of Nevada have argued that suspension of the licensing proceeding occurred because there is no funding to continue, and it is therefore appropriate. On August 3, 2012, the Court held the case in abeyance and ordered the parties to file updates regarding the status of congressional appropriations no later than December 14, 2012.

B. FEDERAL ACTIONS

Blue Ribbon Commission on America's Nuclear Future

On January 29, 2010, President Barack Obama released a memorandum directing Steven Chu, Secretary, DOE, to create the Blue Ribbon Commission on America's Nuclear Future. The Commission was to “. . . conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense-used nuclear fuel and nuclear waste.”

The Commission and its subcommittees held more than two dozen meetings between March 2010 and January 2012 to gather information from experts and stakeholders, visit nuclear waste management facilities, and discuss the many issues identified in its charter. Five public meetings were also held at various locations across the United States in the fall of 2011 in order to receive feedback on the Commission's draft report before submitting the finalized version to the Secretary of Energy.

Noting in its transmittal letter accompanying the final report that it was not charged to serve as a siting body for a nuclear waste repository, the Commission explained that:

Accordingly, we have not evaluated Yucca Mountain or any other location as a potential site for the storage of spent nuclear fuel or disposal of high level waste, nor have we taken a position on the Administration's request to withdraw the Yucca Mountain license application. What we have endeavored to do is recommend a sound waste management approach that can lead to the resolution of the current impasse; an approach that neither includes nor excludes Yucca Mountain as an option for a repository and can and should be applied regardless of what site or sites are ultimately chosen to serve as the permanent disposal facility for America's spent nuclear fuel and other high-level nuclear wastes.

The approach recommended by the Commission is based on an eight-part strategy, described as follows:

1. A new, consent-based approach to siting future nuclear waste management facilities;
2. A new organization dedicated solely to implementing the waste management program and empowered with the authority and resources to succeed;
3. Access to the funds nuclear utility ratepayers are providing for the purpose of nuclear waste management;
4. Prompt efforts to develop one or more geologic disposal facilities;
5. Prompt efforts to develop one or more consolidated storage facilities;
6. Prompt efforts to prepare for the eventual large-scale transport of spent nuclear fuel and high-level waste to consolidated storage and disposal facilities when such facilities become available;
7. Support for continued U.S. innovation in nuclear energy technology and for workforce development; and
8. Active U.S. leadership in international efforts to address safety, waste management, nonproliferation, and security concerns.

For a summary of legislative recommendations, see page viii of the “Executive Summary” of the *Report to the Secretary of Energy*, which can be accessed online at: https://energy.gov/sites/prod/files/2013/04/f0/brc_finalreport_jan2012.pdf.

In January 2013, the DOE released its report, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*, endorsing key principles of the Commission’s report.

In December 2015, the DOE issued an invitation for public comment in the Federal Register soliciting input on the design of a consent-based siting process for nuclear waste storage and disposal facilities. Key questions considered as part of the invitation for public comment included:

- How can the DOE ensure that the process for selecting a site is fair?
- What models and experience should the DOE use in designing the process?
- Who should be involved in the process for selecting a site, and what is their role?

- What information and resources would facilitate participation?
- What else should be considered?

The DOE held meetings around the country gathering input. The comment period ended on July 31, 2016.

Federal Legislation

As in previous sessions, the 114th Congress has introduced several pieces of legislation regarding the Yucca Mountain Project. In March 2015, S. 854, known as the Nuclear Waste Administration Act, was introduced in the U.S. Senate. The bill seeks to establish “as an independent agency in the executive branch: (1) the Nuclear Waste Administration to provide for the permanent disposal of nuclear waste, including the siting, construction, and operation of additional repositories, a test and evaluation facility, and additional storage facilities; and (2) the Nuclear Waste Oversight Board.” The bill requires a consent agreement to host the facility prior to selecting a storage facility site. The Administrator would be responsible for transporting nuclear waste and terminating certain authorities of the Secretary regarding the siting, construction, and operation of repositories, storage facilities, or test and evaluation facilities that were not transferred to the Administrator under this Act. In July 2015, U.S. Senators Dean Heller (R-Nevada) and Harry Reid (D-Nevada) introduced companion legislation, S. 1825, known as the Nuclear Waste Informed Consent Act, which would extend the consent requirement to Nevada. No further action has been taken on either of these bills.

House of Representatives Bill 5055, the Energy and Water Development and Related Agencies Appropriations Act of 2017, if passed, “prohibits the use of funds provided by this bill: (1) to conduct closure of adjudicatory functions, technical review, or support activities associated with the Yucca Mountain geologic repository license application; or (2) for actions that irrevocably remove the possibility that Yucca Mountain may be a repository option in the future.” This bill failed in the House.

