

DEC - 2 1985

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT  
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CLERK, U.S. COURT OF APPEALS

STATE OF NEVADA, ex rel.,  
ROBERT R. LOUX, DIRECTOR OF PHS  
NEVADA NUCLEAR WASTE PROJECT  
OFFICE,

CA NO. 84-7846

Petitioner,

vs.

JOHN HERRINGTON,\* Secretary of the  
United States Department of Energy

Respondent.

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OPINION  
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On Petition for Review under the  
Original Jurisdiction of  
the Court of Appeals

Argued and Submitted August 12, 1985 - San Francisco, California

Before: MERRILL and FARRIS, Circuit Judges, and JAMESON,\*\*  
District Judge.

FARRIS, Circuit Judge:

STATEMENT OF THE CASE:

Nevada seeks funding of technical studies designed to  
evaluate whether its Yucca Mountain site should be used as a  
nuclear waste repository. Nevada also seeks a judgment declaring  
unlawful the Department of Energy's revised Internal General  
Guidelines on Nuclear Waste Repository Program Grants. This case

\*Secretary John Herrington is substituted for his predecessor  
pursuant to Federal Rule of Appellate Procedure 43(c).

\*\*The Honorable William J. Jameson, Senior United States District  
Judge for the District of Montana, sitting by designation.

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1 is a direct appeal from the Secretary of Energy's final decision  
2 to deny funding for Nevada's FY 1985 expenditures on Yucca  
3 Mountain studies. See 42 U.S.C. § 10139(1)(A).

4 The Nuclear Waste Policy Act of 1982 (NWPAct), Pub. L. No. 97-  
5 425, Jan. 7, 1983, 42 U.S.C. §§ 10101-10226, provides that state  
6 activities related to the selection and construction of a high-  
7 level nuclear waste repository will be funded out of the Nuclear  
8 Waste Fund, which is derived from a levy on nuclear waste  
9 generators and owners. A state first becomes eligible for funding  
10 when it is notified by DOE that it contains a potential repository  
11 site. See § 116(c)(1)(A), 42 U.S.C. § 10136(c)(1)(A). Nevada has  
12 been so notified. The Act then requires the Secretary to nominate  
13 at least five sites as suitable for "site characterization"--i.e.,  
14 detailed research of the geologic conditions surrounding the site-  
15 -accompanied by an environmental assessment. See § 112, 42 U.S.C.  
16 § 10132. After public hearings and state and Indian tribe input,  
17 the Secretary must recommend three of these sites to the  
18 President. § 112(b)(1)(B), 42 U.S.C. § 10132(b)(1)(B). The  
19 President may approve or disapprove the recommendations within 60  
20 days. § 112(c)(1), 42 U.S.C. § 10132(e)(1).

21 The Secretary has not yet nominated any sites, even though he  
22 has taken the discretionary step of issuing nine draft  
23 environmental assessments on potential sites in six states. These  
24 drafts indicate that three sites are likely to be nominated to the  
25 President later this year; Yucca Mountain in Nevada is listed as  
26 the most likely site for approval.

1 On September 17, 1984, Nevada applied for a grant from the  
2 Fund for proposed hydrologic and geologic studies of the Yucca  
3 Mountain area. On December 13, DOE refused to fund these studies,  
4 amounting to a disputed sum between \$1.5 and \$2.2 million. DOE  
5 relied on the authority of its Internal General Guidelines, which  
6 seek to "minimize" primary data collection by states and limit  
7 state evaluation of any primary data already collected by DOE.

8 The next day, Nevada timely filed its petition for review to  
9 this court, see 42 U.S.C. § 10139(c), first seeking a preliminary  
10 injunction which we denied on December 19, and then asking for  
11 approval of its grant request and a declaration that the  
12 Guidelines are unlawful.<sup>1</sup>

13 I. Standard of review.

14 In reviewing the Guidelines, we do not "simply impose [our]  
15 own construction on the statute, as would be necessary in the  
16 absence of an administrative interpretation. Rather, if the  
17 statute is silent or ambiguous with respect to the specific issue,  
18 the question for the court is whether the agency's answer is based  
19 on a permissible construction of the statute." Chevron, U.S.A.,  
20 Inc. v. NRDC, Inc., 104 S. Ct. 2778, 2782 (1984); see General  
21 Electric Uranium Mgmt. Corp. v. United States Department of  
22 Energy, 764 F.2d 896, 898 (D.C. Cir. 1985) (reviewing Nuclear  
23 Waste Policy Act); State of Washington, Dept. of Ecology v. EPA,  
24 752 F.2d 1465, 1469 (9th Cir. 1985). The "considerable weight"  
25 given an agency's interpretation of its own regulations is  
26 heightened when the agency is implementing, as here, a new

1 statute. See Udall v. Tallman, 380 U.S. 1, 18 (1965); NRDC, Inc.  
2 v. Train, 510 F.2d 692, 706 (D.C. Cir. 1975).

