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NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY

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BRIEFING ON

NATIVE AMERICAN, STATE OF NEVADA, AND AFFECTED UNITS OF  
LOCAL GOVERNMENTS REPRESENTATIVE RESPONSES TO DOE'S DRAFT  
ENVIRONMENTAL IMPACT (EIS) FOR A PROPOSED HLW GEOLOGIC  
REPOSITORY

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PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland  
Friday, January 21, 2000

The Commission met in open session, pursuant to  
notice, at 9:04 a.m., Richard A. Meserve, Chairman,  
presiding.

COMMISSIONERS PRESENT:

- RICHARD A. MESERVE, Chairman of the Commission
- GRETA J. DICUS, Commissioner
- NILS J. DIAZ, Commissioner
- EDWARD McGAFFIGAN, JR., Commissioner
- JEFFREY S. MERRIFIELD, Commissioner

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

- ANDREW BATES, Acting Secretary
- STEPHEN BURNS, Deputy General Counsel
- ROBERT HOLDEN, Director, Nuclear Waste Project,  
National Congress of American Indians
- RICHARD ARNOLD, Representative of Native American  
Tribal Organizations Group
- HEATHER WESTRA, on behalf of Darrell Campbell,  
Treasurer, Tribal Council, Prairie Island Dakota  
Nation
- ROBERT LOUX, Director, Nuclear Waste Project Office
- DENNIS BECHTEL, Planning Manager, Nuclear Waste  
Division, Clark County
- LES W. BRADSHAW, Manager, Department of Natural  
Resources and Federal Facilities, Nye County
- MIKE L. BAUGHMAN, President, Intertech Service  
Corporation, Lincoln County, Caliente City
- REX MASSEY, Consultant, RMA Research, Churchill County;  
Lander County

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P R O C E E D I N G S

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[9:04 a.m.]

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CHAIRMAN MESERVE: Good morning. I wanted to tell you that you were lucky that you're here this morning for the meeting, because we had a meeting in this room yesterday and it was about 20 degrees colder than it is this morning.

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We are here this morning to discuss the Department of Energy's Draft Environmental Impact Statement relating to the potential repository at Yucca Mountain. We have a variety of stakeholders that we are going to hear from this morning including representatives of the Native American Tribal Governments, the State of Nevada, and some representatives of affected local governments.

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This is the second of three briefings that the Commission is going to benefit from in connection with this subject. There was a briefing in September of '99 by the Department of Energy. That occurred before I had arrived at the Commission but my colleagues that the benefit of that.

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We are going to be hearing from the NRC Staff on this issue next week and of course this briefing has been scheduled so that we can obtain the benefit of the views of various of the affected groups.

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As I think all of you know, the Department of Energy is the entity which has the responsibility to prepare the Environmental Impact Statement and then they make a

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recommendation to the President as to whether to proceed or not with regard to a repository at Yucca Mountain.

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The NRC role is if the decision is to proceed is to serve as a licensing agency. We would receive the Department of Energy application in that role and we would go through a process that is much like the process we go through with regard to other licenses in order to evaluate when and if such a license were to be submitted to us.

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Nonetheless, although this Environmental Impact Statement is the Department of Energy's, this is a very important document for us. First of all, it is an important document just because of the significance of this issue and I think all of us will be benefitted if it is an impact statement that illuminates the issues fully so that there is a foundation for a sound decision on the issue.

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We also have a personal stake in this in the sense that the Nuclear Waste Policy Act requires us in our subsequent actions, if there were subsequent actions we need to take to utilize the DOE Environmental Impact Statement to

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20 the extent practicable as our Environmental Impact Statement  
21 in any action that we might subsequently be asked to  
22 undertake, so we have both as a benefit of good government  
23 and for the benefit of the agency strong interests in making  
24 sure that this is a complete and accurate and thorough and  
25 fair document.

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1 With that as the backdrop, we very much welcome  
2 the comments from you. The purpose of our meeting today,  
3 however, let me emphasize, is to illuminate issues that we  
4 want to consider for purposes of our own comments to the  
5 Department of Energy. Any issues that you would like to  
6 raise on this issue you should do directly as well, in that  
7 your comments directly to the Department of Energy are  
8 important. We are not the conduit for comments from  
9 affected communities. We want to hear from you so that we  
10 get some guidance as to what we should say. We want to  
11 evaluate them, but it is in your interest to communicate  
12 directly with the Department of Energy as well on these  
13 issues and submit your own comments, and that is of course  
14 true for all of the interested groups here.

15 We do have a limited amount of time to be able to  
16 hold on this issue this morning, and as a result I request  
17 that you abide by the time limits that we have provided for  
18 this session. Perhaps the greatest benefit to the  
19 Commission is to have ample enough time for us to have an  
20 interaction with you in the format of questions and answers  
21 and if the time is absorbed on presentations, that obviously  
22 is restricted.

23 Let me say in that connection we did have the  
24 benefit of materials that were previously submitted and I am  
25 sure that I am sure that my colleagues have all been through

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1 those materials before, so we are not completely unfamiliar  
2 with the comments the subject area, and this is for all of  
3 the panels, that you intend to cover.

4 With that, let me turn to my colleagues and see if  
5 they have any opening remarks.

6 COMMISSIONER MERRIFIELD: I would just like to  
7 say, Mr. Chairman, I would like to associate myself with the  
8 comments you made previously and I think those were very  
9 good and just also to note my thanks to all the members of  
10 all the panels today for coming. I know it is time and  
11 expense. It is important. It is useful on our  
12 consideration and I certainly do appreciate it.

13 CHAIRMAN MESERVE: Thank you. Why don't we  
14 proceed. Mr. Holden, are you going first?

15 MR. HOLDEN: I might as well. I think I am up on

16 the docket. Good morning, Mr. Chairman, and Commissioners.  
17 I appreciate this excellent opportunity to be before you at  
18 this time. I hope what I say is worth your review.

19 Just to give you a little bit of background of  
20 what I do and whom I do it for, I am Director of the Nuclear  
21 Waste Program with the National Congress of American  
22 Indians, a tribal government organization. We cover the  
23 waterfront in terms of the issues, particularly around trust  
24 responsibility matters, the Federal Government, as you know,  
25 as a whole entered into treaties with Indian nations many

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1 years ago and after formation of the United States, and we  
2 traded lands and our homelands, on which we resided and  
3 survived on, and in exchange for that the Federal Government  
4 as a whole agreed to provide those things necessary to our  
5 survival from that point and that was quid pro quo, I guess.

6 But many of these lands in addition, beyond those  
7 points of the treaties, were taken for various purposes.  
8 Sometimes we let them go for national security, places such  
9 as Los Alamos, and Hanford, with the idea that they would be  
10 returned to us at some point in the future once these  
11 national security efforts were met and there was not a need  
12 for that endangered situation, that situation had passed.

13 However, these lands were not returned, and even  
14 these days in some of these areas they are contaminated but  
15 they still remain our homelands. They still remain part of  
16 our culture. They are places where we used to go to meet  
17 our spiritual leaders, our churches, if you will, those  
18 sorts of things that keep our cultural integrity whole.

19 But in this area of the Yucca Mountain draft  
20 Environmental Impact Statement I am speaking more to policy  
21 matters in terms of what is available to the tribes in those  
22 areas. I don't think that Congress has done a good job in  
23 looking after the needs of those tribes and providing them  
24 the ability to acquire technical teams to respond to the  
25 draft EISes. It is a matter of balancing budgets perhaps,

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1 but I think that maybe it is an oversight that certainly we  
2 have attempted to try to resolve, but it has not happened.

3 The Department of Energy is aware of the inability  
4 of tribes to respond. However, it cries poverty when it  
5 comes to these types of activities and as well saying they  
6 don't have the resources to do that. However, they continue  
7 to request and receive funding for county governments, state  
8 governments, and which I am pleased that the people living  
9 in these areas are able to put together efforts to assess  
10 the technical data, however the people who have lived there  
11 for thousands of years, the people who will continue to  
12 reside there, they are sitting on the sidelines with no

13 resources and they have the most legitimate reason for  
14 looking at these technical reviews or technical assessments.

15 I appreciate the NRC's efforts, because I am not  
16 exactly sure whether this oversight or this lack of  
17 participation by the tribes can reach some sort of threshold  
18 to be a cause of concern in the licensing process as in, I  
19 guess, NEPA actions whenever a party wants to intervene  
20 there are ways they can do that as well as become necessary  
21 parties, but however they are required to pony up. They  
22 have to come up with their own resources to do the studies,  
23 but I think as part of the Federal Government that  
24 responsibility is assumed by the Commission.

25 It is unfortunately that even though that

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1 gentleman to my right is representing some of the tribes up  
2 there that those tribal representatives cannot, do not have  
3 the resources even to be here at this time to perhaps sit in  
4 my place. I just hope that we can continue have this  
5 dialogue, continue to look for options, to look for  
6 resolutions to this short shrift that tribes are given in  
7 these areas, because as I said these treaty rights are clear  
8 and compelling evidence that DOE needs to provide these  
9 tribal governments with technical staff to analyze the  
10 thousands of documents that have been generated in the life  
11 of this project.

12 One point, if I might add, is that the DOE is  
13 also -- it is my understanding that before you a few weeks  
14 ago that DOE stated that they were going to be returning  
15 some of the lands that were involved in the Nevada test site  
16 back to the tribes, the Timbisha Shoshone, and I am not sure  
17 whether that land will be -- even though that is their  
18 former homelands and it is good that it's being returned --  
19 I am not sure that that land and the exposure of those  
20 people in those areas has been taken into consideration in  
21 this draft EIS, whether, you know, the National Cancer  
22 Institute and the Centers for Disease Control has studies  
23 underway which confirm what Native American people know and  
24 other people who are living in that area know, that the  
25 radioactive fallout causes severe debilitating harm to their

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1 health, chromosomal damage and mortality. However, nothing  
2 has been done in those area. Responsibility has not been  
3 accepted to the degree it should.

4 They are now subject to additional exposure from  
5 the facility, from transportation, so I don't think these  
6 type of measures were taken into consideration even though  
7 this acquisition of land is positive. What does that mean  
8 in terms of this draft EIS?

9                   With that, I am glad to answer any questions and  
10 once again look forward to working with you and having a  
11 dialogue with you on these and other issues.

12                   CHAIRMAN MESERVE: Good, thank you. Why don't we  
13 complete the statements from the three of you and then we  
14 will turn to question and answer.

15                   Mr. Arnold, would you like to proceed.

16                   MR. ARNOLD: Sure. Thank you. My name is Richard  
17 Arnold. I am the spokesperson for the Consolidated Group of  
18 Tribes and Organizations, which is a group of tribes and  
19 organizations which have cultural affiliation to the  
20 proposed site.

21                   Today I am here to share some comments with you,  
22 and some of them are actually very timely in that we had a  
23 meeting of the tribes last Friday in which comments were  
24 provided specific to the EIS, the draft EIS.

25                   By way of background I would like to just share

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1 with you just for a brief moment, if I may, just the  
2 composition of what we do and how we have been involved and  
3 since when, and actually as I mentioned the tribes that are  
4 involved, that represents Southern Paiutes, Western  
5 Shoshones, and the Owens Valley Paiutes and Shoshones.  
6 Those are three ethnic groups, if you will, that have  
7 demonstrated cultural affiliation to the area. Now that is  
8 specific to the area and I think that is an important note  
9 to qualify, because I think that what happens oftentimes  
10 with many EISes is that you look at a site-specific project,  
11 but sometimes if you don't look beyond that, that footprint,  
12 then you may run short here in looking at the impacts on  
13 other communities and/or tribes.

14                   Our position is that there are various other  
15 tribes within Nevada and actually from that going cross  
16 country when it comes to transportation issues of which I  
17 will touch on lightly here.

18                   The other is that we have been involved in this  
19 process since 1987 with the Yucca Mountain Project.  
20 Primarily it has been cultural resource oriented. From an  
21 archeological point of view, people like to look at the  
22 artifacts and there is a mystique about the artifacts, but  
23 for us it goes much deeper than that.

24                   As Mr. Holden had touched on, this is our church,  
25 this is our grocery store, this is our pharmacy --

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1 everything that we need it out there, and not just bound to  
2 this site but all over and as such, with their being  
3 restrictions to access to that land, even though there are  
4 provisions where we can make a phone call and perhaps when  
5 it is convenient we can go out to look at various things

6 that we need to look at or conduct various things we need to  
7 do, it still kind of impedes the process I think that is not  
8 culturally indicative to what we do as Indian people.

9 In the Consolidated Group we meet periodically.  
10 It is basically on more of an as needed basis with the  
11 Project as far as when the Department of Energy is able to  
12 sponsor a meeting, then the tribes are contacted and we come  
13 in and we present our positions and the recommendations  
14 which we have been doing over the years.

15 However, I think that sometimes we, too, just as  
16 Mr. Holden had alluded to, were faced with budget  
17 considerations, so sometimes when meetings may be happening  
18 or should be happening perhaps at a minimum twice per year  
19 with the group, sometimes it may be one time a year, but  
20 obviously that goes back to the root of the problem of  
21 funding.

22 Funding has been essential, as you know, to all  
23 the stakeholders, however the tribes have viewed themselves  
24 as not being necessarily -- falling into that category of  
25 stakeholders, because we are not just a municipality or a

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1 state government, if you will, but these are tribal  
2 governments.

3 There's Federal mandates that require that kind of  
4 interaction between Federal agencies and tribes and so we  
5 think that there is definitely a need for increasing that  
6 type of a process. It is a very difficult thing obviously  
7 to comment specifically on the EIS. However, I will, but  
8 just for the record, the tribes out there that are  
9 culturally affiliated are opposed to this project, and so it  
10 makes it very difficult when you start saying okay, well,  
11 gee, you know, you want us to say all these things. Well,  
12 we could go on for years, eons, decades, centuries about the  
13 faults or the things that go against the grain of our  
14 culture.

15 But it also makes it very difficult because  
16 there's other tribes that we recognize in the United States  
17 that may be impacted by shipments and things, and so it in  
18 essence kinds of pits one against the other, and so it makes  
19 it difficult.

20 Given that, I would just like to share a few  
21 comments, if I may, about what we have been doing and how we  
22 have been involved, and some of the perceptions that were  
23 shared last week at the meeting that we had held.

24 First of all, we have developed a source document  
25 for this draft EIS and in the EIS it was cited 37 times,

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1 various references and things within the draft document.

2 However, the draft document was developed by four tribal  
3 representatives that were appointed by the Consolidated  
4 Group of Tribes and Organizations, and I think they did a  
5 very good job. However, with all due respect, they are not  
6 the scientists and the engineers, and when you start dealing  
7 with mathematical equations and transportation modeling and  
8 all that, sometimes it is a little bit difficult to deal  
9 with those things, but the committee had done the best that  
10 they could in trying to get some of the perspectives shared  
11 prior to the development of the EIS.

12 With that, I think it makes it very difficult when  
13 we start looking at and although referenced things such as  
14 environmental justice. Environmental justice is something I  
15 think many Indian communities are oftentimes fit within the  
16 category of that classification, but oftentimes it is  
17 overlooked as far as truly the impacts they will say, gee,  
18 you know, the Indian population doesn't make up a  
19 significant portion of the population, but these are  
20 Federally recognized tribes. They are on reservations.  
21 They have a special status. There is a trust responsibility  
22 and it goes on and on and on.

23 The DEIS states that there's going to be no  
24 adverse impacts to minority populations with subsistence  
25 lifestyles. I find that kind of interesting, as did the

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1 tribes, because that is what we do. Ethnographically in the  
2 literature it talks about how we are hunters and gatherers,  
3 although we don't necessarily agree with that, because that  
4 makes us kind of people that all we're doing is we are  
5 concerned with eating and sleeping.

6 However, we think that we haven't seen, and that  
7 was one of the comments made, that there were no systematic  
8 studies to evaluate subsistence patterns, lifestyles or  
9 epidemiological studies of impacts of things, and so I think  
10 that is very, very critical.

11 The other thing is that a disproportionate impact  
12 is going to be felt by the Indian people when it comes to  
13 what we term as "holy land violations."