C. TIMELINE FOR THE YUCCA MOUNTAIN PROJECT

- 1982** Congress passed the NWPA of 1982.
- 1987** Congress amended the NWPA by designating Yucca Mountain as the primary location of a deep geologic repository for the disposal of high-level waste and spent nuclear fuel.
- 1988** The DOE held public hearings on its site characterization plan for Yucca Mountain.
- 1991** Studies and testing began at the Yucca Mountain site.

- 2001** The U.S. Environmental Protection Agency (EPA) announced proposed radiation standards for Yucca Mountain. The State of Nevada files suit against the EPA arguing the standards are inadequate.
- 2002** Spencer Abraham, Secretary, DOE, recommended Yucca Mountain as a suitable site to President George W. Bush. President Bush approved the recommendation.
- 2002** Kenny C. Guinn, Governor of Nevada, issued a Notice of Objection, exercising the State's right to veto the Yucca Mountain Project. Both the U.S. House of Representatives and the U.S. Senate overrode Nevada's objection with a majority vote. President Bush signed the joint resolution into law, officially designating Yucca Mountain as the nation's nuclear waste repository site.
- 2002** The DOE published the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*.
- 2003** The NWTRB released a report in November expressing concerns about the potential for corrosion and high temperatures of the proposed repository.
- 2004** The Court of Appeals upheld a challenge by Nevada regarding the EPA's 10,000-year radiation standard for Yucca Mountain not being consistent with the National Academy of Sciences' (NAS) recommendations, but it dismissed Nevada's other lawsuits.
- 2006** The DOE set a new target date of 2017 for the opening of the Yucca Mountain repository.
- 2006** The NAS issued a report titled, *Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States*.
- 2008** The DOE submitted an application for a license to construct and operate the nation's first geologic repository for high-level nuclear waste at Yucca Mountain to the NRC.
- 2009** The Office of Civilian Radioactive Waste Management, DOE, published the *National Transportation Plan*.
- 2009** The NRC admitted 299 contentions by 18 parties to the licensing proceeding.
- 2009** Steven Chu, Secretary, DOE, stated that Yucca Mountain does not represent a viable option for the permanent storage of nuclear waste.
- 2010** President Obama directed the DOE to discontinue its application to the NRC for a license to construct a repository at Yucca Mountain. The Administration's budget for FY 2011 eliminated all funding for development of the Yucca Mountain facility.

- 2010** The Blue Ribbon Commission on America’s Nuclear Future was established.
- 2010** The NRC licensing board denied the DOE’s motion to withdraw the license application.
- 2011** The NRC licensing board suspended the licensing proceeding.
- 2012** The Blue Ribbon Commission recommended the development of a consent-based approach to siting future spent nuclear fuel management facilities.
- 2013** The U.S. Court of Appeals ordered the NRC to restart the licensing proceeding with available funds.
- 2013** The U.S. Court of Appeals ordered that a fee collected on the generation of electricity from nuclear power plants funding the Nuclear Waste Fund to end.
- 2013** The NRC ordered staff to complete work on the safety evaluation report.
- 2013** The DOE issued a strategy for managing spent nuclear fuel in response to the Blue Ribbon Commission's recommendations.
- 2014** The NRC released the report titled, *Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada, Volume 3: Repository Safety After Permanent Closure.*
- 2015** The NRC staff issued a draft EIS supplement on groundwater impacts.
- 2016** The NRC staff issued a final EIS supplement.
- 2016** Comments were due for the DOE’s consent-based siting effort.

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 HLRW, along with the CNP and the ANP, to conduct State oversight of the Yucca Mountain Program. (See Appendix B for a copy of Senate Bill 55 [Chapter 211, *Statutes of Nevada 1985*].)

Based on past recommendations from the Committee, the Legislature adopted resolutions protesting the development of Yucca Mountain: Senate Joint Resolution No. 6 (File No. 17, *Statutes of Nevada 2001*) and Assembly Joint Resolution No. 4 (File No. 75, *Statutes of*

Nevada 2005). The Committee made no recommendations for legislative action for the 2009 and 2013 Legislative Sessions.

Recommendations for the 2011 Session included three parallel measures broadening the jurisdictions of the ANP, the Committee on HLRW, and the CNP (Senate Bills 119, 120, and 121, respectively) to cover a wider spectrum of nuclear waste and contamination. None of these measures were approved. A fourth measure, Senate Concurrent Resolution No. 2 (File No. 36, *Statutes of Nevada 2011*), directed several entities, as funding allowed, to investigate the potential for Nevada to receive compensation from the federal government for environmental damage resulting from nuclear activities.