3 We "must, however, reject administrative constructions of a  
4 statute that are inconsistent with the statutory mandate or that  
5 frustrate the policy that Congress sought to implement." United  
6 States v. Louisiana-Pacific Corp., 754 F.2d 1445, 1447 (9th Cir.  
7 1985); see Bureau of Alcohol, Tobacco and Firearms v. Federal  
8 Labor Relations Authority, 464 U.S. 89, 97 (1983).

9  
10 II. Is the state entitled to funding of its pre-site  
characterization activities?

11 Nevada seeks funding of all activities "relevant" to the  
12 purposes of the NWPA--so long as they do not "unreasonably  
13 interfere" with DOE's activities--during the period preceding the  
14 selection of Nevada for site characterization activities.

15 A. The purposes of the Act.

16 The findings and general purposes of the NWPA support funding  
17 of pre-site characterization activities. Cf. Complaint of McLinn,  
18 744 F.2d 677, 683 (9th Cir. 1984) ("a liberal construction of the  
19 statute is indicated by its declaration of policy"). The statute  
20 declares that the costs of nuclear waste disposal "should be the  
21 responsibility of the generators and owners of such waste," 42  
22 U.S.C. §§ 10131(a)(4), 10131(b)(4)--and at the same time, state  
23 and public participation in the planning of waste sites "is  
24 essential [to] promote public confidence," 42 U.S.C.  
25 § 10131(a)(6). Taken together, these dual purposes show that  
26 Congress intended the generator-fed Nuclear Waste Fund, not the  
state, to pay the costs of any state "participation"--such as

1 evaluative testing--in the choice of sites. The independent  
2 oversight and peer review which only the states are poised to  
3 provide would immeasurably "promote public confidence" in general  
4 and among Nevada residents in particular.

5 These studies would also promote the statutory purpose of  
6 "provid[ing] a reasonable assurance that the public and the  
7 environment will be adequately protected from the hazards posed by  
8 high-level radioactive waste," 42 U.S.C. § 10131(b)(1). When the  
9 statute repeatedly states that the protection and confidence of  
10 the public are goals of the NWPA, *see id.*; 42 U.S.C.  
11 § 10131(a)(1), (4), (7), we must conclude that Congress  
12 contemplated funding independent state studies even if they are  
13 instituted prior to formal site characterization.

14 As the Act recognizes, the dangers inherent in nuclear waste  
15 disposal mandate a close, independent scrutiny of DOE's siting  
16 decisions. Some of the nuclear isotopes involved will generate  
17 intense radioactivity and heat for tens of thousands of years.  
18 The site which is ultimately selected must therefore remain secure  
19 for the indefinite future. Cursory evaluation of potential sites  
20 today can result in heightened danger and potentially prohibitive  
21 control costs tomorrow.<sup>2</sup>

22  
23 B. The structure of the Act.

24 Funding is also supported by the principle that a "statute  
25 should be construed so as to avoid making any word superfluous."  
26 *E.g., United States v. Handy*, 761 F.2d 1279, 1280 (9th Cir. 1985);  
*Yamaguchi v. State Farm Automobile Insur. Co.*, 706 F.2d 940, 946

1 (9th Cir. 1983). The statute's core funding provision,  
2 § 116(c)(1)(A), requires grants "to each State notified under  
3 subsection (a) for the purpose of participating in activities  
4 required by sections 116 and 117 or authorized by written  
5 agreement." (Emphasis added); see 42 U.S.C. § 10136(c)(1)(A).  
6 But other provisions already specifically require grants to states  
7 when the President has chosen a candidate site, § 116(c)(1)(B),  
8 when the Nuclear Regulatory Commission has authorized  
9 construction, § 116(c)(2)(A), and when the state and DOE have  
10 entered into a written cooperative agreement, § 117(c). 42 U.S.C.  
11 §§ 10136(c)(1)(B), 10136(c)(2)(A), 10137(c). To avoid treating  
12 section 116(c)(1)(A) as superfluity, it must be read as a catch-  
13 all provision that authorizes funding in other circumstances not  
14 already specifically "required by sections 116 or 117 or  
15 authorized by written agreement."