14 Just as what was said earlier, in my comments and  
15 Mr. Holden's, is that these are the places that we need,  
16 that we go to, that have been part of our culture. No other  
17 group in the United States is going to be impacted as much  
18 as tribes will because of what do you do if they wipe out  
19 your church, if they wipe out your store, if they wipe out  
20 your pharmacy, everything that you need? So there's some  
21 significant impacts I think that warrant further  
22 consideration.

23 The other is that either denial or impacts to  
24 access to various sites, because I believe that that is

25 critical also in not only the perpetuation of the culture

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1 but also in concern with some of the Federal mandates, so  
2 again those are some of the things that I think warrant  
3 consideration.

4           With respect to transportation, I think that that  
5 is very critical as well. There's several tribes that are  
6 going to be impacted by transportation. Some of those  
7 specifically in the Consolidated Group of Tribes and  
8 Organizations, we see the Las Vegas Paiute tribe, which is  
9 just right down the road on Highway 95 going to the Nevada  
10 Test Site on to Yucca Mountain, the Moapa Paiute tribe,  
11 which we have interstate going right through their  
12 reservation, and then the Timbisha Shoshone tribe, which is  
13 in Death Valley, a Federally recognized tribe that  
14 technically doesn't have a land base that is trying to get  
15 some land, and some of the land that they are looking at  
16 falls adjacent to some of the areas on the Nevada Test Site  
17 and Yucca Mountain and so there's a lot of concerns that  
18 those things I don't believe have adequately addressed, at  
19 least in the eyes of those people.

20           Winding down here, I think that's some of the  
21 things that we see as far as when we are informed that the  
22 routes, you know, will be selected by the states and things  
23 and while we can identify with that, we also think that  
24 there needs to be some assurances of some sort to be granted  
25 as far as the tribes because the tribes are going to be

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1 impacted on some of those issues as well.

2           When we were looking at the EIS we had seen how it  
3 clearly illustrates the state and county boundaries within  
4 EIS in a lot of the maps, but there is no mention or  
5 identification actually on those maps of the tribes, and  
6 here it is -- these are Federally recognized tribes, Federal  
7 mandates that should be included.

8           With respect to an intermodal transfer facility,  
9 we see that there has been no systematic ethnographic  
10 studies to evaluate those sites. We were asked to comment  
11 on some of those, so we did, but the difficulty came in when  
12 we were trying to look at some of those sites, and basically  
13 had to do it from table like we are sitting here, and if you  
14 could imagine, even trying to do any kind of study,  
15 transportation modeling study, if you had to do geological  
16 studies and biological studies or maybe even a site  
17 characterization or site suitability study from the table  
18 here and not ever getting to go out to the field to see and  
19 understand the complex relationships that the tribes have --  
20 I think it's a little bit remiss.

21           We also think it was quite appropriate to have  
22 Indian people out when those studies were out there. It was  
23 basically done by archaeologists and archaeologists, with  
24 all due respect, I mean they have a certain focus. It just  
25 scratches the surface of what the Indian culture is all

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1 about, so clearly Indian people need to be involved.

2           Lastly, some general observations are that we see,  
3 and it's maybe more of just a choice of words and things,  
4 but in the Appendix D of the DEIS it states how copies of  
5 the EIS or DEIS I should say were sent to Governors of the  
6 states, territories, and Indian organizations. Now "Indian  
7 organizations" has a special connotation, and not "Indian  
8 tribes" and so we had recommended that that needs to be also  
9 to Indian tribes. We understand that it was sent out to  
10 tribes but it is one of those oversights. I think once  
11 again how there is not this clear understanding of how to  
12 work with Indian people.

13           With the adverse effects to cultural resources out  
14 there, it states that impacts may result from workers and  
15 from construction activities, and that a plan for mitigation  
16 has been established to monitor those areas and sites, but  
17 there is no mention of how Indian people are going to be  
18 involved in that.

19           Beyond that, as I would again remind you, the  
20 tribes have been involved in that since 1987 formally. Now  
21 if you go back culturally, we were there a way before this  
22 thing was even thought of and when that mountain was made.

23           We need to see that long-term commitment and  
24 insurance that tribes will be maintained on a  
25 government-to-government relationship as required, and the

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1 funding that I mentioned earlier, that that is what has  
2 prevented tribal representatives from coming to these  
3 meetings in the past and will continue to prevent them from  
4 coming in the future unless there was something, some  
5 mechanism to do something there.

6           A couple last things are that with consideration  
7 to National Park Service Bulletins 30 and 38, which evaluate  
8 and document historical landscapes and traditional cultural  
9 properties, things that haven't systematically been  
10 evaluated that potentially could cause some concerns and/or  
11 problems down the road, so I think that that needs to be  
12 further examined.

13           Then with the emergency response and preparedness,  
14 it goes back to the funding, goes back to kind of just the  
15 basic foundation for everything and that if the tribes  
16 aren't prepared for this, you know, how can you expect us to  
17 in essence not to support because I think it goes against

18 the grain, but to be there to respond adequately on behalf  
19 of the constituencies that the tribes have to respond to,  
20 and that is essential.

21 Lastly would be the secondary impacts that we see  
22 to any kinds of studies that would be going on. Oftentimes  
23 those are overlooked in DEISes and that when you move the  
24 dirt from Point A to Point B you get it out of Point A, but  
25 when you put it over in Point B you may be impacting

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1 something else, and so I think that has to be given serious  
2 consideration, and with that I would conclude my remarks,  
3 and I appreciate the opportunity.

4 CHAIRMAN MESERVE: Thank you. Mr. Darrell  
5 Campbell, as I understand it, could not make it because of  
6 the weather. Thank you, Ms. Westra for joining us on behalf  
7 of the Prairie Island Dakota Nation Tribal Council.

8 MS. WESTRA: Thank you, Mr. Chairman,  
9 Commissioners. The Prairie Island Indian Community  
10 appreciates this opportunity to come and brief you on our  
11 reaction to the draft Environmental Impact Statement for the  
12 proposed repository at Yucca Mountain.

13 We are here today to state that we do not support  
14 the no action alternative which has been described in the  
15 draft EIS and we believe that it is necessary to point out  
16 that this alternative has some serious ramifications for the  
17 Prairie Island Indian Community.

18 As you may be aware, there is a commercial nuclear  
19 power plant immediately adjacent to the reservation and an  
20 independent spent fuel storage facility associated with that  
21 plant. The tribe receives no benefit, either a tax base or  
22 electricity, from the plant. We fund our own emergency  
23 preparedness programs and monitoring. Nowhere in the United  
24 States is the problem of nuclear waste more evident than at  
25 Prairie Island.

21

1 The tribe didn't ask for a nuclear power plant to  
2 be built right next door to the reservation or a spent fuel  
3 storage facility to be constructed and operated there, but  
4 there it is, and we feel that dry cask storage is not a  
5 permanent solution to this problem. It is merely a  
6 temporary one until a more permanent solution has been  
7 developed.

8 The tribe is within feet of this nuclear waste  
9 facility, not miles, and to even suggest that the spent fuel  
10 will remain onsite either with institutional controls or  
11 without is not acceptable to the people of Prairie Island.

12 In the draft EIS it states that if this waste  
13 remains onsite there would be environmental consequences

14 such as contamination to the air, soil, water, et cetera,  
15 but there is no mention of what might happen to the people  
16 who would be residing there.

17 We assume that they would either be removed or  
18 face contamination, and the tribe has no intention of  
19 leaving its land, land that was promised to them by the  
20 United States Government and unless the waste is removed,  
21 the tribal people and children will be forced to live with  
22 this very real health and safety threat.

23 Like Richard and Robert mentioned, transportation  
24 is an important issue that has not been fully evaluated, nor  
25 have the transportation packages been fully evaluated and

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1 the associated health and safety concerns, and that all  
2 jurisdictions, tribal, state, local must be fully prepared  
3 for those shipments and be included in the development of  
4 emergency preparedness plans and that we strongly feel,  
5 because the tribe has been living next to this situation for  
6 such a long time that tribal concerns must be addressed  
7 before this moves forward, not just merely considered and  
8 discarded.

9 We feel that the no action alternative means that  
10 the Federal Government will continue to deny its  
11 responsibility for nuclear waste that sits on Prairie Island  
12 and at 71 other sites throughout the country, that the  
13 Federal Government has a responsibility to take care of this  
14 waste and make sure that it is safe from people.

15 In closing, we would like to thank the Nuclear  
16 Regulatory Commission for reaching out to Indian country as  
17 evidenced by this hearing and the recently-published  
18 proposed rulemaking regarding pre-notification of shipments.  
19 As we have got rail lines going right through the  
20 reservation, we will be positively impacted by that and  
21 notified of such shipments, so thank you and we would be  
22 glad to answer any questions.

23 CHAIRMAN MESERVE: Thank you all very much.

24 I have a question that I would like to perhaps  
25 direct to Mr. Arnold.

23

1 In your comments you indicated that there -- that  
2 particular tribes you mentioned have I think you used the  
3 term "cultural affiliation" to the area. It would help me  
4 if I understood a little more specifically as to what  
5 exactly that means, and it's really a two-part question.

6 First is how often does that mean that people  
7 visit the area and for how long and for what purpose, and  
8 then secondly, given those uses, are there any mitigative  
9 measures that would be acceptable to be able to deal with  
10 the cultural interests?

11 MR. ARNOLD: First, with respect to cultural  
12 affiliation, I think in order to define that, it's part of  
13 playing into the rules of I guess established practices and  
14 ethnographical approaches where there was a literature  
15 review done.

16 I am trying to determine based upon the  
17 literature, based upon the information provided by tribal  
18 groups who occupied those lands, who used those lands  
19 ancestrally and with it it basically is a joint use area and  
20 that is why I mentioned three distinct ethnic groups, so it  
21 is not just one ethnic group but it is three.

22 As such, each one of those people or each one of  
23 those groups have the ties, and it was interesting in noting  
24 that when the Owens Valley Paiute and Shoshone tribes in  
25 California, when initially they were brought in, there was

24

1 some question as to why they were being brought in, because  
2 they are way over in California. The tribes said but no,  
3 that is part of our area. Well, later on and probably about  
4 10 years down the road they had found that in doing some  
5 obsidian sourcing studies that they had conducted they found  
6 out that some of the obsidian and projectile points and  
7 different kinds of things out there originated from the  
8 Owens Valley, thus confirming. We had known that initially  
9 and sometimes we are the last ones to be asked, but that is  
10 how we became involved and that is how the cultural  
11 affiliation was determined.

12 With respect to how often, how long and what  
13 purpose, that is a real interesting question because I think  
14 that, first of all, as I mentioned, there are the meetings  
15 that we have and people do go out there, sometimes either in  
16 the meetings, sometimes there is a request to go out  
17 independently because everything isn't done as a group. I  
18 mean a tribe -- if an individual needs to go out for a  
19 specific reason, religious, cultural, what have you, then  
20 those are dealt with independently and those people would  
21 call and make those arrangements so I can't necessarily  
22 answer the specific numbers of times.

23 However, let me share something with you from  
24 Southern Paiute perspective. We have in our stories of  
25 Creation and our stories of afterlife we have to be able to

25

1 go on a journey and our journey follows these trails. These  
2 trails, some of them -- they are invisible trails in  
3 essence, but they would fall into that category of  
4 traditional cultural property as I shared with you earlier.

5 We need to go on that trail to get to our  
6 afterlife. Our trail goes through that area, so when a

7 person passes away, every time there is a funeral we visit  
8 that area because we have to go there and we have to talk  
9 about that in a traditional, in a native way in the songs  
10 that we sing and what have you, so given that, quite  
11 frequently we visit that area.

12 Those are the kinds of things that haven't been  
13 evaluated and it makes it very difficult because it is  
14 something that is not tangible for people. I mean this is a  
15 science-driven project, and so when you see that science and  
16 you can lay down those numbers and you can lay down those  
17 studies and say here it is, well, how do you do that with  
18 somebody that says, you know what? -- but that's part of the  
19 holy land, that's part of the journey for the afterlife.  
20 How do you measure that? So that makes it very, very  
21 difficult.

22 With respect to mitigative measures, I think that,  
23 yes, there can be mitigative measures, and I think the  
24 mitigative measures are first and foremost is to be  
25 developed in collaboration with the tribes. I wouldn't sit

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1 up here by any means and say you just do A, B, C and D and  
2 then it's going to happen, but I think it goes right back to  
3 the fundamental communication that is necessary and  
4 essential with the tribes that are culturally affiliated.

5 CHAIRMAN MESERVE: Good. Thank you very much.

6 MR. HOLDEN: Commissioner, excuse me, if I could,  
7 just to add to what Mr. Arnold was saying, it is apparent  
8 that the cultural considerations in this draft EIS got short  
9 shrift. There's of course no impact and I guess that is  
10 using Western standards of measurement and these are the  
11 things that Native American people usually face when they  
12 want return of lands or when some of these sacred areas are  
13 asked -- that may be under Federal control, we have asked  
14 for protection of these areas or we have asked for them not  
15 to be disturbed by the general public.

16 Those people that are in charge generally say,  
17 well, you know, what lives there? Well, maybe there's a  
18 spirit that resides there that we pray to or we are aware of  
19 that is part of the Deity, if you will. Well, what color is  
20 it? What shape is it? What does it look like? You know,  
21 those sort of questions we have at this point had to respond  
22 to in years past and I guess the fortunate side is that in  
23 this instance there is a cultural group of folks who have  
24 responded to some of these questions and to some of these  
25 areas that have been disturbed.

27

1 A few years ago, when I conducted a meeting of  
2 some tribal officials in Las Vegas we went onto a visit to  
3 the Yucca Mountain site and there were a group of college

4 would-be archaeologists, anthropologists and I am not  
5 demeaning the profession but they were digging in an area  
6 and it's obvious what they were doing and I just asked the  
7 question, you know, what is it you are doing. They said,  
8 well, you know -- and they said what they were doing, and  
9 they had sectors and the equipment that they were to dig up  
10 the land, and then they said, well, we are not disturbing  
11 it, and I said, now how can you not be disturbing it? Well,  
12 we are going to put everything back the way it was.

13 Well, I mean if you did that to a gravesite, if  
14 you dug up the grave, if you pulled up the casket, and you  
15 put it back the same as it was to begin with, would that not  
16 be disturbing, and that is disturbing to us, and those are  
17 the sorts of things that we are faced with.

18 As Mr. Arnold said, there are places, origin of  
19 our peoples, Chickasaw Choctaw from Oklahoma, but the place  
20 of origin of my tribe is in the Central Mississippi area and  
21 even though I am -- we were removed in the 1830s, that is  
22 still what I believe to be our place of origin. We did not  
23 come from, my people did not come from Alaska. The  
24 footsteps may go the other way in our minds, but those are  
25 the types of things that we are concerned with and that is

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1 why I think that there would not be this type of  
2 consideration, cultural consideration, if it were not for  
3 Federal statutes like NEPA and so forth.

4 CHAIRMAN MESERVE: Thank you. Let me turn to  
5 Commissioner Dicus.

6 COMMISSIONER DICUS: Well, first of all, please  
7 accept my apology for being here late. I made every effort  
8 to get here. I don't know how to drive on bad roads. I am  
9 from the South and three of my colleagues are from New  
10 England. I am going to get one of them to give me some  
11 driving lessons --

12 COMMISSIONER MERRIFIELD: Well, you got a  
13 four-wheel drive -- so that is a good first step.

14 COMMISSIONER DICUS: Well, I do have a four-wheel  
15 drive vehicle but still I don't quite --

16 COMMISSIONER DIAZ: -- from me?

17 COMMISSIONER DICUS: No, you are excused,  
18 Commissioner Diaz. You are definitely excused. I don't  
19 think I want driving lessons from --

20 [Laughter.]

21 COMMISSIONER DICUS: But I do apologize -- only  
22 because I need to learn how to drive on ice and snow. I  
23 mean the main roads are fine, but my neighborhood was not --  
24 I fractured my kneecap in a fall a few months ago so I am on  
25 crutches, which makes me a little more uncomfortable with

1 bad roads, but I do apologize very much for being late, and  
2 it is in no way to any of you, any indication of the  
3 seriousness that I give to the issues that we are dealing  
4 with, because I consider them to be very serious.