For information on the activities of the Committee in past interims, earlier bulletins of the Committee are available at the Research Library in Carson City, Nevada, or online at: <http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/index.html>.

B. CURRENT ACTIVITIES OF THE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE

During the 2015–2016 Interim, the Committee on HLRW held one meeting on June 3, 2016, in Las Vegas, Nevada, which was videoconferenced between the Grant Sawyer State Office Building in Las Vegas and the Legislative Building in Carson City, Nevada.

The Committee’s Policy Analyst, Diane C. Thornton, provided an overview of the Committee’s history and duties. The Committee heard testimony from former U.S. Senator and Nevada Governor, Richard H. Bryan, Chair, CNP, regarding Nevada’s position on Yucca Mountain. Robert J. Halstead, Executive Director, ANP, gave the Committee an update on the activities of his agency, including:

- An overview of agency activities;
- A timeline of licensing proceedings from 2008 through future proceedings;
- Contentions challenging site suitability, disposal concept, groundwater impacts, rail access, and impacts on Las Vegas; and
- Pending federal legislation.

Mr. Halstead summarized that Yucca Mountain should not be considered as a repository because of the following issues: (1) active geologic environment; (2) oxidizing/corrosive subsurface environment; (3) high seismic/earthquake activity; (4) relatively young volcanic activity; (5) rail access; and (6) groundwater impacts.

Marta A. Adams, Special Deputy Attorney General, Adam’s Natural Resources Consulting Services, LLC, updated the Committee on the litigation related to Yucca Mountain.

Kristy Hartman, Program Principal, and Katie Meehan, Research Analyst, National Conference of State Legislatures (NCSL), shared a presentation on state policy trends regarding the storage and disposal of nuclear waste.

Daniel S. Metlay, Ph.D., Senior Professional Staff, U.S. NWTRB, reviewed the Board's February 2016 report titled, *Survey of National Programs for Managing High-Level Radioactive Waste and Spent Nuclear Fuel: Update*. Dr. Metlay reviewed national waste management programs in 13 selected countries that account for 81.8 percent of worldwide nuclear power capacity. Most countries are investigating or investing in the disposal of high-activity, long-lived radioactive waste in a deep-mined, geologic repository.

Karen K. Beckley, M.P.A., M.S., Manager, Radiation Control Program, Division of Public and Behavioral Health, Department of Health and Human Services, shared an overview of the Beatty Industrial Fire that occurred on October 18, 2015.

C. INFORMATIONAL TOUR

The Committee's informational tour of the Nevada National Security Site was held on June 2, 2016. The NNSS, formerly known as the Nevada Test Site, is located 65 miles north of Las Vegas. In 1950, on the recommendation of the Atomic Energy Commission, President Harry S. Truman authorized the area as the Nevada Proving Grounds. With approximately 1,375 square miles, the NNSS has been the grounds for 100 atmospheric tests and 828 underground nuclear tests. Full-scale nuclear testing ended in 1992 when the U.S. entered into the Comprehensive Nuclear-Test-Ban Treaty with Russia and France. On September 23, 1992, the last underground test (code name "Divider") was conducted.

On the tour, the Committee first visited the Frenchman Flat hydrographic area. Frenchman Flat is a topographically closed basin surrounded by low-lying mountains and was the site of 14 atmospheric tests and 5 underground nuclear weapons tests between 1951 and 1968. Next, the Committee arrived at the low-level and mixed-level radioactive waste management site known as the Radioactive Waste Management Complex. This disposal site has been in operation since 1961. A majority of the waste is generated from nuclear facilities across the country. The Committee also visited the Radiological/Nuclear Countermeasures Test and Evaluation Complex. This site aids federal agencies in the development and acquisition of nuclear detection systems for various points of entry such as border crossings, toll plazas, and bridges.

The Committee stopped at the U1a Complex. Subcritical experiments, which use chemical high explosives to generate high pressures on nuclear weapons materials, are performed in the U1a laboratories, which are 960 feet underground. These experiments support the Stockpile Stewardship Programs of the National Nuclear Security Administration, DOE, created to maintain the safety and reliability of the U.S. nuclear weapons stockpile.

The tour continued at Icecap Ground Zero, a location for an underground test scheduled for spring of 1993. The tower for the test stands 157 feet, and the test would have been conducted 1,550 feet underground. Plans for underground tests were abandoned on September 23, 1992, when a moratorium on testing was signed by President George H. W. Bush.