16 Section 116(c)(1)(A) thus provides a basis for funding  
17 Nevada's proposed studies, if those studies would be essential to  
18 an informed "statement of reasons explaining why [the state]  
19 disapproved the recommended repository site." § 116(b), 42 U.S.C.  
20 10136(b)(2). That statement of reasons is "required by section  
21 116." Hence, subject to certain limitations, the studies must be  
22 funded in compliance with § 116(c)(1)(A).<sup>3</sup>

23 DOE argues that Congress only intended to trigger federal  
24 funding after a state has entered the site characterization phase.  
25 To authorize funding prior to site characterization, DOE contends,  
26 "would clearly divert moneys from the Nuclear Waste Fund to

1 premature site characterization activities on sites which might  
2 not become candidates at all."

3 This argument, perhaps valid in some circumstances, is  
4 inapposite here. DOE's own press conferences and draft  
5 environmental assessments list Yucca Mountain as the most likely  
6 site for the repository, thus minimizing the danger that funding  
7 for Nevada's studies will be "wasted." More important, DOE's  
8 argument misses the point of the NWPA. Congress intended all the  
9 costs of nuclear waste disposal to be "the responsibility of the  
10 generators and owners of such waste." 42 U.S.C. §§ 10131(a)(4),  
11 10131(b)(4). The statute thus provides funding for evaluating all  
12 three of the sites nominated for site characterization--despite  
13 the fact that only one of the three sites will ultimately become  
14 the national repository. See 42 U.S.C. §§ 10132(c), 10134. By  
15 the same token, when an informed "statement of reasons" for  
16 disapproving a recommended site requires that studies be initiated  
17 now, the costs of those studies must be borne by the Nuclear Waste  
18 Fund--even though a state may never have to file such a statement  
19 of reasons because the state is later eliminated from contention.  
20 In the context of developing repositories for waste from nuclear  
21 defense activities, Congress has authorized funding for state  
22 studies as soon as they have been notified that they host a  
23 potential site. See 42 U.S.C. § 10121(b). Because the statute  
24 declares that the states' participation rights for defense waste  
25 repositories are "identical to" those at issue here, *id.*, federal  
26 funding was intended to be available under § 116(c)(1)(A) even  
before site characterization has begun.

1 Our interpretation of the statute is supported by the  
2 legislative history of the Senate predecessor bill, which  
3 indicates that states "should be entitled to the broadest possible  
4 rights and opportunities to participate in the development of the  
5 facilities . . . . The Committee expects this fundamental  
6 principle to govern any interpretation, including judicial  
7 interpretations . . . . " S. Rep. No. 282, 97th Cong., 1st Sess.  
8 28 (1981). Furthermore, the fact that § 116(c)(1)(A) was added in  
9 the final conference committee deliberations to a bill that  
10 throughout several versions had provided only for post-site  
11 characterization, see § 116(c)(1)(B), 42 U.S.C. § 10136(c)(1)(B),  
12 indicates that § 116(c)(1)(A) was intended to fill the gap and  
13 supply funding prior to site characterization, rather than merely  
14 repeat the specific funding authority already set out by other  
15 provisions. The amendment specifically excludes from federal  
16 funding "any salary or travel expense that would ordinarily be  
17 incurred by such State." § 116(c)(1)(A), 42 U.S.C.

18 § 10136(c)(1)(A). This language suggests by negative implication  
19 that other state expenses required by sections 116 or 117--such as  
20 testing expenditures--are to be funded by the Nuclear Waste Fund.  
21

22 Of course, the state is not entitled to carte blanche access  
23 to the Nuclear Waste Fund. The only pre-site characterization  
24 activities that may receive funding are those essential to an  
25 "informed" statement of reasons for disapproving a site under §  
26 116(b). § 116(c)(1)(B) already authorizes funding for "any  
monitoring, testing, or evaluation" after site characterization

1 has begun. If § 116 (c)(1)(A) is to have any independent effect,  
2 it must authorize only those studies which, to be available in  
3 time to contribute to the state's notice of disapproval, must be  
4 begun prior to site characterization. Therefore, pre-site  
5 characterization activities may only receive funding if their  
6 contribution to the state's notice of disapproval depends on their  
7 being initiated prior to site characterization.