5 They do have my utmost attention and the part of  
6 this meeting that I have missed I will read the transcript  
7 so that I know exactly what your issues are, so thank you,  
8 Mr. Chairman.

9 CHAIRMAN MESERVE: Thank you. Commissioner Diaz.

10 COMMISSIONER DIAZ: Yes, I don't know whether it  
11 is -- let me start with a statement, a short statement.

12 I sincerely believe that the Commission has tried  
13 and continues to try to be aware of what your problems and  
14 your issues are, and I think it's wonderful that we can  
15 interact and listen to you.

16 I am always left with the impression of wanting to  
17 know what more can we do, and I always keep coming  
18 personally short on how to respond better or do something  
19 that actually is an action that represents how much we value  
20 your interest and how much we try to listen to it, and we  
21 find ourself wanting, because in many ways this is the  
22 Department of Energy's project -- we are an independent  
23 agency that is trying to conduct its duties and  
24 responsibilities in a certain way is a subset of what the  
25 Department of Energy is and so, you know, I wonder if now

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1 that you have gone through this process and you obviously  
2 have studied what the responsibilities of the Department of  
3 Energy are and the Federal Government and what our role is,  
4 in that set of issues is there something else that we are  
5 failing to do that you think we can do specifically,  
6 because, you know, we think we understand the problem but we  
7 are always wanting to know specifically what is it that we  
8 could do.

9 CHAIRMAN MESERVE: By "we" do you mean the NRC?

10 COMMISSIONER DIAZ: The NRC. The Nuclear  
11 Regulatory Commission.

12 COMMISSIONER DICUS: If I could add a little bit  
13 to it, are we clarifying our role? I think that is what the  
14 Commissioner -- because I think there was a point in time --  
15 as you know, I came out and met with everyone in April,  
16 early May -- and it was clear that our role was not clear  
17 and is it clearer now?

18 COMMISSIONER DIAZ: And maybe that is one thing  
19 that we can definitely do -- I mean establish what our role  
20 is, but even beyond that, once you understand the different  
21 roles, specifically what is it that within our charter,  
22 within our capabilities, within our authority, specifically

23 what is it that we could do to, you know -- the third  
24 question --

25 MR. HOLDEN: I think the approach that

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1 Commissioner Dicus mentioned was doing the outreach, going  
2 out to Indian country and seeing what is there and listening  
3 to those people who don't have the resources to come up  
4 here. That is a beginning. You are in their homelands.  
5 They will be open to you and then be honest with you to tell  
6 you what is in their hearts and what is on their minds and  
7 what these things actually mean to them, and their history.

8 Their history is their culture and they live it  
9 every day, many of them. It is not obvious to the untrained  
10 eye because many of these people that I have talked with who  
11 have gone to Yucca Mountain to see onsite visits there,  
12 they'll talk about the things that are still out there.  
13 They will talk about what they mean, whereas, you know, some  
14 of the technical people who are along on these visits with  
15 the contractors, they will try to elicit all the information  
16 they can from these people but they will use it to bolster  
17 their academic credentials, to write about it, to publish  
18 it, to use it for their own purposes. That to me is not  
19 what those people intended -- their intention of telling  
20 those things, but it is to really emphasize the importance  
21 of those areas.

22 I think that would do, that would be a good faith  
23 effort on your parts to make those efforts, to be out there.

24 MR. ARNOLD: I would like to kind of expand on a  
25 couple of things that I think coming from Nevada that I

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1 think it's very timely and appropriate that there be -- what  
2 a great opportunity to have you folks to come out and meet  
3 with the tribes out there, and hear from them directly,  
4 first of all.

5 Secondly, to go out to the site with maybe some of  
6 the tribal representatives to gain better understanding.

7 That hasn't happened and I think throughout the  
8 life of this project that if you don't have that kind of a  
9 background, that foundation, it makes it very difficult I  
10 believe to really make an informed decision, and it is not  
11 that you are coming, paying a visit to people just because  
12 of our -- because we have a cultural interest. I mean  
13 there's Federal mandates that really require the kind of  
14 interaction and responsibility that that needs to occur.

15 We also recognize that you are the agency, and I  
16 appreciate Commissioner Dicus's comments as far as the  
17 understanding of what the role of the Commission is, because  
18 I believe that the three of us have a clear understanding of

19 what the role is and, however, that may not have spilled  
20 over into some of the tribes and to me that is a pretty  
21 clear indicator that why don't they know that then? So  
22 obviously there may not have been, along the process maybe  
23 there was a disconnect of some sort, so that could always be  
24 improved, but part of our role, obviously too, is to try to  
25 enhance that information to the tribes, so we do that our

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1 behalves for our constituencies but we are not all things to  
2 all people, and so it is very difficult to be there all the  
3 time for that.

4 The others that I think, in looking at the EIS and  
5 looking at your responsibility for licensing and things, I  
6 think that our role here is to come and share information,  
7 what we see from the areas and the people that we represent.  
8 That purpose is for us to try to help you make a more  
9 informed decision.

10 So just as with everyone else, I mean we could all  
11 come up here and give you a laundry list of everything that  
12 we believe needs to happen with the project, for example,  
13 that may fall outside the purview of what the Commission is  
14 responsible for, but I believe that we just need to make  
15 sure that there is that open dialogue, that these kinds of  
16 meets do occur, that previously when I was here I had, one,  
17 requested, Native tribes needed computers. Here we are, we  
18 are supposed to monitor this thing, and some of the tribes  
19 got them and some of the tribes didn't.

20 I mean that is obviously still a need and trying  
21 to come up and into the now, what twenty-what? -- century or  
22 end because of all the discussion whether or not we are in  
23 the 21st or 20th -- but wherever everyone is, we believe  
24 that it is critical to maintain the dialogue that is  
25 happening here today and to continue on through the life of

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1 this project and beyond.

2 CHAIRMAN MESERVE: Thank you. Mr. McGaffigan.

3 COMMISSIONER MCGAFFIGAN: Mr. Arnold, I do think  
4 from your testimony -- I am sure it is fleshed out in your  
5 comments -- there are several things that you are suggesting  
6 DOE could do to ameliorate the concerns, although obviously  
7 you are opposed, but I think it is also useful to say if you  
8 are going to go ahead with it here are a bunch of things  
9 that you need to do.

10 Ms. Westra, you talked about the no action  
11 alternative. We just got a letter from our Advisory  
12 Committee on Nuclear Waste, and I'm sure it's a public  
13 letter because all their letters are public, but it probably  
14 isn't in the hands of the public. It's dated yesterday.

15 They basically say we have probably spent too much

16 time thinking about the no action alternative and we  
17 probably -- I can assure you I think a lot of the analysis  
18 that is done in this area, whether it is for the Mountain or  
19 for alternatives to the Mounts, it gets to be very, very  
20 hypothetical and the notion that institutional controls will  
21 be lost and your tribe will be at risk, I think, you know,  
22 there has to have been a nuclear war or something for that  
23 to occur, and there will be far worse things happening to  
24 all of us if so, but some of the institutional controls  
25 probably will not be lost at Yucca Mountain, although we

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1 have to by statute assume that they are going to be lost  
2 after 100 years, and again, something profound would have  
3 had to have happened to the nation and to the world for  
4 institutional controls to be lost.

5 So I think that part of the no action alternative  
6 which the bottom line of the ACNW is we should stop  
7 investing too many resources into it because it's already  
8 been over-analyzed, and none of it is realistic, is that we  
9 are going to be there, this Commission will be there,  
10 barring catastrophe for the world, ensuring that the waste,  
11 however long it is there is safety dealt with by the  
12 licensee and the tribe is fully protected.

13 I think we have the resources to do that. I think  
14 we invest an awful lot in maintaining our Spent Fuel Project  
15 Office and making sure that the casks that are used  
16 throughout the industry on an increasing basis are safe.

17 The part of this that people actually worry that  
18 those consequences are real just disturbs me a bit, because  
19 I don't think they are. I think it is an artifact of the  
20 analysis. DOE is sitting there and somebody came up with  
21 the idea that, okay, we have to analyze for 10,000 years at  
22 Yucca Mountain, now we will analyze for 10,000 years  
23 somewhere else -- we'll do that in a way that assumes the  
24 worst, as we are supposed to assume at Yucca Mountain,  
25 institutional controls disappear and then bad things happen.

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1 I think that in both cases they are unlikely to  
2 happen, but that is more a statement than a question.

3 We are here and we will be here a long time, I  
4 hope. Our successors will be here a long time making sure  
5 that bad things don't happen, although we'd just as soon the  
6 waste not be next to you forever.

7 MS. WESTRA: I appreciate your comments and I  
8 think, you know, perhaps I didn't adequately articulate our  
9 position is that, you know, we don't think that that is  
10 realistic either, and to think that it is just going to be  
11 left there is not very realistic, but I think that our

12 concern is that if a repository is not licensed, what then?  
13 You know, what is Plan B, so to speak?

14 COMMISSIONER MCGAFFIGAN: No one -- the punchline  
15 in the ACNW letter is are realistic alternatives likely to  
16 be deferral of decision on a repository for, say, 100 years?  
17 What would that be, the 156th Congress?

18 COMMISSIONER DICUS: Sure.

19 [Laughter.]

20 CHAIRMAN MESERVE: Commissioner Merrifield.

21 COMMISSIONER MERRIFIELD: Mr. Arnold, just to  
22 follow up on some of the questions that the Chairman asked,  
23 one of the issues that we obviously need to look at in the  
24 draft EIS and as we move forward in terms of the uses of  
25 tribes in the area, its uptake, the possibility that through

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1 food consumption, subsistence, in that area that the members  
2 of the tribe or other individuals could have exposure, could  
3 you briefly explain what some of the typical subsistence  
4 patterns are, either as it relates to Nellis and the Nevada  
5 Test Site or in other area adjacent to the area of concern?

6 MR. ARNOLD: Sure. First of all, those areas are  
7 clearly restricted areas with restricted access.

8 However, just historically Indian people have  
9 always relied upon a lot of the plants and animals out there  
10 for living and for medicines and what have you. One of the  
11 concerns, obviously, is with water, groundwater  
12 contamination. You look at the Timbisha Shoshone tribe that  
13 is over in Death Valley and so there's no -- or water  
14 sources that are from the Indian perspective and also from  
15 some of the hydrological studies that it appears that some  
16 of the waters would end up down that way over into the Ash  
17 Meadows area, which is a national wildlife refuge.

18 There are several endangered species of plants and  
19 actually an endangered species of a fish found nowhere else  
20 in the world, little pupfish, and those things, the plants  
21 that are out there, those endangered ones, are our medicines  
22 off of the Yucca Mountain, off of the test site.

23 Those places are still used actively, very  
24 actively today for medicines that are ingested, medicines  
25 that are placed upon your body, food that is digested, all

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1 those things that are essential for us. That still occurs  
2 today.

3 Even when tribal representatives go out to Yucca  
4 Mountain, and there are I guess unbeknownst to many people,  
5 there are some I guess more pristine areas than others, on  
6 Nellis and on Nevada Test Site and things, but there's also  
7 a lot of bad areas out there to where a lot of things had  
8 happened in the past.

9           Even in some of those areas, I have seen people  
10 collect plants during a visit, and they will take them home  
11 because they can't get it from another area or it is because  
12 of a certain ceremony perhaps where they need something from  
13 this specific area so you would take it home and then you  
14 would prepare it.

15           A lot of these things are essential to what we do.  
16 There's -- gosh, it's really unlimited -- because I know  
17 that early on in the studies on some of the botanical  
18 studies that were done with Yucca Mountain that there were  
19 at that time probably I think it was like 80 or 100  
20 different plants that were identified that are used for  
21 those foods and medicines that grow out on the test site  
22 now, and they also grow in other areas, but sometimes,  
23 depending upon from the cultural perspective, where it is  
24 located and that's how it is needed, again with any of the  
25 impacts, even when it comes to transportation, if there were

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1 an accident -- and we all hope that that would never  
2 happen -- but I mean that can decimate a tribe.

3           One of the things that we always hear is that  
4 oftentimes it's tribes that will -- if there was ever an  
5 accident or something that would impact that tribe, that's  
6 where they are from. I mean everyone else here in this, in  
7 the United States with the exception of Indian people, only  
8 because were the ones that were here first, I mean they're  
9 mobile and so you move from one area to another if you get  
10 another job, if you need something else, you go to the  
11 store -- you know, this store over here is having another  
12 sale -- someone would drive across town to get it.

13           We can't do that. This is where we are from.  
14 This is where everything that we need to survive is from, so  
15 that is why we have to stay there, and so if something  
16 happened in a reservation area, we're gone.

17           We don't want that obviously and I think that we  
18 have to look at everything very, very critically, and  
19 sometimes people think, well, you know, you are just kind of  
20 looking at it from maybe a nebulous point of view but we  
21 don't really believe that it is because it is truly  
22 something cultural.

23           COMMISSIONER MERRIFIELD: The second question I  
24 have for you, in your presentation you talked about the  
25 fact, in the environmental justice section, you said no

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1 other people experience holy land violation.

2           I guess from my understanding, are the areas which  
3 are associated with Yucca Mountain, part of Nellis and part  
4 of the Nevada Test Site, do those have a particular holy

5 significance to the tribes or is it more of a holistic sense  
6 that the entirety of the area has important religious  
7 connotations?

8 MR. ARNOLD: Both. First of all, for Southern  
9 Paiutes, Mt. Charleston is our place of origin. And the  
10 Southern Paiutes are found in Southern Nevada, Southern  
11 Utah, Northern Arizona and Southern California.

12 So we all share that same story of creation. Many  
13 other tribes have their places of creation that are nearby.

14 So I think that's the first part. The second part  
15 is when it comes to asking about the direct area, just to  
16 the north of Yucca Mountain at the prow, that is a known  
17 religious site that is in the ethnographic literature.

18 It's known by Indian people. It's a place that  
19 was -- we mitigated out, and it was off limits early on in  
20 the project, how they were taking rock samples and giving it  
21 to the public so they could see what the rocks looked out,  
22 without consulting with the Indian people.

23 We said, you know the nature of this area, so we  
24 got that mitigated out. So there are areas right close by.

25 There are also other archeological sites that have

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1 definite cultural significance. I guess it's -- I'm a  
2 little dicey on talking about that, only because of the more  
3 information that gets out on some of these, I mean, it's  
4 something that when people go out, let's say, well, gee, let  
5 me see those sites and those sites.

6 And so we've been able to mitigate some of that  
7 with a preservation in place policy with some of the  
8 artifacts and some of the cultural resource sites.

9 But nevertheless, there are some right there.

10 COMMISSIONER MERRIFIELD: Just a final brief  
11 comment: I think both Mr. Arnold and Mr. Holden talked  
12 about an issue of resources and having availability for the  
13 tribes to have access to information and to money and to  
14 computers and things of that nature.

15 We, because of our nature, we don't have access to  
16 a lot of the money and the funds that are going to Yucca  
17 Mountain, although we do receive money from that same source  
18 for some of the work that we do here at the Agency in our  
19 review.

20 One of the areas that does come under our purview  
21 where we have a lot of concern is the licensing support  
22 network, the computer system. We have some very good people  
23 here, including the former Secretary of this Agency, who are  
24 in charge of putting together a system that makes sense,  
25 that will make it so that individuals who live in Nevada

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1 will have an ability to easily have access to the

2 documentation associated with the licensing of that  
3 facility.

4 And I think this Agency is working very hard to  
5 make sure that the DOE meets its commitment to make sure  
6 that that is fully funded.

7 As part of that effort, I think we are also trying  
8 to make sure that we have the appropriate outreach to  
9 libraries and other facilities in Nevada so that for those  
10 individuals who may not individually have computer access,  
11 that they will be able to go to a local resource close to  
12 home, their home, that they can use to have access to that  
13 as well.

14 The last point is that I think we have made -- and  
15 Commissioner Dicus is to be commended for her effort. I  
16 certainly intend to go out to Yucca Mountain again. I've  
17 been there previously.

