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THE HISTORY OF CLARK COUNTY'S OVERSIGHT OF THE PROPOSED YUCCA MOUNTAIN REPOSITORY

Prepared for the
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It is important that issues pertinent to Clark County and local entities are considered at the earliest date. In addition to ensuring that impacts are minimized, it is also important to make the federal government aware of the degree of local concern about: a) the project, and b) the fact that Clark County and its citizens would be the best judge on determining what local impacts would result . . . (Donald Shalmy memorandum to County Manager Spaulding, December 21, 1983).

While Clark County has been an affected unit of local government (AULG) since 1988, as a result of the Nuclear Waste Policy Act Amendments passed in 1987, its concerns about potential impacts from the repository project probably formally began with Shalmy's memorandum. The County's role in the siting process, including its response to the DEIS, is a result not only of the NWPA and various mandates, but also the county governmental mission, and a lengthy history of actions by the County Commissioners and agencies aimed at overseeing the siting process. The County's standing in the process is a result of the combination of these factors, and they must be understood to fully appreciate the level of effort and attention the County has given to the proposed repository.

On December 21, 1983, the then director of the Clark County Department of Comprehensive Planning, Donald Shalmy provided the County Manager with an issue paper on the newly proposed high-level nuclear waste repository. Shalmy's early issue memorandum articulated several important concerns about impact issues that seem almost prophetic today. The concerns he outlined in 1983, are even more poignant today, and since the memorandum the County's efforts to obtain clarification and assurances about how the DOE planned on treating and managing these issues has largely been unproductive. Since at least 1983, the County has attempted to fulfill its responsibilities under the NWPA and its subsequent Amendments (NWPA

and NWPAA respectively), as well as its' mandate to protect the health, safety and welfare of its residents. Despite the long-term attention the County has given to these impact issues, its concerns remain because of the lack of attention to them provided by the DOE. Indeed, the lack of cooperation by the DOE in developing the DEIS with the affected units of local government including Clark County, may very well constitute a violation of the letter of the NWPA and NWPAA, and certainly its spirit.

The 1983 briefing report was a response to a request for information from Commissioner Woodbury and raised five issues that Clark County and local entities needed to carefully consider to ensure that impacts would be minimized. These issues were identified at the very earliest stages of the project by Clark County and included:

- Emergency response issues;
- Transportation routes and modes;
- Socioeconomic considerations including employment, and impacts from construction;
- Perceptual issues and their influence for example on tourism, and quality of life;
- Mitigation funds to minimize impacts and for the analysis of potential impacts from the project ^(H-1).

Additional issues such as environmental justice, fiscal impacts on government, and greater public involvement have been raised concerning the potential impacts from the siting. Yet these five issues have remained part of the core County concerns, as reflected in this response to the DEIS, and a host of other county formal communications with the DOE. While space does not permit a review of all of the County efforts to secure answers from the DOE concerning these issues, a brief review of the County's mandates and its efforts needs to be examined.

The NWPAA of 1987 in Section 116 (B) (PL 100-203) formally recognizes affected units of local government (AULG). The County had already on January 8, 1985 adopted a resolution opposing the selection of the Yucca Mountain site, and in early 1988 by resolution declared itself an AULG. Hence, the County Commissioners' actions were in full compliance with both the NWPA and NWPAA. Under Section 116 (B) of these acts the County was mandated and agreed to use the assistance afforded to AULGs to do the following:

- Determine any potential economic, social, public health and safety, and environmental impacts of the repository on the state or its residents;
- Develop a request for impact assistance (if appropriate);
- Engage in monitoring, testing or evaluation activities with respect to site characterization activities;
- Provide information to state (county) residents concerning the siting;
- **Request information from, and make comments and recommendations to the DOE on actions they have taken** (Section 116 (B), emphasis added) ^(H-2).