8 Congress has limited funding under a consultation-cooperation  
9 agreement to only such "reasonable independent monitoring and  
10 testing" which "shall not unreasonably interfere with or delay  
11 onsite activities." See § 117(c)(8), 42 U.S.C. § 10137(c)(8). As  
12 Nevada concedes, this provision indicates that Congress only  
13 intended to fund "reasonable" state testing that would not  
14 "unreasonably interfere with or delay" DOE's activities.  
15 Therefore, any pre-site characterization activities conducted  
16 before a state has entered into a consultation-cooperation  
17 agreement must be "reasonable"-- scientifically justifiable and  
18 performed by demonstrably competent contractors -- and cannot  
19 unreasonably interfere with or delay DOE's own activities.

20  
21 III. Review of the site characterization Guidelines.

22 Apart from the question whether the statute authorizes  
23 funding for pre-site characterization activities, both parties  
24 petition us to decide whether the Guidelines are consistent with  
25 the statutory scheme of funding available after a state has  
26 reached the site characterization stage. Before deciding this

1 issue, however, we must determine whether Nevada has standing and  
2 whether the issue is ripe for adjudication.

3 A. Standing.

4 Nevada arguably lacks standing to contest the Guidelines  
5 governing the site characterization phase because 1) Nevada has  
6 not yet entered the site characterization stage, and 2) the  
7 Secretary may never even recommend the Yucca Mountain site in  
8 Nevada for site characterization. On the other hand, DOE has  
9 already denied funding for Nevada's proposed FY 1985 studies, by  
10 first categorizing those studies as Phase III site  
11 characterization studies, and then applying the Phase III  
12 Guidelines to deny funding. Thus, Nevada has suffered "some  
13 actual or threatened injury" as a direct result of DOE's own  
14 application of the Phase III Guidelines. See Valley Forge  
15 Christian College v. Americans United for Separation of Church and  
16 State, Inc., 454 U.S. 464, 472 (1982). It would be disingenuous  
17 for DOE to argue that Nevada lacks standing to challenge the very  
18 guidelines that DOE has chosen to apply to Nevada.

19 Because Nevada has alleged "personal injury" that is "fairly  
20 traceable" to the challenged conduct and "likely to be redressed  
21 by the requested relief," see, e.g., Allen v. Wright, 104 S. Ct.  
22 3315, 3325 (1984); Price v. State of Hawaii, 764 F.2d 623, 630  
23 (9th Cir. 1985), the state has standing to challenge DOE's Phase  
24 III site characterization Guidelines.

25 B. Ripeness.  
26

1 Similar reasoning indicates that Nevada's challenge is ripe  
2 for adjudication. The "basic rationale" of the ripeness doctrine  
3 is to prevent courts from "entangling themselves in abstract  
4 disagreements over administrative policies, and also to protect  
5 the agencies from judicial interference until an administrative  
6 decision has been formalized and its effects felt in a concrete  
7 way by the challenging parties." Pacific Gas & Electric Co. v.  
8 State Energy Resources Conservation and Development Comm'n, 461  
9 U.S. 190, 200 (1983) (quoting Abbott Laboratories v. Gardner, 387  
10 U.S. 136, 148-49 (1967)). The question of ripeness turns on "the  
11 fitness of the issues for judicial decision' and 'the hardship to  
12 the parties of withholding court consideration.'" 461 U.S. at 201  
13 (quoting Abbott Laboratories, 387 U.S. at 149).

