

EDO Principal Correspondence Control

FROM: DUE: 11/02/02

EDO CONTROL: G20020603
DOC DT: 10/21/02
FINAL REPLY:

Representative Shelley Berkley

TO:

Chairman Meserve

FOR SIGNATURE OF :

** PRI **

CRC NO: 02-0683

Chairman Meserve

DESC:

ROUTING:

Failure to Include the State of Nevada and the
Public in Discussions and Decisions Related to
Yucca Mountain Project in Preparation of the
Licensing Application

Travers
Paperiello
Kane
Norry
Craig
Burns/Cyr
Merschhoff, RIV
Reiter, CIO

DATE: 10/22/02

ASSIGNED TO:

CONTACT:

NMSS

Virgilio

SPECIAL INSTRUCTIONS OR REMARKS:

Template: SECY-017

E-RIDS: SECY-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Oct 21, 2002 15:57

PAPER NUMBER: LTR-02-0683 **LOGGING DATE:** 10/21/2002
ACTION OFFICE: EDO

AUTHOR: Shelley Berkley
AFFILIATION: REP
ADDRESSEE: Richard Meserve

SUBJECT: Express concern about the Department of Energy and the NRC's failure to include the State of Nevada and the American public in discussions and decisions related to the Yucca Mountain Proj as DOE prepares its lic appl for submission to the NRC

ACTION: Signature of Chairman
DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 10/21/2002

ACKNOWLEDGED: No

SPECIAL HANDLING: Commissioner Offices should search office files for documents in response to this request.

NOTES: EDO should make the FOIA Branch aware of this request.....COMMISSION CORRESPONDENCE

FILE LOCATION: Adams

DATE DUE: 11/04/2002 **DATE SIGNED:**

EDO --G20020603

SHELLEY BERKLEY
1st DISTRICT, NEVADA

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WASHINGTON, DC 20515
202-225-5965

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Congress of the United States
House of Representatives
Washington, DC 20515-2801

October 21, 2002

The Honorable Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Dear Chairman Meserve,

I am extremely concerned about the Department of Energy (DOE) and the Nuclear Regulatory Commission's (NRC) apparent failure to include the State of Nevada and the American public in discussions and decisions related to the Yucca Mountain Project as DOE prepares its licensing application for submission to the NRC.

Planning a permanent nuclear waste repository has unprecedented ramifications for the State of Nevada and the United States, and the law¹ mandates that DOE and NRC keep the State of Nevada apprised of all meetings or contacts affecting the Yucca Mountain project. However, DOE has not fully abided by its obligations.

For example, on September 10, 2002, Gordon Pedersen on behalf of DOE addressed the Nuclear Technical Review Board. In the context of a discussion on the design of proposed multiple small surface facilities at Yucca Mountain, he stated that the design information had been presented to the NRC and that several meetings with the NRC were planned to discuss it. Also at that meeting, Dr. Margaret Chu, DOE Director of the Office of Civilian Radioactive Waste Management, distributed a handout in which she stated that DOE had made commitments to the NRC in the areas of roles, responsibilities, authority, and accountability; quality assurance program; project procedures; corrective action program; and safety-conscious work environment.

In addition, on July 31, 2002, discussion during an NRC/DOE Quarterly Management meeting referred to a DOE report on *The Predisclosure Aircraft Hazard Plan and Map* that DOE had sent to the NRC but withheld from the State of Nevada. Promptly after the July 31 meeting, Nevada's Agency for Nuclear Projects sent a letter to Dr. Margaret Chu, DOE's head of the Yucca Mountain project, with a copy to you, urging that Nevada be allowed to participate in the meeting scheduled for September 17. To this date, Nevada has not even received the courtesy of a reply to this request.

¹ The Nuclear Waste Policy Act, Section 117, regarding Consultation with State and Affected Indian Tribes, states that: "The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a state shall provide to the governor and legislature of such State, and to the governing body of any affected Indian tribe, 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 such repository."

The above examples represent alarming instances of DOE and NRC's failure to provide the State of Nevada and the public notice, and opportunity to attend meetings between NRC and DOE.

As such, I respectfully request an unexpurgated copy of any and all correspondence, working papers, documents, notes, transcripts memorializing any meetings, contractor, departmental or interdepartmental memoranda or other records in whatever form, including but not limited to, electronic transmissions, relating in whole or in part to pre-licensing and licensing communication between DOE and NRC with regard to the Nuclear Waste Policy Act and the Yucca Mountain Project. The answer to this request should include at a minimum:

1. A list of all public or private management meetings, technical exchange meetings, and site visits between DOE and NRC employees over the last three years;
2. Detailed minutes of any such meetings;
3. Any written materials exchanged or discussed at such meetings;
4. An articulation of any decisions, commitments or agreements made between NRC and DOE at such meetings or elsewhere.

I would also like to request that NRC provide me and the State of Nevada advance notice of at least 14 days, by fax, phone and email, of any planned meeting between DOE and NRC staffs relating to any aspect of the Yucca Mountain project, including its evaluation, performance assessment, technical issues or anticipated licensing.

In addition, for those future meetings between representatives of NRC and DOE to which the State of Nevada is not invited to attend, please provide me with:

1. Identification of the subject matter of such meetings, and the reason why DOE and NRC staff consider Nevada's attendance inappropriate; and
2. Notice sufficiently in advance of such meeting to permit Nevada to have an opportunity to assess the reason for its exclusion, and to take appropriate action if it deems it necessary.

This request is for my official use and is not aimed at fulfilling any specific individual constituent request. I look forward to hearing from you. Should you have any questions, please contact me, or Leonor Tomero or Joe Morana of my staff, at (202) 225-5965.

Sincerely,



SHELLEY BERKLEY
Member of Congress

Cc: The Honorable Hubert T. Bell, Inspector General, U.S. Nuclear Regulatory Commission
The Honorable David M. Walker, Comptroller General, General Accounting Office
The Honorable Kenny Guinn, Governor, State of Nevada
The Honorable Frankie Sue Del Papa, Attorney General, State of Nevada
Bob Loux, Director, Nevada Agency for Nuclear Projects