This current response to the DEIS clearly falls under this last bulleted mandate, as well as the National Environmental Policy Act (discussed below). Within the Department of Comprehensive Planning, the Nuclear Waste Division was formed in 1988, to carry out these duties, as well as those directly resulting from the County's AULG status and to implement a program reflecting Clark County policy regarding Yucca Mountain. In addition, the County has fiduciary responsibility and is required to protect the health, safety, and welfare of its citizens under the General Welfare Clause. Should the repository siting, operation, or transportation of waste have negative impacts on the residents including their quality of life, the County is required to provide protection. Hence, the County has throughout the siting process made every

effort to communicate its concerns about potentially negative impacts to the DOE.

Unfortunately, the observation made on September 28, 1985 concerning the County's efforts to enter into constructive dialogue with DOE is as true today as it was then, namely: "DOE in a nutshell, politely ignores us" (H-3). Perhaps no better place to observe this ignoring of the County's efforts can be seen in the DEIS after reviewing some of the County's efforts to gain assurances that its concerns would finally be addressed by this seminal document.

In 1991, Clark County as well as other governmental entities made an attempt to contribute to DOE's own effort to understand why it had lost trust and credibility by testifying before the Secretary of Energy Advisory Board Task Force on Civilian Radioactive Waste (H-4). In this important testimony, an effort was made to explain to DOE why the lack of trust in the DOE by citizens might negatively spill over onto the County's own Nuclear Waste Repository Program. The County's testimony went on to cite four factors that were essential to the County's effective participation in the program. These factors included the following:

1. Programmatic independence;
2. Secure funding provisions;
3. Secure planning periods,
4. Consistent evaluation criteria. (H-4: pp 10)

We are all aware of the continuing conflicts over programmatic independence, the instability of funding from year-to-year, the shifting time frames and planning periods, and the changing criteria as reflected in recent changes in radiation exposure limits. On January 13, 1995 (prior to the EIS Scoping Meetings later that year), all ten of the affected counties met with Secretary and Under Secretary of the DOE. In this meeting that largely dealt with interim storage proposals the County once again articulated one of the key factors missing from the

program. The County indicated that its effective involvement in any program was contingent on DOE “Acknowledge (ing) the role of local governments as pre-decisional participants in all phases of the siting process” (S-5). In all of these meetings the County clearly indicated the importance it attached to the NEPA provisions being fully implemented.

In its continuing effort to communicate to the DOE the importance it attached to its concerns about several issues related to potential negative impacts, as well as the entire EIS process, the County sent the DOE a lengthy detailed document. This *Review of Impact Concerns* document was sent to the DOE following their EIS Scoping Meeting in Las Vegas (H-6). This 1995 document contained an examination of the major concerns and issues that the County felt were imperative to cover in any EIS and assessment. The issues raised in the document were the result of years of State of Nevada, local government and County studies, as well as years of meetings in which these and other issues were discussed. It is impossible to review all of these concerns in depth but they included the following:

- Property value diminution;
- Negative impacts on the visitor economy;
- Regional traffic disruptions;
- Inequitable distribution of risk—environmental justice;
- Project-related business and population impacts;
- Local government finance imbalance resulting from project related costs;
- Political and institutional conflict resulting from the program causing local political instability (H-6: pp x-xi).

Obviously these concerns cannot all be covered here in depth, as often the discussions in the document on these issues are lengthy and technical. Rather it is important to note that the

County did communicate its concerns and how important it was that the EIS address these issues as they reflected both the County's residents and leaders concerns. Indeed, DOE representatives assured the NWD that the EIS would address all of these issues. These assurances were provided numerous times verbally and in writing. Hence, between 1995-96 and the delivery of the DEIS, there was some optimism that the issues central to Clark County would finally be addressed in depth.