14 Consistent with the trend in favor of reviewing even policy  
15 statements and informal positions, letters, or announcements, see  
16 4 K. Davis, Administrative Law Treatise § 25.16 at 411 (2d ed.  
17 1983), we will review the challenge to DOE's Guidelines. The  
18 validity of the Phase III Guidelines is a purely legal issue  
19 involving a reading of congressional intent rather than complex  
20 factual questions. See Pacific Gas, 461 U.S. at 201; Abbott  
21 Laboratories, 387 U.S. at 149. Second, the Guidelines bear  
22 hallmarks of finality, an element of ripeness that the Supreme  
23 Court has viewed in a "pragmatic way." Abbott Laboratories, 387  
24 U.S. at 149. While not formally adopted by DOE under the  
25 Administrative Procedure Act, the Guidelines were issued in both  
26 draft and revised form to all relevant states and Indian tribes,  
and in DOE's own words, "express the administrative construction

1 of the NWPAs that subsequently formed the basis for DOE's partial  
2 denial of Nevada's grant request." Compare with Administrative  
3 Procedure Act, 5 U.S.C. §§ 551(4), (13) (agency action includes  
4 "an agency statement of general or particular applicability and  
5 future effect designed to implement, interpret, or prescribe law  
6 or policy") (cited in Abbott Laboratories, 387 U.S. at 149).

7 Because the Guidelines by their own terms "are intended to assist  
8 field offices by establishing a single framework within which  
9 grants can be negotiated and awarded," (emphasis added), they can  
10 be viewed as "a definitive statement of the agency's position."  
11 See Air California v. United States Dept. of Transp., 654 F.2d  
12 616, 620 (9th Cir. 1981).

13 Even if the Guidelines are viewed "as a statement only of  
14 [DOE's] intentions," they are eligible for review. See, e.g.,  
15 Abbott Laboratories, 387 U.S. at 150, citing Columbia Broadcasting  
16 System v. United States, 316 U.S. 407, 418-19 (1942); K. Davis,  
17 supra, at § 25.15 (collecting cases). Their effect on the state's  
18 testing activities is "direct and immediate," see Air California,  
19 654 F.2d at 621, discouraging the state from embarking on the  
20 lengthy and detailed independent site studies that would allow it  
21 to fully evaluate DOE's conclusions. The state must therefore  
22 choose now between "disadvantageous compliance and risking  
23 sanctions," K. Davis, supra, at § 25.13; see Abbott Laboratories,  
24 387 U.S. at 152--to either restrict its testing to those forms  
25 which would be funded under the Guidelines even though its  
26 evaluation of DOE's studies would thereby be impaired, or perform  
such testing at its own expense. Resolution of the Guidelines now

1 will foster, rather than impede, effective administration of the  
2 Fund by DOE, see State of Texas v. United States Department of  
3 Energy, 764 F.2d '278, 283 (5th Cir. 1985), since DOE's decision to  
4 fund the states' ongoing budget requests will necessarily be  
5 controlled by the challenged Guidelines.

6 In sum, although Nevada has not yet entered the site  
7 characterization stage, it has already suffered a direct and  
8 immediate injury from DOE's application of its formal, final  
9 Guidelines. Furthermore, because DOE has indicated in both its  
10 draft environmental assessments and in public statements that  
11 Nevada's Yucca Mountain site is likely to top the list of sites  
12 recommended for site characterization in fall of 1985, a challenge  
13 to those Guidelines is ripe for review.

14  
15 C. The Guidelines unduly restrict the state's statutory  
16 rights.

17 Nevada challenges two clauses in the Guidelines. These  
18 declare that "duplication of data collection efforts and  
19 associated activities should be minimized to the maximum extent  
20 practicable and avoided if at all possible," and that Nevada may  
21 "receive funding to run independent tests on DOE data, where the  
22 need for such independent testing can be justified." The first  
23 clause minimizes primary data collection by the state; the second  
24 clause requires DOE approval before a state may obtain funding for  
25 any tests--even though those tests are confined to primary data  
26 already collected by DOE.

1 This interpretation of a state's statutory rights is unduly  
2 restrictive. Section 116(c)(1)(B)'s mandatory language provides  
3 that the Secretary "shall make grants to each state . . . to  
4 engage in any monitoring, testing, or evaluation activities with  
5 respect to site characterization." 42 U.S.C. § 10136(c)(1)(B)  
6 (emphasis added). As the legislative history indicates, these  
7 grants "extend[] to all activities undertaken under this  
8 subtitle," H.R. Rep. No. 785, 97th Cong., 2d Sess. 72 (1982); the  
9 House reports impose no limitation on the state's funding of the  
10 type adopted in the Guidelines. See H.R. Rep. No. 491, Pt. 1,  
11 97th Cong., 2d Sess. 55 (1982), reprinted in 1982 U.S. Code Cong.  
12 & Ad. News 3821. See also § 117(c)(8), 42 U.S.C. § 10137(c)(8)  
13 (state may conduct "reasonable independent monitoring and testing  
14 of activities on the repository site" pursuant to a written  
15 agreement during the site characterization stage).