18 But I think we've also asked our staff to be more  
19 involved in having meetings near the site, so that the  
20 individuals who live in Nevada and are members of the tribe  
21 can have greater access to those meetings. I think we  
22 should continue that. Thank you.

23 CHAIRMAN MESERVE: Good. I'd like to thank the  
24 panel. We very much appreciate their assistance.

25 On an unrelated subject, let me just note for you

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1 that the Commission did publish an Advance Notice of  
2 Proposed Rulemaking on which we requested comment.

3 And the rulemaking, proposed rulemaking had to do  
4 with having licensees notify Native American tribes of  
5 planned shipments of spent fuel through tribal lands. And  
6 that is something that we currently have pending, and we  
7 would welcome comments on that issue from you.

8 Thank you very much. We'll now hear from a  
9 representative, Robert Loux, from the State of Nevada.

10 MR. LOUX: Good morning. My name is Robert Loux.  
11 I'm the Executive Director of the Agency for Nuclear  
12 Projects, as I think most of you are aware.

13 I want to let you know that we certainly  
14 appreciate the opportunity to be here today and to give you  
15 some of our thoughts about that draft Environmental Impact  
16 Statement.

17 As you might suspect, we have been intimately  
18 involved with this particular document for many years,  
19 including the scoping process that occurred in the mid-90s.

20 And, in fact, we made the recommendation to the  
21 Department of Energy, and I guess it seems, in retrospect,  
22 much more important now that they would have been better  
23 served by producing a programmatic Environmental Impact

24 statement, initially, and then tiering from that, other  
25 environmental documents, whether they be related to

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1 transportation or the site itself.

2 The problem with this particular document is that  
3 it makes an attempt to do some of the things that would have  
4 been much better served in that particular format.

5 We, as well, have attended nearly every EIS  
6 hearing throughout the country, my staff. We have reviewed  
7 the transcripts from every hearing, in detail. So I guess I  
8 can tell you that we are intimately familiar with the  
9 document, and the concerns and the discussions that have  
10 taken place regarding the document.

11 What I'd like to do today is highlight some of the  
12 basic concerns that we've got, and, of course, leave some  
13 time for questions.

14 Our overall impression is that the document is  
15 fundamentally legally flawed from a number of perspectives,  
16 and the laundry list of issues that I have identified for  
17 you include many of those. There are many other legal flaws  
18 that we have not included in this list.

19 You virtually, I don't believe, can find -- open a  
20 page in the document and not find something that is of a  
21 flawed nature.

22 Let me highlight three or four areas, and then  
23 answer questions. I'd like to first highlight, again, the  
24 no-action alternative that was discussed earlier.

25 As you are undoubtedly aware, NEPA requires the

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1 no-action alternative to be realistic, to be reasonable, and  
2 to be likely. And by Commissioner McGaffigan's comments and  
3 those of others including ourselves, the no-action  
4 alternative is truly unrealistic, unlikely to occur, does  
5 not represent a legal representation of the circumstances  
6 that might exist, especially given the directive of the  
7 Nuclear Waste Policy Act that if Yucca Mountain is found  
8 unsuitable, the Department is required to revisit Congress  
9 for further direction.

10 Understanding that the no-action alternative is a  
11 required NEPA analysis in order to form a baseline from  
12 which to analyze the proposed action, but even in that  
13 perspective, it has to be, again, realistic, reasonable, and  
14 likely, and none of those situations exists, as I think we  
15 talked about earlier.

16 Secondly, there is an inadequate and inaccurate  
17 description of the project. There is not a final design, a  
18 final layout of the facility, and as a result, it makes it  
19 almost impossible then to analyze what the impacts of that  
20 facility might be.

21           And while the Department of Energy has indicated  
22 that have bounded the design of the facility, meaning  
23 thermal loads and other sorts of things, it simply is not  
24 acceptable nor legal to not have a final solidified design  
25 from which impacts can be analyzed and evaluated.

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1           Thirdly, as I think many of you have heard  
2 already, and I know that the ACNW has remarked to you  
3 directly, there is no identification of national  
4 transportation routes, making it impossible for anyone  
5 outside of Nevada, virtually, to understand what impacts  
6 might or might not occur from the transportation of this  
7 material, either by rail or highway.

8           Obviously, if the routes have not been identified,  
9 then there has been no analysis of those routes, no analysis  
10 of what those impacts might be. And that sort of leads to  
11 the next point, which is the process of conducting hearings  
12 in other parts of the country.

13           Frequently we get calls from governors' offices,  
14 from other communities across the country about, we hear  
15 this hearing is going on, what is this all about? Clearly,  
16 there has not been the kind of outreach by the Department of  
17 Energy to let other people know throughout the country, what  
18 the project is about, or in some cases, where the hearing is  
19 or where it's going to be conducted.

20           The whole approach to trying to acquire public  
21 opinion has been a very minimal effort by the Department of  
22 Energy, and one that has been forced upon them in many  
23 instances, i.e., the hearing outside the state of Nevada.

24           In many instances, the hearing locations are very  
25 obscure, the Department of Energy virtually does no outreach

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1 or publicity to let people know where these hearings are, or  
2 when they're going to occur.

3           And, of course, that goes along with their notion  
4 that they really didn't think they needed to disclose or  
5 analyze national transportation routes, which were the  
6 corollary of that process.

7           There also has not been an identification or an  
8 analysis by the Department of Energy of potential cumulative  
9 impacts that might associated itself from the development of  
10 the facility.

11           For example, as many of you are aware, there are  
12 some 200-300 million Curies of radiation within the  
13 subsurface at the Nevada test site which the Department of  
14 Energy has no understanding of where it's located, where its  
15 migration in the future might be.

16           Although there is some work going on in that area,

17 it clearly is going to be very many decades before the DOE,  
18 if they at all have come to some understanding about where  
19 this contamination from prior DOE activities at the test  
20 site, where it's migrating.

21 As a result, we believe it's going to be  
22 impossible for DOE to demonstrate compliance with any  
23 regulatory standard without a knowledge of where these  
24 200-300 million Curies of radionuclides from the Nevada test  
25 site are and where they may migrate in the future.

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1 And I guess that the last point that I want to  
2 make -- and this is probably perhaps the most controversial  
3 -- is that in our view, the project that's described in the  
4 draft Environmental Impact Statement is not geologic  
5 disposal. It's not in compliance with the Nuclear Waste  
6 Policy Act nor the 1980 EIS.

7 And let me provide you a little bit of explanation  
8 about that: As many of you are aware, in the late 70s, and,  
9 indeed, early 80s, much discussion, much analysis, much  
10 study, was done, both by the National Academy of Sciences,  
11 as well as others, regarding what the role of engineered  
12 barriers should be and ought to be, relative to geologic  
13 disposal.

14 And this, of course, led to the 1980 EIS, which,  
15 of course, is the underpinning of this entire program. And  
16 in those analyses, and, indeed, in that document, it  
17 indicates that geology has to be the primary barrier and  
18 that engineering barriers only come into play after the site  
19 suitability is determined by its geologic or hydrologic  
20 characteristics.

21 And then, of course, the engineered barriers  
22 provide then redundancy, multiple barriers in the system.

23 In most of the recent performance assessments  
24 completed by the Department of Energy in Nevada and  
25 discussed in various technical meetings, it has become clear

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1 through that analysis that nearly 95 to 98 percent of the  
2 entire performance of Yucca Mountain is associated  
3 exclusively with the waste package itself.

4 And exercises have been conducted by the Technical  
5 Review Board as well as others when the various components  
6 of performance are pulled out so that you can see what their  
7 individual contribution is, and when the waste package is  
8 pulled out of that analysis, it's clear that the rest of the  
9 entire system, cladding, geology, hydrology, all of the rest  
10 of the purported attributes of the system constitute  
11 probably less than five percent of the whole performance of  
12 the entire project.

13 As a result, it is no longer geologic disposal.

14 You essentially have an engineered project that simply  
15 happens to be under the surface, and as a result, we don't  
16 believe that this particular project is in line with the  
17 definition of geologic disposal, either in the Nuclear Waste  
18 Policy Act, or the 1980 EIS.

19 And unfortunately, your proposed rule that's  
20 currently underway, 10 CFR 63, only reinforces and  
21 facilitates that particular notion that somehow an  
22 engineered system with geology being a sidebar to that  
23 system, qualifies as geologic disposal. In our minds, it  
24 does not.

25 So, from that perspective, once again, the

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1 project, as described in the EIS, is flawed, legally because  
2 it does not constitute geologic disposal.

3 There are a whole myriad of other issues that we  
4 have delineated in the very brief outline I have given to  
5 you. Of course, we're going to be writing the Department of  
6 Energy with more detailed comments in the future.

7 But from our perspective, this document is so  
8 fundamentally and legally flawed that DOE, regardless of  
9 what comes out of the final Environmental Impact Statement,  
10 we don't believe that they can correct the problems that are  
11 in this particular draft.

12 It is not correctable, it's not fixable, and our  
13 recommendation is that this document should be withdrawn.  
14 It should be redone with the kind of analysis that we all  
15 expected it might have, including analysis of national  
16 transportation routes and the like.

17 We believe that will happen one way or another.  
18 If it's either a voluntary action by the Department of  
19 Energy or one that's actually imposed on them by the courts,  
20 we certainly intend -- and if the document continues to  
21 proceed along these lines as it appears, I'm certain that we  
22 will be recommending to the Attorney General that we pursue  
23 legal action to make sure this document is withdrawn and  
24 redone.

25 With that, I'd be happy to answer any questions

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1 you may have.

2 CHAIRMAN MESERVE: Thank you, Mr. Loux. I  
3 apologize for mispronouncing your name.

4 MR. LOUX: No problem.

5 CHAIRMAN MESERVE: I'd like to follow up on your  
6 statement about the no-action alternative, and you might be  
7 able to correct some misunderstanding I have.

8 I had understood that the statute, the Nuclear  
9 Waste Policy Act, enabled -- basically said that the

10 Secretary need not consider alternative sites to Yucca  
11 Mountain. That sort of puts them in the context in the EIS,  
12 I think, that the options that you examine are Yucca  
13 Mountain, or the alternative, having the stuff stay where it  
14 is.

15 And that my understanding of the no-action  
16 alternative, which is the material remaining where it is,  
17 that's in the draft Environmental Impact Statement, has two  
18 scenarios: One of which is to have the institutional  
19 controls fail after 100 years; and then an alternative  
20 scenario which picks up on the point which Mr. McGaffigan  
21 made, which is, well, it's not really realistic to have that  
22 happen and let's assume that the scenario is that we do have  
23 institutional controls.

24 Given what they've done and what the statute  
25 allows, what is the failing of the no-action alternative

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1 that you feel they should address?

2 MR. LOUX: Well, in my reading of NEPA and looking  
3 at that particular statute, as well as the exemptions to  
4 NEPA that are provided to DOE in the Nuclear Waste Policy  
5 Act, it's clear that the no-action alternative, an action  
6 that preferred alternative has to be compared to, has to be  
7 realistic, has to be likely, has to be reasonable.

8 And it's clear from the discussion that we're  
9 having here today, that that is not the case; that no one  
10 believes that material will stay onsite for 10,000 years,  
11 either completely without institutional control or with  
12 institutional control for 100 years and then no controls, as  
13 described in the document.

14 Neither of those, I don't think anyone believes,  
15 is realistic, nor likely, nor reasonable.

16 One can assume in a cynical way, that the  
17 Department of Energy deliberately put those alternatives  
18 forward to make them seem so unreasonable that Yucca  
19 Mountain seems much more reasonable by comparison.

20 But aside from that part, we don't think it meets  
21 the legal test of NEPA that it be reasonable, that it be  
22 likely, that it be realistic.

23 CHAIRMAN MESERVE: What would be a reasonable,  
24 no-action alternative, in your mind? That's granting that  
25 they don't have to consider alternative sites.

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1 MR. LOUX: Clearly, looking at -- I don't know  
2 what the reasonable alternative might be. The Nuclear Waste  
3 Policy Act, as I indicated, requires the Department of  
4 Energy, if they find Yucca Mountain unsuitable, to return to  
5 Congress and get additional direction.

6 One could assume from that action that Congress

7 might, in fact, begin a process to look at another site  
8 screening process, to look at a myriad of other sites,  
9 without comparing Yucca Mountain to another site. They  
10 clearly could compare it to a process that led to the  
11 selection of other sites, in our mind.

12 But the current action, again, does not comply  
13 with NEPA by the current description of the no-action  
14 alternative.

15 CHAIRMAN MESERVE: Commissioner Dicus?

16 COMMISSIONER DICUS: Thank you. First of all, I  
17 want to make a statement, and then I want to delve into one  
18 of your points, your Issue #2 on Inadequate and Inaccurate  
19 Projection of Project Description.

20 But the comment I want to make really has to do  
21 with the transportation issue. And I deal with this in a  
22 variety of ways, and part of my past life I was on the  
23 Southern States Energy Board and dealt with the  
24 Transportation Subcommittee.

25 And we were dealing with this ten years ago, what

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1 should we do if this became a reality? How do we deal with  
2 local governments and so forth?

3 And we came up with a lot of ideas. From a  
4 radiological health impact standpoint, transportation is not  
5 an issue, but from a social and political standpoint, I  
6 recognize that it is, and therefore I recognize that we need  
7 to deal with it.

8 I just want to say that. I have questioned DOE  
9 about this, I will continue to question the issue, and I  
10 will continue to have it, because I recognize that there are  
11 issues that have to be answered.

12 I look at several of your issues and they deal  
13 with transportation.

14 MR. LOUX: Yes.

15 COMMISSIONER DICUS: Quite a few of them. Like I  
16 said, I have to say that as a health effects specialist,  
17 sort of, I guess, I know that the impact is not there, even  
18 in an accident scenario.

19 But that doesn't matter if it does have a social  
20 or political impact. So I'm interested in the  
21 transportation issue from that point of view.

22 The question that I have -- and we're struggling  
23 with this a bit, even here at the Commission. I think DOE  
24 is struggling with it a bit.

25 On coming up with a final design, for example, for

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1 the casks. What should the casks be? We're talking about  
2 thermal loads, we're talking about how we deal with this.

3           And we're not sure -- I mean, there are two points  
4 of view: Yes, let's make a decision and let's go forward  
5 and this is it, and we're not going to change; and then  
6 there is the point of view, well wait. If we come up with a  
7 better mouse trap, shouldn't we change?

8           So, can you help me with that? You want us to say  
9 this is it, period.

10          MR. LOUX: Well, from a philosophical perspective,  
11 I think -- I mean, you're right, you probably don't in some  
12 sense want to keep doors closed that might be better opened  
13 at some later point in time.

14          But at the same time, there has to be an ability  
15 to understand what the project is and what its impacts might  
16 be. I think NEPA requires that; common sense requires that.

17          COMMISSIONER DICUS: Right.

18          MR. LOUX: The inability -- if DOE is simply not  
19 ready to run with the final design, then this whole  
20 decisionmaking process should be put on hold until such time  
21 they have arrived at this design, whether that's five years  
22 from now, ten years from now, or ever.

23          I think paying too much attention to the political  
24 process is what's harmed this project all the way along.

25          And what you're suggesting is that we leave this open, and

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1          therefore if things change down the road, that would be okay  
2 because we simply need to move on with this.

3          We have this imaginary crisis occurring at all  
4 these nuclear power plants. If DOE is simply not ready to  
5 proceed with the final design, then they shouldn't be going  
6 forward with an Environmental Impact Statement nor a  
7 recommendation.

8          COMMISSIONER DICUS: Okay, if we did go forward  
9 with, or DOE went forward with the final design, but we did  
10 -- and if we got a license application, if that's the  
11 decision, I do say if we get a license application, and if  
12 we decide to approve it, then we find something we can do a  
13 little different that would even be better. You wouldn't  
14 have a problem with that?

15          MR. LOUX: Let me just say that as long as it was  
16 in keeping with the laws of the country, including NEPA,  
17 which would probably require a supplement to the EIS, maybe  
18 an EA or some other environmental documentation, but if, in  
19 fact, the system is not ready to move forward, I don't know  
20 why, other than for the external political pressure, we're  
21 moving forward.

