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March 18, 1986

Mr. Robert E. Browning, Director
Nuclear Regulatory Commission
Waste Management Division
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Browning:

Enclosed please find copies of three Resolutions recently considered and approved by the Nevada Commission on Nuclear Projects. They include:

- 1) A Resolution regarding the timing of the preliminary determination of suitability as required by Section 114 (F) of the Nuclear Waste Policy Act.
- 2) A Resolution regarding the need to establish strict federal liability for any accident in the transportation and storage of high-level radioactive waste.
- 3) A Resolution regarding the issue of Nuclear Waste Funds for judicial review.

I hope that you will find these Resolutions informative. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert Loux
Executive Director

(F) (H)

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RRL/sjc

Enclosures (3)

WM Record File
102.3

WM Project 11
Docket No. _____
PDR ✓
LPDR ✓

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PDR WASTE PDR
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**RESOLUTION
TIMING OF THE
PRELIMINARY DETERMINATION OF SUITABILITY**

Whereas; The Nuclear Waste Policy Act of 1982 requires in Section 114 (f), that "...the Secretary (of Energy) shall consider as alternate sites for the first repository to be developed under this subtitle three candidate sites with respect to which (1) site characterization has been completed under Section 113; and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated under Section 112 (a)"; and

Whereas; The U.S. Department of Energy has stated its intention in its final Mission Plan, in its draft Project Decision Schedule, in presentations before the Nuclear Regulatory Commission, in testimony before several congressional committees, and in numerous public presentations, that the Secretary of Energy will make the "preliminary determination of suitability," as required by Section 114 (f) of the Nuclear Waste Policy Act of 1982, prior to site characterization; and

Whereas; Governor Bryan, the entire Nevada congressional delegation, the Attorney General and other State officials have expressed concern over the U.S. Department of

Energy's stated intentions regarding the timing of the Secretary's preliminary determination of suitability; and

Whereas; Should the Secretary make the aforementioned determination of suitability prior to site characterization, that determination will be made without detailed technical information concerning sites recommended for characterization while actual characterization could result in only one or perhaps no sites being found suitable for development as a repository; and

Whereas; The Nuclear Waste Policy Act clearly requires that the preliminary determination of suitability be made after site characterization is completed in order to ensure that the Secretary, in recommending a single site to the President for the first permanent repository, can recommend a single site from at least three sites that have been found to be preliminarily suitable; and under the Nuclear Waste Policy Act; and

Whereas; Only the Nuclear Regulatory Commission can make the final determination of site suitability through its licensing process.

Therefore be it resolved that:

The Commission on Nuclear Projects urges that Congress require the Secretary of Energy to make the preliminary determination of suitability, as required by Section 114 (f) of the Nuclear Waste Policy Act, at the end of site characterization; and

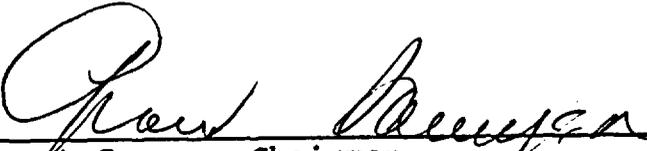
Be it further resolved that:

The Commission on Nuclear Projects requests that the Secretary of Energy make the aforementioned determination after site characterization; and

The Commission on Nuclear Projects recommends that the Governor of the State of Nevada not conclude any written agreement with the U.S. Department of Energy, as referred to in Section 117 (b) of the Nuclear Waste Policy Act, unless the Secretary of Energy agrees to make the aforementioned determination after site characterization is completed; and

The Commission on Nuclear Projects recommends that the Attorney General bring legal action against the U.S. Department of Energy, should the Secretary of Energy make the aforementioned determination prior to site characterization; and

Be it further resolved that copies of this Resolution be transmitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Secretary of Energy, all members of the Nevada congressional delegation, the Governor, the Attorney General of the State of Nevada, and the Chairman of the Legislative Study Committee.