The Committee visited the T-1 Site also known as the NNSS Radiological/Nuclear Weapons of Mass Destruction Exercise Site. This site was home to a televised 29-kiloton nuclear detonation used to evaluate the effects on a “typical American community.” Now this site serves as training grounds for emergency responders in the event of terrorist use of nuclear or radiological devices. Lastly, the tour stopped by the Sedan Crater. As part of the Plowshare Program to develop peaceful applications of nuclear explosions, the crater is the result of a 104-kiloton thermonuclear device detonated 635 feet underground in July 1962. The explosion created a crater 1,280 feet in diameter and 320 feet in depth.

D. THE NATIONAL CONFERENCE OF STATE LEGISLATURES’ NUCLEAR LEGISLATIVE WORKING GROUP

Committee members also serve on NCSL’s Nuclear Legislative Working Group (NLWG). The mission of the NLWG is to provide legislative members with the opportunity to learn about the cleanup of federal nuclear weapons production and research facilities, the transportation and storage of radioactive wastes, and nuclear energy issues that affect our nation and states. For more information on the NLWG, go to: <http://www.ncsl.org/research/environment-and-natural-resources/ncsl-nuclear-legislative-workgroup.aspx>.

E. MEETINGS MONITORED

In addition to its mandated oversight functions, the Committee monitored the actions of the 114th Session of the U.S. Congress and the progress of Nevada’s various administrative and legal challenges to the Yucca Mountain Project, as well as gathered information on spent fuel nuclear waste disposal and transportation. The Committee also monitored meetings of the following entities:

- ***Nuclear Regulatory Commission***—The Commission held a public meeting on the NRC Staff’s draft *Supplement to the Environmental Impact Statement for the Proposed Geologic Repository at Yucca Mountain, Nevada*, on September 15, 2015, in Las Vegas, Nevada. For more information, see the NRC’s website at: <http://www.nrc.gov/>.
- ***U.S. Congress, House of Representatives, Subcommittee on Environment and the Economy of the Committee on E&C***—The Subcommittee held a hearing titled, “Federal, State, and Local Agreements and Economic Benefits for Spent Nuclear Fuel Disposal.” More information is available at: <https://energycommerce.house.gov/hearings-and-votes/hearings/federal-state-and-local-agreements-and-associated-benefits-spent-nuclear>.

- *Office of Nuclear Energy, U.S. Department of Energy*—The DOE recently concluded a series of eight public meetings around the country. The purpose of these meetings was to hear from the public, communities, states, Tribal Nations, and all interested stakeholders on what matters to the public as the DOE moves forward in developing a consent-based process. For more information on consent-based siting, see the DOE’s website at: <http://energy.gov/ne/consent-based-siting>.
- *U.S. Nuclear Waste Technical Review Board*—The NWTRB was created to advise Congress and the Secretary of Energy of the DOE on the technical and scientific validity of the DOE’s Civilian Radioactive Waste Management Program. Members are appointed by the President of the United States from a list of nationally recognized scientists recommended by the NAS. More information is available on the NWTRB’s website at: <http://www.nwtrb.gov/>.

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 Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101 et seq.), the ANP was established in early 1983 by Executive Order of Governor Richard H. Bryan and placed within the Division of Minerals. In December 1983, the ANP was transferred to the Office of the Governor. In 1985, Senate Bill 56 (Chapter 680, *Statutes of Nevada*) created the CNP 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.

Robert J. Halstead, Executive Director, ANP, Office of the Governor, reported that the ANP continues to perform its monitoring and oversight responsibilities.

Details of the ANP’s oversight activities can be obtained by contacting the ANP office at 1761 College Parkway, Suite 118, Carson City, Nevada 89706; by telephone at (775) 687-3744; or by visiting the ANP’s website at <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 continues to be represented by Egan, Fitzpatrick, Malsch & Lawrence of Texas and Washington, D.C. The firm specializes in nuclear law and has handled many high-profile cases around the world. In July 2016, the State Board of Examiners approved \$2.5 million for the extension of the contract.

Over the life of the Yucca Mountain Project, Nevada has filed several lawsuits against federal entities, including the President, the DOE, 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.

Nevada's Attorney General also filed a lawsuit in the U.S. District Court for the District 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 the following:

- *United States v. State Engineer* (5th Judicial District Court, Nye County, No. 15722)—This case was 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 U.S. pursues its constitutional claims in federal court. The case is pending.
- *United States v. State of Nevada* (U.S. District Court, No. CV-S-00-0168-DWH-LRL)—The United States challenges the 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 borehole-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.
- *Nevada v. United States Environmental Protection Agency* (U.S. Court of Appeals for the District of Columbia Circuit, No. 08-1327)—Nevada filed suit on October 10, 2008, against the EPA, challenging the revised EPA radiation standard for the proposed Yucca Mountain repository, thereby failing to comply with the duty to protect health and safety in connection to the proposed Yucca Mountain radioactive storage and disposal facility. On January 7, 2009, the Court issued an initial scheduling order.