22          COMMISSIONER DICUS: Again, I apologize for being  
23 late.

24          CHAIRMAN MESERVE: No problem. Commissioner Diaz?

25          COMMISSIONER DIAZ: Yes. Notwithstanding your

1 clear position on the draft Environmental Impact Statement  
2 and the fact that it is slow, I find there is an issue in  
3 here that from the public health and safety, I think needs  
4 to be clarified.

5           Whether it's Yucca Mountain or any other  
6 particular geological site, there are some inherent  
7 characteristics of that site that might vary. People look  
8 at salt mines some time ago, and they looked at Yucca  
9 Mountain as the site that has some intrinsic geological  
10 characteristics and barriers, because if not, it would be in  
11 open air.

12           And you raise an issue that I have a problem with  
13 from the standpoint of a public health and safety regulator.  
14 Given a site, if the licensee now decides to improve by  
15 engineered barriers, okay, the public health and safety  
16 considerations by, you know, two orders of magnitude, three  
17 orders of magnitude, and if they do it by six orders of  
18 magnitude, that means that public health and safety impact  
19 will be less, because they actually created a better  
20 barriers.

21           That certainly makes me, as a regulator, feel even  
22 more comfortable because it is improving the bottom line,  
23 the public health and safety.

24           Therefore, I don't see what the fundamental  
25 objection to having engineered barriers that are much better

1 than originally thought, coming in and reducing the public  
2 and safety issue.

3           Would you care to comment to that?

4           MR. LOUX: I think you perhaps have a  
5 misunderstanding of what I said.

6           COMMISSIONER DIAZ: Okay.

7           MR. LOUX: I don't think that there is an  
8 objection to engineered barriers. I don't think there is an  
9 objection to multiple engineered barriers leading to a  
10 greater public health and safety.

11           I'm just asserting to you that the law requires,  
12 in our estimation, that Yucca Mountain be found suitable  
13 without regard, necessarily, to engineered barriers. It is  
14 the geology and the hydrology that has to be the primary  
15 barrier, and, indeed, that is the problem we have right now  
16 with the Department of Energy attempting to make a change to  
17 the siting guidelines, which, as you know, are mostly  
18 geologic and hydrologically driven.

19           If you can do performance assessment, if you can  
20 do performance assessment to lead to a calculation of a  
21 regulatory target at some point in time, then clearly all of

22 the elements that are in the siting guidelines are clearly  
23 subsets of that performance, and you have to understand  
24 those things in order to do performance to begin with.

25 So, it seems to us, and I think the Act and the  
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1 1980 EIS certainly supports it, that the geology has to be  
2 primary barrier in looking how the Yucca Mountain project  
3 has evolved.

4 It's clear that's not the case there any longer.  
5 As I mentioned at the outset, almost 95 percent of the  
6 performance of Yucca Mountain, by DOE's own words, is  
7 captured in the waste package itself, leaving perhaps than  
8 five percent performance attributable to the site itself.

9 So I don't think you have geologic disposal any  
10 longer. You really have an engineered system that you  
11 virtually could take these waste packages, according to DOE,  
12 if they last hundreds of thousands of years, and place them  
13 virtually anywhere.

14 That's not what geologic disposal is. That's not  
15 what the foundation of this program is. It has to be that  
16 the geology is the primary barrier.

17 You make the evaluation of the site based on the  
18 geology, and add the engineering later to provide the kind  
19 of additional protection or redundancy that you spoke of.

20 COMMISSIONER DIAZ: Okay.

21 CHAIRMAN MESERVE: Commissioner McGaffigan?

22 COMMISSIONER MCGAFFIGAN: I would first like to  
23 associate myself with Commissioner Diaz's remarks. I think  
24 you're off in claiming that geology has to be the primary  
25 barrier, if other barriers get to be orders of magnitude --

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1 MR. LOUX: Not from looking at the law. That's  
2 all I look at.

3 COMMISSIONER MCGAFFIGAN: The word, primary  
4 barrier, is in there?

5 MR. LOUX: Yes.

6 COMMISSIONER MCGAFFIGAN: Okay. The no-action  
7 alternative, you know, you're claiming it's unrealistic. I  
8 think the Option 2 or Alternative 2 is probably unrealistic  
9 in the notion that institutional controls fail after 100  
10 years.

11 Would you agree that the preferred action is  
12 unrealistic in assuming institutional controls fail after  
13 100 years at Yucca Mountain?

14 MR. LOUX: Well, if you look at it in the context  
15 of NEPA, the preferred action is the one that you compare to  
16 the no-action alternative, and as a result, I don't think  
17 the same analysis about necessarily the reasonableness or  
18 realistic-ness of -- that test doesn't necessarily apply

19 because it's the preferred action.

20 COMMISSIONER MCGAFFIGAN: I know you're trying to  
21 be legal, but is it realistic that institutional controls  
22 would fail at Yucca Mountain after 100 years, which is what  
23 they have to assume?

24 We're assuming this is a mandate from heaven that  
25 we have to assume institutional controls fail after 100

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1 years at Yucca Mountain. Is that realistic?

2 MR. LOUX: I think that after 100 years, it's  
3 probably not realistic. Probably in a longer period of time  
4 then it might be, but that's not an issue that we've spent a  
5 lot of time looking at.

6 COMMISSIONER MCGAFFIGAN: The trouble with a lot  
7 of this analysis, as I said earlier, is the artificial  
8 nature of it. This is not -- some of these assumptions that  
9 are made, either on the preferred action or on the no-action  
10 alternative, are not assumptions that are realistic in  
11 either case.

12 I can understand why DOE did what it did, in some  
13 sense, because they're being forced to make an unrealistic  
14 assumption about the preferred action, and they say, okay,  
15 well, let's make an equally unrealistic assumption about the  
16 other.

17 MR. LOUX: Well, I suspect that if people have  
18 problem with NEPA and they have to go about the business of  
19 trying to get it modified.

20 COMMISSIONER MCGAFFIGAN: Okay. You mentioned  
21 earlier, and I associate myself with Commissioner Dicus on  
22 transportation. You know, you mentioned ACNW in the context  
23 of transportation, and they have, I think, said to us they'd  
24 like to see more detail on transportation.

25 But the context is that they think there's no

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1 transportation issue, as Commissioner Dicus alluded to.  
2 They feel very strongly that if they -- no radiological  
3 health and safety issue associated with transportation.

4 If that information were properly presented, if  
5 Mr. Garrick and his colleagues believe the mobile Chernobyl  
6 issue, which is constantly trumpeted in the press and  
7 various places around the country, would go away.

8 And so just so you understand that they're coming  
9 at it from a different perspective. That, yes, let's flesh  
10 out transportation, but in order to bury this issue once and  
11 for all --

12 MR. LOUX: Well, I think it's a  
13 mischaracterization to suggest that they fleshed out  
14 transportation. I mean, I think that there is a requirement

15 that DOE has got to identify these routes and have to do the  
16 analysis, whether it be on a sociological perception,  
17 property value basis or whether it happens to be on a public  
18 health basis.

19 I might disagree with you a little bit on the  
20 public health side, but nonetheless, simply to ignore the  
21 issue, simply not to do any analysis or identification at  
22 all is not acceptable.

23 COMMISSIONER MCGAFFIGAN: How many -- if this  
24 document goes forward and is finalized, taking into account,  
25 the comments that various entities are likely to make on it,

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1 and if you don't succeed in the courts in getting it  
2 defeated, how many supplemental EISs do you believe will be  
3 required before the -- or the environmental assessments to  
4 get the job done?

5 MR. LOUX: That's really hard to say, given DOE  
6 and the way they conduct business. Clearly, there is a  
7 contemplated supplement already relative to transportation  
8 in Nevada.

9 DOE, at this point, has made no commitment about  
10 any sort of additional analysis of the national system  
11 whatsoever.

12 I don't think that issue can be covered by some  
13 supplement EA, if you would, from this particular document.  
14 Had they pursued the path we talked about from the outset,  
15 perhaps a programmatic environmental impact statement, then  
16 it might be likely to tier lesser environmental documents to  
17 take a look at the transportation issue from a national  
18 perspective.

19 But right now, it's very difficult for me to see  
20 how the Department of Energy, in the period between the  
21 issuance of the draft Environmental Impact Statement, could  
22 go out now and actually identify these routes and conduct  
23 analysis, and then produce them in the final document. I  
24 don't think that's going to be acceptable either.

25 It seems to me that that analysis has to take

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1 place with a lot more rigor than that kind of process would  
2 allow.

3 But, clearly, there is a need for the Department  
4 of Energy to identify routes, nationally, conduct analysis,  
5 and have them included in an Environmental Impact Statement.

6 And for that reason, if not that one alone, the  
7 document is legally flawed.

8 COMMISSIONER MCGAFFIGAN: Could I ask one last  
9 question? The ACNW also talks to us about the importance of  
10 design flexibility, the ability to change the design over  
11 time.

12           Clearly, license amendments would have to be  
13 submitted to us if design changes were made, and we'd have  
14 to approve them in some sort of formal process.

15           But they believe that once they get into the  
16 Mountain, start building the repository, if that happens,  
17 that we'll learn over a period of decades, and that that  
18 learning has to be fed back into the final actions with  
19 regard to how the rest of the repository is built, and then  
20 how it's closed.

21           Isn't that allowed under NEPA, to go into a  
22 project saying here is our design today, as best we  
23 understand it, and then to make changes over time,  
24 presumably with environmental analysis accompanying the  
25 license amendments, if they're required? Isn't that a -- I

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1 think we do that in other areas.

2           MR. LOUX: Sure. I think I alluded to that  
3 earlier, that I think that's a likelihood. But the design  
4 description that is in the EIS is not anything that's  
5 capable of being analyzed.

6           There are bounding assumptions on either end, but  
7 there is not a final design that's included in the document,  
8 which there has to be, in our minds, to make it legal under  
9 NEPA.

10           As a result, I think that later on, if the DOE  
11 learns more, if, as you suggest, other things come along,  
12 then other modifications to that document can be made  
13 through environmental assessments or other environmental  
14 documents in compliance with NEPA.

15           So I think that process is available, but at this  
16 point, to assert that basically we don't know what the  
17 design is, but we think it falls somewhere in between A and  
18 Z, and so that's what you're left to analyze, simply is not  
19 acceptable, and I don't think that it complies with NEPA, as  
20 well.

21           CHAIRMAN MESERVE: Commissioner Merrifield?

22           COMMISSIONER MERRIFIELD: It's interesting,  
23 listening to your testimony and having read some of the  
24 testimony of the panel that follows.

25           I have a great deal of sensitivity regarding

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1 reactions of the folks in Nevada. I come from New  
2 Hampshire, which was one of the finalists of the East Coast  
3 repository some years ago, so I think that, personally, I  
4 have a high degree of sensitivity of where you all are  
5 coming from.

6           I do want to make a couple of comments, and I've  
7 got two questions. The first one is, given your comments on

8 a no-action alternative, it almost -- I'm also struck that  
9 it's one of these rock-and-a-hard-place situations.

10 Because I think there's been some talk today about  
11 how the current no-action alternative isn't very realistic,  
12 given some of the assumptions out there. And you allude to  
13 the fact that you thought that that wasn't right.

14 But any other alternative would be an action  
15 alternative, so it would seem to me that under NEPA -- I  
16 mean, DOE is constricted by NEPA, the way it currently  
17 stands. Although it seems somewhat unrealistic, given  
18 what's happened, it doesn't seem to me that under NEPA,  
19 there is any other alternative, other than to look at the  
20 no-action alternative that they put in there. So that's one  
21 comment I would leave.

22 The other one is -- actually, I've got a request.  
23 You made some comments relative to your Issue No. 3, the  
24 proposed action is inconsistent with NEPA as it relates to  
25 geologic disposal versus an engineered facility.

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1 I have a request, if you could provide the  
2 specific language within the Nuclear Waste Policy Act that  
3 you were referring to in that respect.

4 MR. LOUX: Sure.

5 COMMISSIONER MERRIFIELD: And also provide some  
6 justification to the Commission for that. You know, I think  
7 our staff is looking at that, and may have some differences  
8 with it, but if you've got a logical argument and have the  
9 citation to that, that's something I certainly would benefit  
10 from.

11 MR. LOUX: I can do that.

12 COMMISSIONER MERRIFIELD: The first question I  
13 have regards the socioeconomic impacts. And this is Issue  
14 No. 12, the fact that it ignores economic impacts to  
15 Nevada's key industry, tourism.

16 I guess that I have visited a number of nuclear  
17 power plants recently, some of which were subject to the  
18 same kind of concerns, if you look back through the history  
19 of this Agency, accusations that placing them in this  
20 specific area might have dramatic impacts on tourism  
21 adjacent to those facilities.

22 North End, Virginia Power Plant, a lovely site  
23 which has very, very expensive homes which have recently  
24 been built next to it seems to go somewhat against that.

25 In addition, obviously Nevada has had a long-time

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1 involvement with the Nevada test site. A number of  
2 activities occurred there over a long period of time, yet  
3 there was still ongoing and very active activity in Las  
4 Vegas, you know, not that far away.

5           So I guess I don't quite understand, you know, the  
6 basis for your analysis that the placement of this material  
7 at that site would have a significant impact on, presumably,  
8 tourism in Las Vegas.

9           MR. LOUX: Well, let me answer that a couple ways:  
10 First of all, I don't think that there is anywhere else in  
11 this country that you can compare to southern Nevada in  
12 terms of the impact of tourism and visitors as they relate  
13 to the local economies and the local infrastructure.

14           I mean, I don't care where you want to talk about,  
15 there is no place like Las Vegas, relative to these kinds of  
16 issues. That's one point.

17           Your second point is that in the era of the  
18 weapons testing days, there certainly was some growth in Las  
19 Vegas, without question. The world has changed dramatically  
20 since the late 70s and early 80s, relative to how the public  
21 views nuclear issues.

22           You'd have to be in a vacuum not to know that, in  
23 fact, the world is upside down at this point. I mean, where  
24 there was widespread support for these kinds of facilities  
25 in the early 70s, there clearly was a major turnaround in

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1 the late 70s and early 80s.

2           That dramatically affects how people view nuclear  
3 facilities. It dramatically affects their view of how they  
4 will visit, retire, relocate, move businesses to places  
5 where there are nuclear facilities.

6           We have got an incredible amount of data that  
7 supports this. I'd be happy to provide you with it, and  
8 show it to you. I think it's irrefutable.

9           The idea that someone could do a socioeconomic  
10 analysis of the southern Nevada area for some project and  
11 not include an analysis of the potential impact on tourism  
12 is simply beyond imagination, at least from my perspective.

13           So we have the data. I can show it to you. I can  
14 clear describe to you, how the situation is far different  
15 today than it was in the 50s, 60s, and early 70s, relative  
16 to weapons testing and the kinds of things that went on in  
17 Nevada.

18           We have data that shows dramatic changes in  
19 people's attitudes from those periods of time through the  
20 early 80s, relative to nuclear facilities. And I think it  
21 actually speaks for itself.

22           But we think that that's an analysis the  
23 Department of Energy should conduct. I think that it's  
24 irresponsible that they have not conducted it. We have a  
25 lot of data, we conducted it and looked at it. It's simply

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1 not that difficult to do.

2 And we have even made that data available to the  
3 Department of Energy. So it's not only a matter of them not  
4 doing it on their own, but it's a matter of them having  
5 available to them, data.

6 And that's not only in this area, whether it be  
7 population data or other data that has been available to  
8 them, data from the local governments which has been  
9 provided to them that they simply did not include.

10 Another failing under NEPA is to not include  
11 information that was readily available to them in terms of  
12 analysis. Another --

13 COMMISSIONER MERRIFIELD: I think that, obviously,  
14 we'll take a look at your testimony and thoughts relative to  
15 that in our review of the EIS.

16 I would say, as an aside, that I think that this  
17 Agency is as qualified as any in terms of understanding the  
18 public impression of nuclear facilities around.

19 The final one I want to focus on is  
20 transportation, as well. Again, you know, Commissioner  
21 Dicus and Commissioner McGaffigan talked a little bit about  
22 it.

