

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: EDO

To: Virgilio, NMSS

AUTHOR: Robert Loux

AFFILIATION: NELSON

ADDRESSEE: Margaret Chu

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DEDMRS
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AO
STP

SUBJECT: Request copy of the DOE report "Preclosure Aircraft Hazard Plan and Map"

ACTION: Information

DISTRIBUTION: RF

LETTER DATE: 08/12/2002

ACKNOWLEDGED No

SPECIAL HANDLING: cc: Chairman Meserve

NOTES:

FILE LOCATION: Adams

DATE DUE:

DATE SIGNED:

Template: SECY-017

E-RIDS: SECY-01



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

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August 12, 2002

Dr. Margaret Chu, Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
Washington, DC 20585

Dear Dr. Chu:

At the July 31, 2002, NRC/DOE Quarterly Management meeting, there was a discussion of a report by DOE called the Preclosure Aircraft Hazard Plan and Map that has already been sent to the NRC, and discussion on a meeting regarding this report to be held on September 17, 2002. The discussion at the Quarterly meeting implied that this report was not available to the State of Nevada or the public and that the upcoming meeting would be closed. As you are aware, Section 117 (a)(1) of the Nuclear Waste Policy Act requires the Department of Energy to provide "timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning..." of a site. (emphasis added)

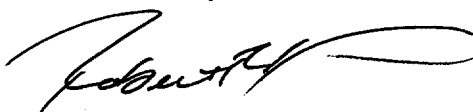
Given President Bush's recent signing into law of the siting resolution passed by Congress, DOE is turning its attention to licensing. As you may know, there are strict regulations prohibiting a license applicant or even one who intends to become a license applicant from certain *ex parte* communications with Nuclear Regulatory Commission personnel. While those regulations may or may not prohibit a closed meeting on September 17 between DOE and NRC, they certainly do embody a policy of openness and transparency with respect to all aspects of licensing and prelicensing, **particularly** with respect to communications between the potential applicant and the Commission. Any purported concern of DOE to protect national security should not be used as an excuse to avoid its duty of full disclosure to Nevada, nor to trump Nevada's right and duty to access relevant information in order to accomplish its oversight role. In the past, before your tenure, DOE has been known to invoke the "national security" mantra on frivolous grounds simply to advance its own agenda. An example of this was its conferring on

itself a "national security" exemption from transportation cask testing requirements with respect to casks intended to transport materials from Rocky Flats, Colorado, to the Savannah River facility in South Carolina. It took a lawsuit to deter DOE from utilizing the questionable casks. With respect to the Yucca Mountain project, should it go forward, the State of Nevada is **at least** as interested as NRC and DOE in assuring that public health and safety are protected at every juncture. In recognition of that fact, Nevada should not be excluded from receiving any documentary materials or attending any meetings with respect to the advancement of the Yucca Mountain project, specifically **including** those whose subject matter deals with security issues.

Therefore, I am requesting a copy of the above mentioned plan and map with the proviso that we will not distribute this material to other parties not involved in the oversight of the Yucca Mountain project. Also, any meeting held on this or similar matters should be open to State participation as part of its statutorily mandated oversight duties and responsibilities. Holding closed meetings regarding any issue involving the Yucca Mountain project is not in keeping with an open and honest process.

Thank you for your prompt attention to this matter. If you have any questions, please feel free to contact me at (775) 687-3744.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a stylized flourish extending to the right.

Robert R. Loux
Executive Director

cc: Senator Harry Reid
Senator John Ensign
Congresswoman Shelley Berkley
Congressman Jim Gibbons
✓ Richard Meserve, Chairman, NRC
Commissioners, Commission on Nuclear Projects