Signed: 
Grant Sawyer, Chairman
Commission on Nuclear Projects

**RESOLUTION
REGARDING FEDERAL LIABILITY
FOR THE
TRANSPORTATION AND STORAGE OF HIGH-LEVEL
RADIOACTIVE WASTE**

Whereas; The U.S. Department of Energy, pursuant to the provisions of the Nuclear Waste Policy Act of 1982, has notified the Governor that Nevada contains a "potentially acceptable site" for a high-level radioactive waste repository; and

Whereas; The U.S. Department of Energy in its draft Environmental Assessment has indicated a strong preference for continued study of the "potentially acceptable site" in Nevada at Yucca Mountain; and

Whereas; There is considerable uncertainty regarding who is liable currently for any accident that might occur in the transport and storage of high-level radioactive waste materials or in the continued study of potentially acceptable sites; and

Whereas; The transportation and storage of high-level radioactive waste materials is the responsibility given to the Federal Government by the Nuclear Waste Policy Act of 1982, which also gives the Federal Government title to such materials; and

Whereas; A single state and its local governmental entities will bear the burden of high-level radioactive waste storage for the entire nation; and

Whereas; In recognition of this uncertainty, federal responsibility and unique burden, the National Governors Association, the National Association of Attorneys General, the National Conference of State Legislatures, and the Nevada State Legislature have adopted Resolutions calling for the establishment of strict liability by the Federal Government for any accident that might occur in the transportation and storage of high-level radioactive waste materials; and

Whereas; The Governors of Nevada, Washington and Texas, three states having "potentially acceptable sites" within their borders, have agreed to four principles, which must be included in any federal legislation regarding liability for high-level radioactive waste accidents, including (1) the establishment of strict federal liability, (2) the commitment to fully compensate victims of accidents, (3) adoption of a simple, direct method of compensation, free of red tape, and (4) that state and local governments will be held completely harmless; and

Whereas; The U.S. Congress is considering new legislation regarding liability for high-level radioactive waste accidents.

Now therefore be it resolved that:

The Commission on Nuclear Projects fully endorses and supports the Resolutions passed by the aforementioned organizations and endorses and supports the four principles agreed to by the Governors; and

The Commission on Nuclear Projects urges the U.S. Congress to incorporate these principles into any legislation it adopts to establish liability for high-level radioactive waste accidents; and

Be it further resolved that:

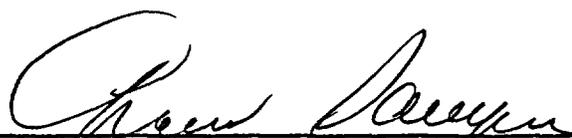
The Commission on Nuclear Projects recommends that the Governor and/or Legislature issue a "notice of disapproval" as provided for in Section 116 (b) (2) of the Nuclear Waste Policy Act should the site in Nevada be selected as the site for a high-level radioactive waste repository and Congress has not established strict federal liability for any accident that results from the

transport and storage of high-level radioactive waste materials; and

Be it further resolved that:

Copies of this Resolution be transmitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Secretary of Energy, all members of Nevada's congressional delegation, the Governor and Attorney General of the State of Nevada, the Chairman of the Legislative Commission and the Chairman of the Legislative Study Committee.

Signed: _____


Grant Sawyer, Chairman
Commission on Nuclear Projects

RESOLUTION
USE OF NUCLEAR WASTE FUNDS FOR JUDICIAL REVIEW

WHEREAS, subsections 116 and 117 of the Nuclear Waste Policy Act established the right of the State of Nevada to participate in the federal program for the siting of a repository for the disposal of high-level radioactive waste, and

WHEREAS, subsection 119 provides for judicial review of final federal agency decisions and actions, failure to act or make a decision, any environmental impact statement or environmental assessment, and

WHEREAS, the opinion entered by the Ninth Circuit Court of Appeals in State of Nevada, ex rel., Robert R. Loux, Director of the Nevada Nuclear Waste Project Office v. John Herrington, Secretary of the United States Department of Energy, recognized that Nevada was "entitled to the broadest possible rights and opportunities to participate...that Congress intended the generator-fed Nuclear Waste Fund, not the State, to pay the costs of any state 'participation,'" and

WHEREAS, the Department of Energy has taken the unreasonable position that the State is not entitled to expend grant funds for purposes of judicial review, and

WHEREAS, if the Department of Energy's position is not opposed, the independent oversight role envisioned by Congress for candidate States will be diminished contrary to the Nuclear Waste Policy Act as construed by the Ninth Circuit Court of Appeal's opinion,

NOW, THEREFORE, BE IT RESOLVED:

That the Commission on Nuclear Projects recommends that the Agency for Nuclear Projects resist with all means available the implementation of the Department of Energy's position to restrict the use of grant funds from the Nuclear Waste Fund for judicial review.

BE IT FURTHER RESOLVED THAT:

Copies of this Resolution be transmitted to the President of United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Secretary of Energy, all

members of the Nevada congressional delegation,
the Governor, the Attorney General of the State of
Nevada, and the Chairman of the Legislative Study
Committee.

Signed: 
Grant Sawyer, Chairman
Commission of Nuclear Projects