- *Nevada v. United States Nuclear Regulatory Commission* (U.S. Court of Appeals for the District of Columbia Circuit, No. 09-1133)—The State of Nevada petitioned for a judicial review of the 2008 EPA Rule in an action pending (*State of Nevada v. Environmental Protection Agency*, Case No.08-1327).

Nevada’s legal challenges are all being held in abeyance at present, pending the final decision on the DOE’s motion to withdraw its Yucca Mountain license application.

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

- Request the NRC to conduct rulemaking on its safeguards against terrorism as they apply to shipments of nuclear waste;
- Revise the NRC’s standards for reviewing and litigating national EPA issues in the DOE’s EIS on Yucca Mountain to conform to the decision in *Nuclear Energy Institute, Inc., v. Environmental Protection Agency* (U.S. Court of Appeals of District of Columbia Circuit, 2004, No. 373 F.3d 1251);
- Request the NRC to address (by rulemaking) the issue of the DOE’s “aging pad” for commercial spent fuel at Yucca Mountain; and
- Request 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.

The NRC rejected a petition that asked it to deny the DOE’s license application as incomplete because the EPA’s radiation protection standard has not been finalized and there is no final repository design.

Summaries 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: <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 surrounding counties. 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, environmental, public health and safety, and social 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. (Please see Appendix C.)

V. THE FUTURE

Nevada's Committee on HLRW will continue to monitor the progress of the DOE's motion to withdraw the license application before the NRC, the ongoing review of the license application by the NRC, legislation in Congress, and litigation over Yucca Mountain, and it will make recommendations for legislative action as appropriate.

Finally, on behalf of Chair Goicoechea, the Committee wishes to thank everyone who took part in the Committee's activities this interim.

VI. APPENDICES

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APPENDIX A

Nevada Revised Statutes 459.0085

Nevada Revised Statutes

NRS 459.0085 Creation; membership; powers and 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 review and approve the budget and work program for the Committee and any changes to the budget or work program. The Legislative Commission shall select a Chair and a Vice Chair from the members of the Committee.

3. Except as otherwise ordered by the Legislative Commission, the Committee shall meet not earlier than November 1 of each odd-numbered year and not later than August 31 of the following even-numbered year at the call of the Chair 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 may conduct investigations and hold hearings in connection with its functions and duties and exercise any of the investigative powers set forth in NRS 218E.105 to 218E.140, inclusive.

5. 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.

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

7. The Director of the Legislative Counsel Bureau shall provide a Secretary for the Committee on High-Level Radioactive Waste.

8. 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 the member 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 218A.655. 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; 2009, 1156; 2013, 3759)

APPENDIX B

Senate Bill 55 (Chapter 211, *Statutes of Nevada 1985*)

Senate Bill No. 55—Committee on Human Resources and Facilities

CHAPTER 211

AN ACT relating to high-level radioactive waste; establishing the legislative committee on high-level radioactive waste; prescribing its powers and duties; and providing other matters properly relating thereto.

[Approved May 18, 1985]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 459 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *There is hereby created a committee on high-level radioactive waste. It is a committee of the legislature composed of:*

(a) *Three 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. Each member of the committee is entitled to a salary of \$80 for each day or part of a day during which he attends a committee meeting or is otherwise engaged in the work of the committee. Per diem allowances, salary and travel expenses of members of the committee must be paid from the legislative fund.*

APPENDIX C

Affected Units of Local Government Contact Information

Affected Units of Local Government Contact Information

<http://www.landercountynwop.com/aug.htm>

Nevada:

- Churchill County Nuclear Waste Oversight—(775) 423-5136
- Clark County Nuclear Waste Program of Comprehensive Planning—(702) 455-5129
- Esmeralda County Repository Oversight Program—(702) 870-4043
- Eureka County Nuclear Waste Office—(775) 237-5372
- Lander County Yucca Mountain Oversight Program—(775) 635-2860
- Lincoln County Yucca Mountain Oversight—(775) 726-3511
- Mineral County Nuclear Projects Office—(775) 945-2484 or (775) 945-2485
- Nye County Nuclear Waste Repository Project Office—(775) 727-7727, Ext. 26
- White Pine County Nuclear Waste Project Office—(775) 289-2033

California:

- Inyo County Yucca Mountain Repository Assessment Office—(760) 878-0030