16 By "minimizing" independent collection of primary data, and  
17 then restricting state tests of primary data that DOE has  
18 collected, the Phase III Guidelines eviscerate the independent  
19 oversight role that Congress envisioned for the states.

20 Permitting DOE to "guard the chicken coop" alone would violate the  
21 statutory finding that state participation and oversight of DOE is  
22 "essential in order to promote public confidence in the safety of  
23 disposal of [nuclear] waste." § 111(a)(6), 42 U.S.C.

24 § 10131(a)(6).

25 The Secretary's construction of § 116(c)(1)(B) is  
26 inconsistent with the statutory mandate and a frustration of  
congressional policy. See Louisiana-Pacific Corp., 754 F.2d at

1 1447. Consistent with its duties under a consultation-cooperation  
2 agreement, see § 117(b) & (c)(8), 42 U.S.C. § 10137(b) & (c)(8),  
3 DOE must fund relevant site characterization activities which are  
4 reasonable, scientifically justifiable, and performed by  
5 demonstrably competent contractors, and which would not  
6 unreasonably interfere with or delay DOE's own activities.

7  
8 **IV. Conclusion.**

9 The findings and general purposes of the statute support  
10 funding of the state's pre-site characterization studies. In  
11 addition, because such backup studies are essential to the  
12 "statement of reasons" that must accompany the state's disapproval  
13 of a site recommendation, see § 116(b), the studies are "required  
14 by § 116" and therefore fundable under the catch-all provision of  
15 § 116(c)(1)(A).

16 Because DOE's Guidelines seek to "minimize" independent  
17 collection of primary data, and require DOE approval before any  
18 federally-funded tests can be run on the primary data that DOE has  
19 collected, they undermine the independent oversight role that  
20 Congress envisioned for the states. Nevada is entitled to funding  
21 of its relevant pre-site characterization activities subject to  
22 the limitations defined herein. The sections of the Guidelines  
23 which govern site characterization are unlawful.

24 **REVERSED AND REMANDED.**  
25  
26

FOOTNOTES

1           <sup>1</sup>DOE does not argue that its denial of funding is not a  
2 "final decision", subject to review under 42 U.S.C. § 10139(a).  
3 This case involves a denial of funding with an immediate, direct  
4 impact on Nevada's activities, see infra sections III A and B,  
5 rather than the choice of a potential site which the Fifth Circuit  
6 has recently held to be unripe for judicial review. See State of  
7 Texas v. United States Department of Energy, 764 F.2d 278 (5th  
8 Cir. 1985).

9           <sup>2</sup>Nevada's studies can only contribute to the success of DOE's  
10 site evaluation program. If Nevada confirms DOE's conclusions,  
11 DOE will be better able to make its case before the Nuclear  
12 Regulatory Commission in future licensing proceedings under  
13 § 114(d) of the NHPA, 42 U.S.C. § 10134(d). If Nevada discovers  
14 significant flaws in DOE's findings, DOE could turn its attention  
15 to other sites and cut short the expenditure of money, time, and  
16 manpower for the evaluation of a site which would later turn out  
17 to be unsuitable. Cf. General Electric Uranium Mgmt. Corp. v.  
18 United States Dept. of Energy, 764 F.2d 896, 898 (D.C. Cir. 1985)  
19 (explicitly applying policy considerations to resolve statutory  
20 ambiguity in NHPA).

21           <sup>3</sup>Congress recognized the importance of such studies in  
22 another context, where the statute authorizes funding of  
23 "reasonable independent monitoring and testing of activities on  
24 the repository site" when provided for by written agreement  
25 between the state and DOE. See § 117(c)(8).

26           Although the state relies heavily on sections 116(c)(1)(B)  
and 117(c)(1) and (8), which indicate that "monitoring, testing,  
or evaluation activities" are eligible for funding, these  
provisions by their express terms are only applicable once a state  
has been chosen for site characterization or has entered into a  
written agreement with DOE. Because Nevada has not entered the  
site characterization stage and has not sought to enter into an  
agreement with DOE, it cannot invoke these provisions to fund its  
pre-site characterization activities.