23 One of the issues, and, unfortunately, it wasn't  
24 in your testimony today, one of the words that has been  
25 thrown around to some degree by some is referring to the

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1 transportation casks as mobile Chernobyl's. I think this is  
2 inaccurate and unfortunate language. I certainly would want  
3 to make that point on my behalf.

4 I have had detailed briefings from the staff on  
5 how these casks work, and although I'm not the expert that  
6 Commissioner Dicus is, I would share her thoughts that the  
7 way in which these are being portrayed are not at all  
8 associated with the reality and the scientific uses of  
9 these.

10 I would also note, coming from my home state of  
11 New Hampshire where we have Portsmouth Naval Shipyard where  
12 we've had ongoing refueling activities associated with our  
13 nuclear submarine program for over 50 years at this point,  
14 had countless casks that have been shipped via rail through  
15 my home state to an ultimate -- or to a destination in  
16 Idaho.

17 You know, given our long history in the Naval  
18 program with shipping of casks, I'd be interested to see if  
19 you have any information, you know, if you've taken a look  
20 at that, and are making comparisons.

21 It would seem, at least from where I sit, they've  
22 had a pretty good record in terms of shipping that fuel  
23 around, and I certainly think we feel pretty comfortable

24 with the casks and with the way that they are designed and  
25 built.

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1 MR. LOUX: Well, I would agree with you that the  
2 record, to date, looks relatively -- I mean, looks fairly  
3 good. I mean, I don't think there's any argument about  
4 that.

5 The concern that I think we and many others have  
6 with the issue is that you would have as many shipments in  
7 one year of Yucca Mountain's shipping campaign -- in any one  
8 year -- than you'd have in the entire history of shipments  
9 in the country to date.

10 So simply to say, well, we've done it well 3,000  
11 times in the past, but we may do it 100,000 times in the  
12 future, simply is, I think -- I don't think you can simply  
13 sit back and rely on the fact that we've done it well in the  
14 past, means we don't have to be doing -- I mean, we don't  
15 have to really worry about it in the future.

16 I don't think that's a very responsible way to  
17 proceed.

18 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

19 CHAIRMAN MESERVE: Mr. Loux, than you very much  
20 for your comments.

21 MR. LOUX: Thank you.

22 CHAIRMAN MESERVE: Our next panel consists of a  
23 variety of representatives of affected local governments.  
24 Perhaps they could come to the table?

25 [Pause.]

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1 CHAIRMAN MESERVE: Good morning. Gentlemen, we  
2 have allocated, I think, for the four of you, so I think  
3 it's 30 minutes for your presentations. We do -- let me  
4 just say that we all have received your slides, and I'd ask  
5 you to bear in mind the time as you proceed.

6 MR. BAUGHMAN: Thank you, Mr. Chairman. Members  
7 of the Commission, my name is Mike Baughman, and I will  
8 begin the presentation on behalf of the ten affected units  
9 of local government in Nevada and California.

10 Let me begin by just thanking you and the members  
11 for responding to our request that we do have this  
12 opportunity to brief you on our concerns regarding the draft  
13 Environmental Impact Statement.

14 Let me make our intent today very clear: We hope  
15 to influence your comments on the draft Environmental Impact  
16 Statement, and we appreciate the opportunity to do that, and  
17 we think that the NRC actively seeks public input on major  
18 decisions that they make, and certainly your decisions about  
19 what you will say about the DEIS is a very important

20 decision.

21 I would just note also that we had a very  
22 excellent meeting with your staff yesterday, and we have a  
23 good working relationship with the staff, sharing concerns,  
24 issues, and perspective. We hope to continue that.

25 With me at the table today, at the far left, is

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1 Rex Massey. He represents Lander and Churchill Counties,  
2 and he will talk about the DOE EIS process and NEPA process  
3 issues. Les Bradshaw, to his immediate right, is from Nye  
4 County, and Les will talk about technical issues, and  
5 geotechnical issues, in particular.

6 And then to my immediate left is Dennis Bechtel  
7 from Clark County, and he will talk about transportation  
8 issues.

9 All ten affected units of local government have  
10 participated actively in preparing this presentation. They  
11 are all not represented here today, but know that they have  
12 participated with us.

13 You are aware that the counties were designated by  
14 the Secretary of Energy as affected units of local  
15 government, pursuant to the Nuclear Waste Policy Act.

16 We have a fiduciary responsibility under the act  
17 to be involved in this program. We are funded by the U.S.  
18 Congress to do that, and we are expected by our constituents  
19 to represent their interests in terms of protecting the  
20 public health and welfare.

21 You need to know that we are depending upon you as  
22 the regulatory agency to protect the public health, safety,  
23 and welfare.

24 Collectively, we represent over a million and a  
25 half people in the ten counties, and we have -- are in a

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1 region of the United States which has historically been  
2 exposed to a variety of radiologic sources, weapons  
3 programs, low-level waste disposal, and then we have ongoing  
4 transportation.

5 And now that the waste management DEIS is out, and  
6 the Secretary has designated Nevada as one of the national  
7 sites for low-level waste, those shipments will begin to  
8 pick up with earnestness, and we will have a lot more  
9 shipments of low-level waste coming through our state.

10 We are in one of the fastest growing, if not the  
11 fastest growing region of the United States, and by the year  
12 2035, roughly when emplacement may end, we expect to be an  
13 area of about three to four million people. So we represent  
14 a lot of folks who are very concerned about having the risks  
15 of radioactive wastes concentrated from around the nation to  
16 their area.

17           We have done a variety of things which have really  
18 led us to be able to participate today and comment  
19 effectively on the DEIS. I won't belabor all of these, but  
20 just know that we use the resources that are provided to us  
21 to create staffs of very competent folks, to retain  
22 consultants.

23           We have set up advisory committees in these  
24 counties to provide for citizen input, for accessing  
25 technical resources in the community. Many counties have

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1 participated in tours, to really try to understand the fuel  
2 cycle.

3           What is it about this waste? How does it work?  
4 Where is it coming from? In these tours, you need to know  
5 that we are meeting with local people, residents, our  
6 counterparts in those areas, to find out, for example, you  
7 know, how do the people in New Hampshire feel?

8           Now, I have not been to New Hampshire, but you  
9 meet with the county commissioners.

10           COMMISSIONER MERRIFIELD: It's a lovely state, and  
11 I highly recommend you go there.

12           MR. BAUGHMAN: Well, I used to live in  
13 Massachusetts, so I know it's wonderful. But, you know,  
14 visiting Surrey, for example, at that site we meet with the  
15 county commissioners in Surrey. We meet with the local  
16 emergency response personnel, so we have done these things  
17 to really understand, you know, the implications for  
18 coexisting with nuclear facilities.

19           We have made extensive use of our university  
20 system in Nevada. It's a good system, it's growing, and  
21 they have done a lot of technical studies. And I would just  
22 note that I think, collectively amongst the ten counties,  
23 there has probably been on the order of 100 or more  
24 technical studies, various research endeavors undertaken,  
25 all of which are being brought to bear as we speak, to

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1 prepare comments on the DEIS, and to really inform the  
2 process so that we do make good decisions.

3           In particular, the counties have worked hard on  
4 geotechnical and geohydrology. Very noteworthy is the Nye  
5 County Early Warning Drilling Program, and Les Bradshaw from  
6 Nye County can give you some more details on that, if you'd  
7 like.

8           We have done independent risk assessments using  
9 the DOE's Rad Trend Computer Codes, and we have various  
10 hydrologic and socioeconomic assessment things underway.

11           I'm going to skip a few of these, just in the  
12 interest of time. Note that we have provided DOE with

13 copies of technical reports. As Bob Loux indicated, the DOE  
14 requested that we provide them with information, presumably  
15 to help them prepare the DEIS.

16 And this was following scoping. They requested us  
17 to provide the information. I know that in the case of the  
18 counties that I work with, we spent several hours briefing  
19 them, going through these documents, and then gave them a  
20 big stack of documents and computer codes and whatnot, and  
21 encouraged them to use this information in preparing the  
22 draft Environmental Impact Statement.

23 The other counties did the same thing, so DOE has  
24 been provided a wealth of information derived from these  
25 local areas.

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1 We also provided DOE, probably collectively among  
2 the counties, probably over 100 pages of EIS scoping  
3 comments, very specific comments on what needs to be in the  
4 scope of the DEIS. And those comments were substantiated by  
5 this extensive body of research that exists.

6 We are now preparing comprehensive comments to the  
7 DEIS, and I do know -- and I'm just going to provide at this  
8 time -- these are a couple of preliminary sets of comments.  
9 There is a diskette that contains those.

10 I do know that my counterparts from the other  
11 counties are going to be providing the NRC with comments as  
12 well, in advance of the deadline. We encourage you to look  
13 at these.

14 They certainly embellish what we're saying today,  
15 and we certainly encourage you to use these as you see  
16 appropriate, to inform your own comments.

17 With that, I would like to turn this over to Rex  
18 Massey, who will talk about NEPA procedural issues.

19 MR. MASSEY: Good morning. I'm Rex Massey, and  
20 I'm going to talk about some of the procedural requirements  
21 of the EIS. I'll skip over the -- or skip to page 10, and I  
22 will note that your counsel had identified a couple of sites  
23 in there on one of our slides that may not be accurate.

24 But what we were trying to say in those first two  
25 slides is that at first, we were uncertain -- or, let me

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1 reemphasize -- we were uncertain as to what NRC's role was  
2 with the EIS process. I think we're getting a better  
3 understanding of that by talking with staff.

4 And that, secondly, we felt that as an agency that  
5 adopted this EIS, that NRC played an important role in  
6 ensuring that the analysis of the direct and indirect  
7 impacts were thorough, complete, and accurate.

8 On page 10, we had several areas of concern, and I  
9 will mention that they are areas of concern, because,

10 typically, when you go through some of this EIS process, you  
11 bring up all these questions, and it may take you awhile to  
12 sort of evaluate these concerns and decide whether or not  
13 they are valid, or whether or not another opinion exists  
14 that makes sense.

15 So, I'm kind of throwing these out as questions,  
16 more or less to ponder and to think about as we move through  
17 the evaluation of the draft.

18 And several items -- and there are many of them,  
19 and I think you've talked about several of them with Bob  
20 Loux from the State of Nevada, but let me go over these  
21 again:

22 We think the inability to determine potential  
23 impacts associated with long-term performance is an issue  
24 now. We see that there is an incomplete proposed action,  
25 and alternatives. We have some concerns about the

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1 cumulative impact analysis.

2 There was not a selection of a preferred  
3 alternative for the repository design or mode of  
4 transportation in the DEIS, and as we touched on, the DEIS  
5 doesn't adequately address the transportation and  
6 socioeconomic impacts. And we think that there's a failure  
7 to adequately consult with federal, state, and local  
8 agencies and governments.

9 Let me touch on the inability to determine  
10 potential impacts associated with long-term repositories:  
11 What we were looking at there is that this EIS, the  
12 technical information there and the evaluation of how the  
13 site performs, really runs parallel with the TSPVA.

14 And I think that it is fair to say that the  
15 comments and criticisms that were made about the TSPVA and  
16 its ability to predict performance with a comfortable level  
17 of assurance might be somewhat lacking.

18 So if you can't do that now, you really can't come  
19 up and say what the impacts are going to be from a  
20 repository if you don't have something in place at this  
21 point that gives you some assurance of what the long-term  
22 performance of the repository will be.

23 So we take issue with having an EIS that comes out  
24 and concludes that there will not be any significant  
25 impacts.

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1 There are several items related to that on Slide  
2 No. 12; that the regions of influence are too restrictive  
3 and do not include potentially affected areas; the DEIS  
4 methodologies are too restrictive and unable to identify  
5 most indirect impacts; and the cumulative analysis does not

6 consider the collective impact of all actions.

7           And I would note that this is really not part of  
8 my presentation, and I'll step out on a limb here, but I  
9 think it's fair to apply that loss -- if you're going to  
10 apply the loss of institutional control after 100 years to  
11 the proposed action and no-action, then you ought to apply  
12 it and look within the cumulative impacts, if there are  
13 other sources of radiological contamination that you would  
14 lose control of after 100 years.

15           We didn't see that as sort of a parallel  
16 evaluation in the EIS.

17           Some of the recommendations with respect to the  
18 long-term performance assessment: We think that it might be  
19 appropriate to go back and prepare a worst-case scenario for  
20 the gaps in the relevant information of the scientific  
21 uncertainty.

22           We recognize that even at licensing, there might  
23 be some things that we are uncertain about. I think it  
24 would be important to understand under what conditions the  
25 system doesn't work, in a sense, when is it broken? What

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1 are the probabilities of that occurring? And then what  
2 could be the consequences?

3           I think that makes for a better disclosure of  
4 possible impacts. When we get down to it, it may be that  
5 the probabilities of these catastrophic events occurring are  
6 very minimal, but I think it's important that the public  
7 knows that and has a thorough discussion of it.

8           I think it's appropriate and may be appropriate to  
9 reissue the draft EIS, to prepare a supplement when this  
10 essential information becomes available, and that the  
11 methods, models, and data used in the evaluation should be  
12 accepted, defensible, and accurate.

13           Turning to -- and I think you've discussed some of  
14 this on the incomplete proposed action -- but the final  
15 repository design is not known. It is not known whether the  
16 proposed action or the action alternatives are capable of  
17 being implemented, and we don't think one of them can be.

18           The DEIS uses unproven conceptual designs to  
19 evaluate a possible range of impacts. In the EIS they used  
20 the term, conceptual, and I think it's appropriate to use  
21 conceptual when you're building a bridge or you're building  
22 a pipeline.

23           You know you can build the project. But it's  
24 really somewhat inappropriate to use a conceptual concept  
25 when you're not really sure that you can actually build the

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1 project that you're thinking about building.

2           And we saw in the DEIS that the boundary analysis,

3 is, I think, far too often used as a substitute for an  
4 incomplete proposed action, and that if we bound this thing  
5 wide enough, every possible action that may occur down the  
6 road can fall into this boundary.

7 Let me just mention on Slide 15, we've talked  
8 about some of these other things, but the DEIS fails to  
9 include a mitigated action proposal. There is really no  
10 mitigation in the proposed action. There is no committed  
11 mitigation, and, therefore, it's not really mitigation.

12 And I'm going to step out on a limb here a little  
13 bit, and at least give you my personal views. When I read  
14 the mitigation section, I really got the sense that by  
15 adding the engineered barriers that were going to be added  
16 to the repository, are the mitigation. And I just think  
17 that's really part of the design and part of the proposed  
18 action, and it shouldn't really be considered mitigation.

19 But it looks, at least appears in that section, to  
20 me, that that's what DOE is trying to convey.

21 Some of the recommendations on page 16: I'd like  
22 to see the performance assessment models strengthened, and a  
23 near-final design selected. I think it's appropriate when  
24 you go into licensing -- and we've talked a little bit about  
25 flexibility -- that, sure, there can be some changes made,

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1 but they shouldn't be substantial changes. And the design  
2 that is evaluated in the EIS ought to be fairly close and  
3 shouldn't be too far from the final design that may be  
4 licensed.

5 And another issue we found is that we think it's  
6 important as part of the proposed action to include a total  
7 inventory, radiological inventory, that may be placed in the  
8 repository.

9 Right now, this EIS discusses that in cumulative  
10 actions, and I think it may be more appropriate to put it up  
11 into the proposed action and discuss it there.

12 On page 17, I won't talk about the cumulative  
13 impacts anymore, because I think it has been mentioned. On  
14 page 18, I again mention the selection of preferred  
15 alternatives, pointing to the transportation mode.

16 And as you look at the analysis in the EIS, we  
17 think there may be enough difference between rail and truck  
18 transportation to select a preferred mode, and not just  
19 leave that open for any type of transportation mode that DOE  
20 or a private contractor may want to decide is appropriate.

21 On page 19, I won't go into this in too much  
22 detail, and we've already talked about it, transportation,  
23 socioeconomic impacts, and then on Slide 20, I wanted to  
24 mention that we saw failure to adequately consult with

25 federal, state, and local agencies and governments. DOE did

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1 not conduct an effective consultation with federal agencies  
2 having significant or statutory roles in the implementation  
3 of NWPA.