In 1998, as a result of meetings with DOE leading to a request for additional and previously supplied information, the NWD sent another document outlining the County's comments and concerns about the EIS. The "Comments, Findings and References Regarding The Draft Yucca Mountain Environmental Impact Statement" was a thorough document representing the County's views. It was submitted to Ms. Wendy Dixon of the DOE at the invitation of the Department solicited at the August 4th, 1998 meeting with DOE and contractor representatives, and the AULG. The Comments document was an effort by the County to aid the DOE while making certain the issues vital to County interests would be examined. Three objectives were listed in the accompanying letter to the Comments document:

- Highlight significant issues that Clark County believes the DOE must address in meeting its responsibilities under the National Environmental Policy Act;
- Present findings and contextual information regarding the comments listed, and
- Provide references to substantiate the comments and findings discussed (H-7).

As the accompanying letter also noted, "The EIS is, for Clark County and the other AULG, the most important document produced in this program" (H-7: pp 2). The letter also noted that a major strength that Clark County brings to the EIS process is that it has a comprehensive knowledge of the geographical area of responsibility. Obviously, the County was once again

attempting to aid in producing a better product by offering its cooperation and expertise and requesting it be brought into the process prior to its completion. The attached Comments document, thoroughly commented on issues the County felt was critical for the EIS, as well as providing findings as to why the issues or processes needed to be included along with references supporting its position. The County was assured these materials “would be cited in the EIS by the DOE where appropriate, placed in public reading rooms along with other EIS materials, furnished directly upon request to interested persons, and otherwise made accessible through electronic and/or hard copy means” (H-7: pp 1 of attachment). Indeed, under NEPA provisions the DOE was required to make reference materials to the public for at least the full public comment period.

Despite DOE assurances, these actions were not taken and the Comments document was not referenced in the DEIS nor was the document included as an appendix. This decision by DOE not to keep its word was a violation of a legally binding agreement between two governmental entities both possessing legal standing in the NWPA and NWPAA. The Comments document covered eight areas and represented a large investment of personnel time and effort. It placed DOE on notice of what the County believed was required in the DEIS, provided its findings and references. The Comments document covered the following areas:

1. Public and institutional processes (including why Clark County must be allowed reasonable opportunity to provide accurate information for use in the DEIS);
2. Scope and Policy (time frame, uncertainties);
3. Cumulative Impacts and integration with other EIS’s, NRC Licensing Process etc.)
4. Methodology (system methodology and system assessment of environment and groundwater);

5. Public Health and Safety (radiation exposure levels, etc.)
6. Transportation (the entire transportation network must be examined, as well as many other issues relevant to transportation);
7. Environmental Justice;
8. Fiscal and Economic effects.

Despite the County's efforts to communicate major issues and concerns, and despite repeated assurances by the DOE that these issues and concerns would be addressed in the DEIS, the DEIS does not adequately address. Despite the fact that the County comments drew heavily on the Environmental Assessment Checklist developed by the DOE Office of NEPA Oversight, many of its comments were not addressed. Hence, critical issues to Clark County are either not addressed in the DEIS, poorly addressed in the EIS, or are not realistically addressed in the DEIS.

As recently as early this year, DOE continued its policy of ignoring the AULG. The DOE without explanation dropped the Directors meetings that were occurring on a quarterly basis. It is these types of actions, and the County's continuing to be politely ignored by the DOE that have resulted in a seriously flawed DEIS. As demonstrated in our response, the DEIS is marginal and should be found so.

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- H-3** Bechtel, Dennis (September 28, 1985). “Nuclear Waste Repository Program: The Clark County, Nevada Experience.” Paper presented at the North Central Conference on High-Level Nuclear Waste at Superior, Wisconsin.
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- H-6** Clark County Department of Comprehensive Planning, Nuclear Waste Division, (December 1995). “DOE’s High-Level Nuclear Waste Program: A Review of Impact Assessment Concerns.” Available through Clark County Comprehensive Planning Nuclear Waste Division.
- H-7** Letter to Ms. Wendy Dixon, OCRWM, DOE North Las Vegas Office, from Mr. Dennis Bechtel, Manager, Nuclear Waste Division, Clark County Department of Comprehensive planning. December 7, 1998.