4 DOE did not address the concerns of state and  
5 local governments and agencies, and DOE did not include data  
6 and information collected by local governments for use in  
7 the DEIS.

8 Page 21, some of the recommendations might be that  
9 DOE should engage in meaningful consultation with BLM, DOT,  
10 EPA, and actively pursue comments on the DEIS. And DOE  
11 should conduct meaningful consultations with AULG, and use  
12 recent data collected by the AULG, or where DOE disagrees  
13 with AULG, identify AULG's perspectives as opposing  
14 technical viewpoints. Thank you.

15 MR. BRADSHAW: Thank you. I'm Les Bradshaw.

16 On page 22, we have identified a number of  
17 technical concerns. With the limited time available, I'm  
18 just going to refer to them, and our comments that we will  
19 be submitting will have some detail that your staff can  
20 track down and trace.

21 But cumulative impacts, we just don't think that  
22 the EIS, while the data was easily available, they decided  
23 to stove-pipe the impacts of Yucca Mountain. We cannot  
24 believe that this document came out suggesting no impacts.  
25 That's just wrong.

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1 The waterborne radiologic consequences, we don't  
2 think the DOE used adequate data to support assumptions and  
3 models on the waterborne activity of these radionuclides.  
4 Even now at this moment we have drill rigs working in  
5 Amargosa Valley, trying to help everyone, including the NRC  
6 and WTRB, DOE, itself, the State of Nevada, the AULG, to try  
7 to understand the groundwater flow regime in this area. It  
8 is not known; it is not well known; it is not known well  
9 enough to be able to go forward.

10 The bounding assumptions, a catchword that has  
11 been used here, is very -- we are nervous about that. If  
12 you lived in Amargosa Valley and you these bounding  
13 assumptions made that are going to impact your area and your  
14 life for many generations, you would understand.

15 We believe that DOE should go forward with  
16 adequate data. Addressing a comment that was made earlier  
17 by one of the Commissioners, DOE is under-funded on this  
18 project, as it is. Congress expects DOE to produce  
19 information and data, and DOE has told them that they're not  
20 getting enough money, and so DOE is forced to just go  
21 forward with bounding assumptions.

22           We suggest that DOE shouldn't do that, and that  
23 adequate money ought to be available to them to have the  
24 data that they need to be able to make the assumptions and  
25 do the modeling that's necessary on the regional groundwater

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1 flow patterns.

2           The well concentration amongst the constituents,  
3 we believe that they have not adequately taken into account,  
4 issues such as naturally occurring background materials, the  
5 potential impacts of nuclear activities on the Nevada test  
6 site, the daughter products.

7           And you mix that in with the incompletely  
8 understood groundwater regime, flowing southward from Yucca  
9 Mountain through Amargosa Valley and heading on down south,  
10 we believe the database is inadequate, and the EIS should  
11 not go forward, based on these skimpy databases.

12           We're not suggesting that Yucca Mountain shouldn't  
13 go forward. That's a national issue. We are simply saying  
14 that the data isn't there to make reasonable assumptions  
15 upon which predictions about the behavior of this area for  
16 the next several generations can be made.

17           Some people want to have a planning horizon of 100  
18 years, and some, several thousand years, but in any case,  
19 we're suggesting we shouldn't rush into this with an  
20 inadequate database.

21           I understand the notion of a flexible plan, and  
22 we're not expecting DOE to be able to have every aspect of  
23 this thing down, but additional data could be available and  
24 rather cheaply and it's just a question of spending a little  
25 bit more time at it.

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1           This is not a criticism of DOE's 15 or 18 years of  
2 site characterization. We're simply saying that at this  
3 point, the data should be -- there should be more data upon  
4 which to base these assumptions that have been presented in  
5 the EIS.

6           The uncertainty or risk factors that have been  
7 presented in the EIS, we were nervous the first time we  
8 cracked the cover of this document when they decided to use  
9 the population estimates for Nye county that were based on  
10 the 1990 Census, when, in fact, Nevada is one of the fastest  
11 growing small towns in America.

12           And it has been for that ten-year period since the  
13 1990 Census. That's a well-documented growth of 12-15  
14 percent a year.

15           The Amargosa Valley is growing less rapidly, but  
16 still as an example of the assumptions that are made in the  
17 EIS for predicting the behavior and the conditions around

18 the Yucca Mountain over the next several hundred years, we  
19 are shocked that better data, which was available in the  
20 public domain, wasn't incorporated.

21 We believe that these are fatal flaws, that this  
22 document ought to be revised or upgraded so that the true  
23 impacts can be determined.

24 Just very briefly, on page 29, we've suggested  
25 some recommendations. We always like to come to the table

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1 with a solution to a problem.

2 But our solution is the same as what you're heard  
3 in the past: Revise, augment, redo, this document. It's  
4 just not adequate for the purposes at hand, and we would  
5 urge you and your staffs to carefully look at the comments  
6 that have been coming in on this issue.

7 The document, as you read it, the rationales and  
8 assumptions are obscurely presented, hard to follow. The  
9 basis for the assumptions are oftentimes not readily  
10 graspable.

11 I know there are 40,000 pages of backup documents,  
12 but, I'm sorry, we didn't have time to really work those  
13 pages.

14 The population-based analyses, it's just that they  
15 should start over on that. There's better data available.

16 And the document and DOE in their document, should  
17 just come out and say that they don't have enough  
18 information. It would not be harmful for the nation for DOE  
19 to say at this point that they need more data and that  
20 they're not ready to go forward.

21 Dennis Bechtel from Clark County will now discuss  
22 the transportation issues.

23 MR. BECHTEL: Thank you. I appreciate the  
24 opportunity to be here. We've appreciated, as Mike  
25 indicated, meeting with staff yesterday and sharing a lot of

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1 our more detailed concerns.

2 And as you're aware, we met with the Commission in  
3 March and expressed that transportation was, of course, a  
4 key issue, and I appreciate your questions this morning.

5 I think we feel that the document, to echo Bob  
6 Loux, is inadequate with regard to transportation. I think  
7 it so narrowly defines the role of transportation in the  
8 DEIS that there is really no room to understand whether  
9 there is impact or not.

10 At a minimum, there should be a description of  
11 what the transportation system would be.

12 I think we feel -- I have been a planner for 30  
13 years, an urban planner. And when we do analysis of a 7-11  
14 store, there is more detailed analysis of transportation,

15 potential impacts, than there is in this document.

16 I think, given the fact that this is a major part  
17 of the program, I think the public, nationally, and in  
18 Nevada, is owed the more detailed description of this.

19 We have concern -- by the way, I'm keying on Slide  
20 33 here. That's going to be the emphasis with the time we  
21 have available.

22 I think we feel, on the third bullet there, that  
23 as far as risk, the risk is defined inaccurately and  
24 incompletely. There was a comment earlier about  
25 radiological health risk.

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1 I don't think we, as the public, can assume there  
2 will be no risk. Casks are made by humans.

3 The transport system, by the way, counter to maybe  
4 the experience in New Hampshire, will be a private  
5 contractor, and I think the military does do a good job of  
6 shepherding shipments west. I think it's a little uncertain  
7 how DOE is going to handle it, given a privatized system.

8 We also have concern about just the fact that the  
9 data -- Les and others have mentioned the use of the 1990  
10 Census. Well, if you're evaluating radiological risk,  
11 health risk by 1990 data, in an area such as southern  
12 Nevada, which has almost tripled in size since 1990, that is  
13 unsatisfactory.

14 I might also note that in the case of Clark  
15 County, while they were said they weren't going to evaluate  
16 transportation risks, they had a very detailed analysis of a  
17 road system in southern Nevada, including a beltway system  
18 which, by the way, is not in the federal system.

19 That was funded entirely by local monies. That is  
20 a Clark County road, and I think that had DOE taken the time  
21 to interact with the local governments, I think that would  
22 have been apparent.

23 I think also since routes were mentioned in  
24 Nevada, various modal options, it was incumbent upon them,  
25 we feel, to do some analysis of the routes. If you're going

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1 to list them, that's on somebody's template for future  
2 consideration.

3 So I think the document is inadequate in the sense  
4 that this comparative analysis of routes was not done.

5 Also, to kind of play on -- we've mentioned a  
6 number of cumulative impacts that weren't evaluated. Again,  
7 it's also important to note that the Nevada test site is on  
8 the preferred list for a low-level nuclear waste site, and a  
9 RCRA decision will be out shortly.

10 With regard to transportation, those are thousands

11 of other shipments that will occur today, and also within  
12 the period, should Yucca Mountain open. And that's a  
13 cumulative impact that will affect, being the end of the  
14 funnel, Nevada greatly and that's not evaluated.

15 We also have some recommendations we're offering  
16 on page 38, and like the rest of the counties, we'll be  
17 submitting more detailed comments and hope that you will  
18 take them into consideration when those are submitted.

19 Mr. BAUGHMAN: Let me just quickly close with some  
20 summary conclusions and recommendations:

21 We would, first of all, certainly encourage the  
22 NRC to make comments to the DEIS, to encourage DOE to  
23 prepare a final EIS which is responsive to our concerns,  
24 concerns of the state, of the stakeholders, but one that can  
25 support major federal decisions.

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1 There is probably a suite of about a half a dozen  
2 or more decisions that are presumably going to be made off  
3 of this document.

4 And this is your document as well. As you see it  
5 today, this is your document. You know that it's coming,  
6 and we would assume that you, as well, have to be worried  
7 about whether this document serves your needs.

8 We would encourage you to make better use of local  
9 information. And we will just note that.

10 We've given you comments today, and you're going  
11 to get other comments, but DOE needs to make use of that  
12 information as well. With regard to encouraging DOE to  
13 identify preferred modes and routes for transportation,  
14 that's particularly troublesome to us.

15 If you look at page 398, Section 3211 of the DEIS,  
16 you will see there that they say that site-specific  
17 transportation decisions will be made following a decision  
18 to build the repository.

19 Now, they don't don't define what decision to  
20 build the repository means. If that means granting a  
21 license or receiving a license by the NRC, that means that  
22 you will be making decisions about whether or not to go  
23 forward with this project without the specific information  
24 on transportation, and we find that to be totally  
25 unacceptable.

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1 Now, the NRC should encourage DOE to reduce  
2 uncertainties within the DEIS, and certainly that would  
3 improve the analyses.

4 NRC should encourage DOE to address mitigation and  
5 compensation of impacts. I would underscore the  
6 compensation side of this thing as well.

7 If this is such a good project, and if there are

8 no impacts, then why is that no one else in the nation wants  
9 it? And the reason is because it's not a good project.

10 It's not a project that's good for a community.  
11 It doesn't help a community. It does posit potential  
12 impacts.

13 The preferred action does save the nation  
14 estimated \$25-30 billion if the analyses are correct in the  
15 DEIS. We believe that a portion of that savings that the  
16 nation will garnish should be shared with Nevada.

17 The NRC should encourage DOE to address -- to meet  
18 with affected units of local governments to review comments  
19 to the DEIS and to discuss proposed responses thereto.

20 We would not want to see all of our comments end  
21 up in a generic briefing book that says here's the generic  
22 comment or comment we constructed from 50 other comments;  
23 here's a generic response, and that's the first time we see  
24 how they're going to deal with it.

25 We'd like to sit down with the staff, the DOE

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1 staff, have them discuss with us how they interpret our  
2 comments. They may misinterpret what we're saying.

3 Have them propose to us, how they're looking at  
4 responding to that, and we can discuss that. Clearly, you  
5 know, they're going to have a final decision, but we think  
6 that interaction would be very helpful, and it would produce  
7 a better document for you as the NRC.

8 One comment that's not on here that I must note is  
9 the proposed revisions to 10 CFR 960 and the proposed new 10  
10 CFR Part 963 that DOE has got on the streets right now,  
11 removes the requirement to consider environmental,  
12 socioeconomic and transportation impact issues.

13 And they are proposing to remove that requirement  
14 because they are assuming that that information is  
15 adequately addressed within the draft environmental impact  
16 statement, and subsequently then will be available to the  
17 Secretary to base a site recommendation report upon, and  
18 presumably then available to the NRC through the EIS to base  
19 your own licensing decisions on.

20 We have reviewed this document extensively. We  
21 note that staff's preliminary comments to you, your staff,  
22 have concerns about transportation.

23 We believe that that assumption that the  
24 information is in the DEIS is totally invalid. And so we've  
25 either got to leave those requirements in 10 CFR 960, or

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1 we're going to have to do a better job on the DEIS. Thank  
2 you.

3 CHAIRMAN MESERVE: Thank you very much. I'm sure

4 we all appreciate your comments, and we also appreciate your  
5 offer to provide us with the drafts of the materials that  
6 you've submitted. I can see that we have one set here, and  
7 we'd be happy to receive the others and review those.

8 I have one question that quite frankly has puzzled  
9 me from the review of the slides and the comments this  
10 morning. In fact, those relate to some of the earlier  
11 comments.

12 There is some criticism of the draft Environmental  
13 Impact Statement because it doesn't adequately define the  
14 preferred design, details of the design for potential  
15 repository at the Yucca Mountain site.

16 And as I think some of the questions have  
17 indicated earlier, it's obvious, I think, that from DOE's  
18 point of view, they want preserve as much flexibility as  
19 possible; that they expect they're going to be learning as  
20 time goes on, and that the design will become more refined  
21 as time goes on as they learn.

22 And the question is -- and this really relates as  
23 much, I think, to Slide 14, which Mr. Massey had, which was  
24 if the Environmental Impact Analysis has an adequate  
25 bounding analysis that encompasses all the areas in which

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1 they want to preserve flexibility, isn't that sufficient?

2 You have doubts about whether they have bounded it  
3 adequately because they haven't looked at the data and so  
4 forth, but if they were, in the Environmental Impact  
5 Statement, to have an envelope that encompasses the range of  
6 alternatives that they want to preserve, isn't that  
7 sufficient for this purpose?

8 MR. BRADSHAW: Well, that's exactly what we're  
9 suggesting that DOE ought to do before it comes forward with  
10 a document like this, is to have the database to support  
11 adequate bounding assumptions.

12 And so our story today is that they don't. And so  
13 the dominoes start to tumble from there.

14 We are suggesting that they need to slow down, do  
15 more work, get those database in place so that they can do  
16 adequate bounding assumptions, and then we'll be happy with  
17 the flexibility within that.

18 CHAIRMAN MESERVE: Well, the reason I ask is  
19 because some of the slides suggest that they adequately  
20 define the preferred alternative, and that, independent of  
21 bounding analysis, they haven't been complete, that their  
22 comments and your response suggests that they can preserve  
23 all the flexibility they want, so long as when they do the  
24 analysis, they bound the range of impacts that would arise  
25 from the alternatives they seek to preserve.

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1 Is that fair?

2 MR. BRADSHAW: That would be fair, but, again, at  
3 this point, the uncertainties are so broad and so widespread  
4 and so deeply rooted that it's -- we're suggesting, let's  
5 wait and see until they can make adequate bounding  
6 assumptions before we look at the internal flexibilities.

7 There is no one in the world that wants that  
8 repository safer than this group of counties and the State  
9 of Nevada. Of course, everyone in the country has a stake  
10 in safety, but the down gradient, the hydrologically down  
11 gradient impairs people in the Amargosa Valley and heading  
12 over are the people who are going to have to deal with these  
13 assumptions and these decisions that the nation made.

14 Let's not go forward with poorly defined databases  
15 that support bounding assumptions that make everyone  
16 nervous. What is the problem with waiting and getting that  
17 data?

18 MR. BAUGHMAN: Let me just note as well that this  
19 issue is also linked to mitigation, because if there is so  
20 much flexibility in the design, or you are moving down a  
21 track with a preferred alternative, preferred design  
22 alternative which then suggests certain mitigation measures,  
23 for example, a ventilated repository where we're going to  
24 monitor emissions from that site based upon that assumption,  
25 and you license on that basis.

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1 Or maybe they submit some supplemental data  
2 between now and licensing, they commit to mitigation now for  
3 a ventilated project and we then we go to some other project  
4 that has a different source exposure pathway, we've not come  
5 up with the mitigation for it.

6 And this document is woefully deficient in  
7 mitigation, I would just note. But that's part of the  
8 problem with the uncertainty and just flexibility, is, what,  
9 exactly are we proposing to mitigate for? And what  
10 assurance do we have that the mitigation fits the project?

11 MR. MASSEY: I just wanted to say one thing that I  
12 think Les touched on. Assume that you had a performance  
13 assessment process in place that was acceptable and it was  
14 supported, and then you could take a host of different  
15 designs, plug into that process, predict with some  
16 assurance, what might be the outcome.

17 And then that sets an accurate boundary. But if  
18 you cannot establish an accurate boundary, you, in effect,  
19 don't have a boundary. And I think part of this may relate  
20 back to the idea now that my understanding is that we're  
21 going to think about dropping the hot repository design that  
22 was in the EIS.

23 Well, if we add a system in place, we're able to  
24 evaluate that alternative, we would have been able to say,  
25 well, okay, maybe the hot repository isn't going to work,

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1 and it never would have been proposed as a feasible  
2 alternative. That illustrates, I think, what we're trying  
3 to get at.

4 CHAIRMAN MESERVE: Commissioner Dicus.

5 COMMISSIONER DICUS: Okay. You have heard what I  
6 have to say about transportation, so I won't go into that,  
7 and I do appreciate the issue.

8 Going to the comment made a couple of times that  
9 the DOE did not conduct effective consultations with Federal  
10 agencies and I think you said state and local governments as  
11 well with regard to the NWPA, could you elaborate just a bit  
12 on that, and this is a kind of multipart question or  
13 comment.

14 There is some concern that DOE might have been  
15 consulting with us almost too much, and we were cautious  
16 with that. We tried to have a reasonable barrier there.  
17 But what I would also ask is the NRC consulting in a way  
18 that you think is effective with Federal agencies we must  
19 deal with with this and state and local governments?

20 MR. BECHTEL: With regard to the first part of  
21 your question, Clark County and I know other counties sat  
22 down with the Department of Energy to try to understand how  
23 we could interact during this process. Again, I work for a  
24 planning agency. I have been involved in the development of  
25 the EISs over a number of years and normally there's too

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1 much interaction. You know, we are kind of a data sink.

2 A lot of the concerns we had were because of the  
3 growth of the area and the fact that we wanted to make sure  
4 that -- I mean a lot of the information is actually  
5 non-Yucca Mountain related. It is demographics and where  
6 development is going to occur and we were essentially  
7 rebuffed. I mean we tried but there was no interaction  
8 after that.

9 Mike mentioned the fact that we were then offered  
10 the opportunity to submit what DOE called reference  
11 documents on data, and we did do that, but lo and behold,  
12 they never showed up anyplace, so I don't know. A lot of  
13 the information we tried to convey that we couldn't convey  
14 may be just sitting down, we did try to get, and that just  
15 never happened. I think you can echo that for the rest of  
16 the countries.

17 With regard to the NRC I think recently we have  
18 had some good sit-downs. Mike mentioned the meeting we had  
19 yesterday and there seems to be a desire on the part of NRC

20 to understand our issues. We are concerned you are the  
21 regulatory agency and you are kind of the bottom line, and  
22 we hope that the needs we have and the sensitivity reflects  
23 into, is translated into some comments that make sure that  
24 the EIS, the company's license application is honest.

25 MR. MASSEY: I don't think that we meant to imply

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1 that the consultation between NRC and DOE wasn't occurring,  
2 but we were looking at it more on the fact that in the EIS  
3 there is no, I don't believe there is any cooperating  
4 agencies and typically agencies are cooperating when they  
5 have a statutory rule or function. The Fish & Wildlife  
6 Service might be EPA for certain laws and regulations that  
7 DOE has to demonstrate that they fulfill in their project,  
8 so in that sense -- and we are uncertain whether or not  
9 these agencies have made any comments or have been involved  
10 directly with the EIS. We just don't know what level that  
11 has occurred.

12 I will give you an example. On the  
13 transportation, looking at selecting a possible rail  
14 alternative, most of the lands that a rail alternative would  
15 go over are public lands that are managed by the Bureau of  
16 Land Management, and I don't think there's been any  
17 discussion with the Bureau of Land Management on where those  
18 alternatives may go, and the BLM -- I don't know this, I am  
19 speculating -- the BLM may turn around and say, well, we  
20 like the analysis you did in here, it just isn't our  
21 analysis, and we are going to require you to go back and  
22 relook at these transportation alternatives.

23 CHAIRMAN MESERVE: Commissioner Diaz.

24 COMMISSIONER DIAZ: Thank you, Mr. Chairman.

25 Like all the other Commissioners I really

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1 appreciate the opportunity to interact with you and to  
2 listen directly to your concerns. Obviously you have done a  
3 very good job in looking at the draft Environmental Impact  
4 Statement and to raise some issues and those issues we will  
5 pay attention to.

6 However, I was sitting here and trying to realize,  
7 you know, the multiple issues that the Commission faces and  
8 trying to put them in the context of what is the best thing  
9 for the people of Nevada, which eventually are going to be  
10 the ones that are going to be affected by it.

11 In thinking of this, and in thinking of this and  
12 thinking of many other decisions the Commission have to live  
13 with or activities or problems not only during the last  
14 three and a half years that I have been here but during my  
15 previous lifetime in which I actually worked in the nuclear

16 industry, in academia and so forth, I come with a real  
17 problem, a real concern for the people of Nevada.

18 That is the key issue of reality and perception.  
19 I think it is so important that the people of Nevada be  
20 informed of the reality of the estimates of public health  
21 and safety impacts that they are going to be having. This  
22 includes tourism.

23 I just heard a statement obviously done with great  
24 concern for the people of Nevada that there are 200-300  
25 million curies of radioactive materials migrating from the

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1 Nevada Test Site. If you compare that with the potential  
2 impact of Yucca Mountain it's of course a very small issue.  
3 I mean this is one that is already there. It is already  
4 existing. It is already in the environment.

5 The issue with Yucca Mountain is to try to contain  
6 it and the selection of the site, not by us but by the  
7 Government of the United States and the engineering barriers  
8 are all designed to prevent precisely this millions of  
9 curies or a few curies of radioactivity migrating.

10 So at least for experiences in the last three  
11 years in which well-intentioned public officials make  
12 statement regarding nuclear reactors or the decommissioning  
13 site including one which called a beautiful site/town a  
14 "nuclear dump" of which the public official had to in a few  
15 days land in there with a helicopter and say it is a  
16 gorgeous place to live, great businesses, nice people, and  
17 so forth, but the impact was done, okay?

18 Real estate was affected, not because of a real  
19 problem, not because of a radiological dose that's going to  
20 be there but because the perception that went to the media  
21 that this was a real bad problem.

22 I think you are the very heart of it. You need to  
23 be able to pair reality with perception and although this  
24 might be a problem larger than we envision or DOE envisions,  
25 it has to be something that we do not scare the people of

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1 Nevada beyond what reality is, and I think it is a real role  
2 for the State of Nevada and the local governments that we  
3 can help with. We can try to put things in context, but it  
4 is not just an unbounded issue. The issue has to be bounded  
5 and you have every right to demand that it be bounded, and I  
6 think we are going to work on that, but we think that -- and  
7 allow the media to put limits that really affect the  
8 perception of the quality of life of the people from Nevada  
9 without a real substantive, scientific fact I think is  
10 something that you need to deal with.

11 We are trying to deal with it. I just want you to  
12 know that this is not a minor issue, that your perceptions

13 and the things that get into the press do affect the quality  
14 of life directly now, tomorrow, and the day after, and it is  
15 this balance that needs to be achieved. That's it, Mr.  
16 Chairman.

17 MR. BECHTEL: If I could maybe comment to that.

18 As Mr. Loux indicated, tourism is our bread and  
19 butter, seventy percent of the income of the State of Nevada  
20 and Clark County, and tourism is a very competitive  
21 industry. Part of the concern we have with the DEIS was  
22 they defined economic effects as jobs, and it was purported  
23 as a positive effect, yet there was no analysis of potential  
24 downsides if there was, say, an accident in the middle of  
25 Las Vegas, how the public would react to that.

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1 The other part, one item I didn't mention, there  
2 are many risks out there and I think perception takes on a  
3 reality of the public makes decisions about a potential  
4 risk.

5 I'll give you an example, the city of Santa Fe and  
6 the Comas v. Santa Fe case, which actually the city of Santa  
7 Fe was doing their job as a Government entity and trying to  
8 prevent waste from coming through the community unknowing  
9 what the impact would be.

10 They designated a route and someone -- the courts  
11 decided based on, and this was years before the WIPP  
12 shipments, that in fact that was a taking of that person's  
13 property because of the fact that the public was aware that  
14 this transportation route was going to happen. They offered  
15 a judgment to the individual, which by the way DOE wasn't  
16 sued, it was the city of Santa Fe, so we have to be  
17 concerned as a community for liability but more importantly  
18 people locate in places for reasons of quality of life and  
19 any potential risk -- I mean property is very important to  
20 America, the United States. That is what we are all about,  
21 and any potential effect to that is not a perceived risk.

22 I mean if there is case law out there that  
23 demonstrates an impact, that is reality and that is  
24 something we are very concerned about and very concerned  
25 that the DEIS did not address that.

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1 CHAIRMAN MESERVE: Mr. McGaffigan.

2 COMMISSIONER MCGAFFIGAN: I may come back to that,  
3 but let me just ask, I forget which one of you was hinting  
4 at it, and I may have misperceived, so that is why I am  
5 asking the question. Somebody said something to the effect  
6 I thought that there might be enough in this EIS to chose  
7 between rail and road. I would suspect based on the  
8 analysis in the EIS you would choose rail, but is that, am I

9 perceiving the comment correctly, whichever one of you made  
10 it?

11 MR. MASSEY: Yes, I think you are. I mean you  
12 look at that analysis and is there enough to choose or is  
13 there a big enough difference, and we look at the latent  
14 cancer fatalities and you have three in one instance and  
15 eight or so in another.

16 COMMISSIONER McGAFFIGAN: With regard to  
17 institutional controls, I will take another crack at what  
18 reality means here. I continue to be frustrated by  
19 different assumptions that get forced on people, but we  
20 assume the word "perpetual" institutional controls comes up  
21 in a lot of DOE documents with regard to Hanford or Savannah  
22 River or whatever.

23 EPA and RCRA space essentially assumes perpetual  
24 institutional controls where people come in and check,  
25 because those things have infinite half-lives, so it is a

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1 not uncommon assumption for a lot of work either  
2 radiological or hazardous substances that once you have  
3 concentrated them on the site you assume perpetual  
4 institutional controls.

5 We are obviously not there. We have these  
6 artificial assumptions that come up in both the proposed  
7 alternative and the proposed action in the alternative, but  
8 I will just leave it at that.

9 With regard to radiophobia, which is I think the  
10 issue that Commissioner was trying to deal with, I think I  
11 agree with Mr. Loux that the public probably has become more  
12 concerned about radioactive substances but in all honesty,  
13 you know, following Commissioner Diaz, it is not an informed  
14 judgment. Anybody who is going to travel to Nevada or you  
15 guys came here, you have about four, five millirems, right,  
16 round-trip air ticket. You are going to get far more -- you  
17 know, people love to ski in Aspen. They go from Long Island  
18 to Aspen. They get some number of millirems in the air  
19 travel and then they will get some number of millirems  
20 because Colorado has -- you know, the Colorado plateau is  
21 rich in radium, thorium, uranium, et cetera, and radon and  
22 they will get a lot more than they get in Long Island for  
23 that period that they choose to ski in Colorado or if you  
24 guys have ski resorts I'm sorry, I'm not -- I think of Utah,  
25 Colorado, New Mexico --

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1 MR. BRADSHAW: Nevada skiing is the best in the  
2 world.

3 COMMISSIONER McGAFFIGAN: I understand. I take it  
4 back -- so people are getting dose from naturally-occurring,  
5 as a result of their activities.

6           We don't put up signs "Beware of Moving" -- I will  
7 choose another state -- "Beware of Moving to Colorado"  
8 despite the fact in Colorado you can get naturally-occurring  
9 background radiation. You can get a rem a year, as opposed  
10 to sea-level on one of the coasts where you might get 100  
11 millirems a year from naturally-occurring background, so  
12 what is it that -- if tourism is the heart of the industry  
13 and the biggest threat to you guys would be if people  
14 actually started thinking about radiation comprehensively  
15 and everybody were wearing their own personal dosimeter and  
16 they were really radiophobic, they might not take the  
17 airplane flight. They might not want to go to altitude. I  
18 don't know what the hell they'd do. They might all want to  
19 wear lead clothing, which is slightly impractical.

20           So feeding the radiophobia is, I think, a concern  
21 we have to all have. We have to make these decisions  
22 rationally in the context of everything we know, and not  
23 create problems where there are not.

24           MR. BRADSHAW: Well, then we would say, and we  
25 agree with that, that things ought to be presented

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1 rationally and factually. We would say as to this EIS that  
2 DOE in fact ought to do that. We are all for that, and you  
3 can't do that using 1990 census data, for instance, so  
4 there's nobody that has a greater stake in an informed,  
5 factually cognizant community. We all have to live with it,  
6 but I think we as a nation, perhaps as a group dealing with  
7 this, we have failed to educate people as to what radiation  
8 means, what it is, and so on, but as to this EIS, we say  
9 simply state the facts in a way that people can understand  
10 it, put out your bounding assumptions, put it out so that  
11 people can understand the calculations and so on and the  
12 results, and then let it stand, but we are saying they  
13 didn't do that.

14           CHAIRMAN MESERVE: Commissioner Merrifield.

15           COMMISSIONER MERRIFIELD: Let me start off like my  
16 fellow Commissioners. Thank you for coming here and taking  
17 the time to put together your testimony.

18           I have to say given the amount of time you had,  
19 and the speed at which you went through it, I think in an  
20 articulate, thought-provoking and succinct manner, it  
21 certain is a model I think for something perhaps our Staff  
22 ought to think about once in awhile in terms of presenting a  
23 large volume of material very well in a short period of  
24 time.

25           I did have one question I wanted to direct to Mr.

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1 Massey regarding page 15 of your slides. You talked about

2 the failure of the DEIS to include a mitigation action  
3 proposal and I am wondering if you could talk a little bit  
4 about what you think would be an appropriate -- what should  
5 be in there? What would be an appropriate mitigation action  
6 proposal to be included in the DEIS?

7 MR. MASSEY: I don't know if I can answer that,  
8 because the mitigation is going to follow from the impacts  
9 that are identified in the EIS.

10 I think our opinion today is that DOE didn't do a  
11 very good job at doing that, so I can't presuppose or say  
12 down the road what the impacts ought to be until a thorough  
13 and complete evaluation is done and it is accurate and we  
14 would accept it to be accurate. It's pretty hard to kind of  
15 tell you upfront what the impacts would be and what ought to  
16 be the mitigation for those impacts that we have yet to  
17 determine.

18 COMMISSIONER MERRIFIELD: Thank you. I just, Mr.  
19 Bechtel, we talked a little bit about the Navy, which I  
20 agree with you has a very good record for transporting  
21 materials. My understanding is that the railcars are taken  
22 by private railroads. As far as the truck transportation I  
23 don't know off the top of my head, I don't know if you know  
24 whether those are done by Navy-owned vehicle --

25 MR. BECHTEL: I think they are escorted, whether  
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1 it is train or they have it escorted in some fashion, so  
2 that may be the difference.

3 COMMISSIONER DICUS: Right.

4 MR. BECHTEL: That's the difference.

5 COMMISSIONER MERRIFIELD: Thank you.

6 CHAIRMAN MESERVE: Good. I would like to thank  
7 all of the panelists today for their participation. This  
8 has been very helpful to us.

9 We will be submitting comments as an agency. I  
10 think our deadline is the same as yours in February, I  
11 think.

12 Let me say that all of you, as I think you  
13 understand, should submit your own comments directly to the  
14 Department. This has been helpful to us though in  
15 understanding many of the issues and I appreciate it, so  
16 with that we are adjourned.

17 [Whereupon, at 11:39 a.m., the briefing was  
18 concluded.]