

APR 8 1988

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NOTE TO BJY

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NOTE TO: B. Joe Youngblood, HLOB/DHLWM

FROM: John J. Linehan, HLOB/DHLWM

SUBJECT: MARCH 30, 1988 MEETING WITH ON-SITE REPRESENTATIVE AND
MARCH 31, 1988 NNWSI TPO MEETING

On March 30 I met with Paul Prestholt to discuss changes I had made to the on-site representative Position Description and corresponding changes to Prestholt's critical elements. The revisions, which Prestholt agreed with, more clearly reflect the duties and responsibilities of the on-site representative.

On March 31 I attended as an observer the monthly NNWSI TPO meeting. The meeting started with a talk by Ed Kay who focused on the priority of QA. He indicated that QA was the No. 1 priority of DOE and that, as DOE had committed to NRC, DOE would have a qualified QA program in place prior to any ESF pre-work or any other new work. He told the TPOs and DOE staff to refocus and reprioritize their work, if necessary, to arrive at a fully qualified QA program. He expected a fully qualified QA program by the end of the year. He also gave a date of May 1st for issuance of a draft Mission Plan Amendment.

Carl Gertz followed Kay and reemphasized the importance of QA - "It's Not Data Unless NRC Says It's Data." He also indicated that MACTEC was on board as a QA consultant and discussed the process and schedule of the peer review of the Szymanski Report. Selected handouts from presentations by Gertz and other DOE and contractor presentations, including those on the SCP completion schedule and evaluation of NRC point papers, are enclosed.

Carl Johnson, State of Nevada, provided me with a copy of a recent State lawsuit against BLM (enclosed) over the right of way BLM granted to DOE for site characterization activities.

John J. Linehan, HLOB/DHLWM

Enclosures:

1. Selected handouts from TPO meeting
2. State of Nevada Lawsuit

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

*received
with letter
Hob. 4/8/88*

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**QUALITY ASSURANCE MUST BE EMPHASIZED IN
ALL OUR ACTIVITIES**

**PHILOSOPHY: IT'S NOT DATA UNLESS NRC SAYS
IT'S DATA**

**EXEMPLARY SCIENCE WITH POOR DOCUMENTATION
IS USELESS IN THE LICENSING ARENA**

**WE MUST HAVE AN NRC "APPROVED/QUALIFIED"
PROGRAM IN PLACE AS SOON AS POSSIBLE**

BACKGROUND OF CONCERNS ON ALTERNATE GEOHYDROLOGICAL MODELS

- **JERRY DISCUSSED HIS CONCERNS WITH PROJECT PERSONNEL BEGINNING IN 1984**
- **JERRY COMMENTED EXTENSIVELY ON THE SCP AS A PART OF HIS PROJECT RESPONSIBILITIES (1986-1987)**
 - **THERE WERE DIFFERING STAFF OPINIONS ON A COMPLEX HYPOTHESIS ABOUT NATURAL PROCESSES AT YUCCA MOUNTAIN**
- **JERRY WAS REQUESTED BY MEMO ON NOVEMBER 2, 1987 TO PROVIDE DRAFT REPORT TO DOE MANAGEMENT**

THE PROJECT PEER REVIEW TEAM CONSISTS OF A CROSS-SECTION OF TECHNICAL PERSONNEL WITH EXPERTISE IN THE DISCIPLINES COVERED IN THE DOCUMENT

● THESE AREAS INCLUDE

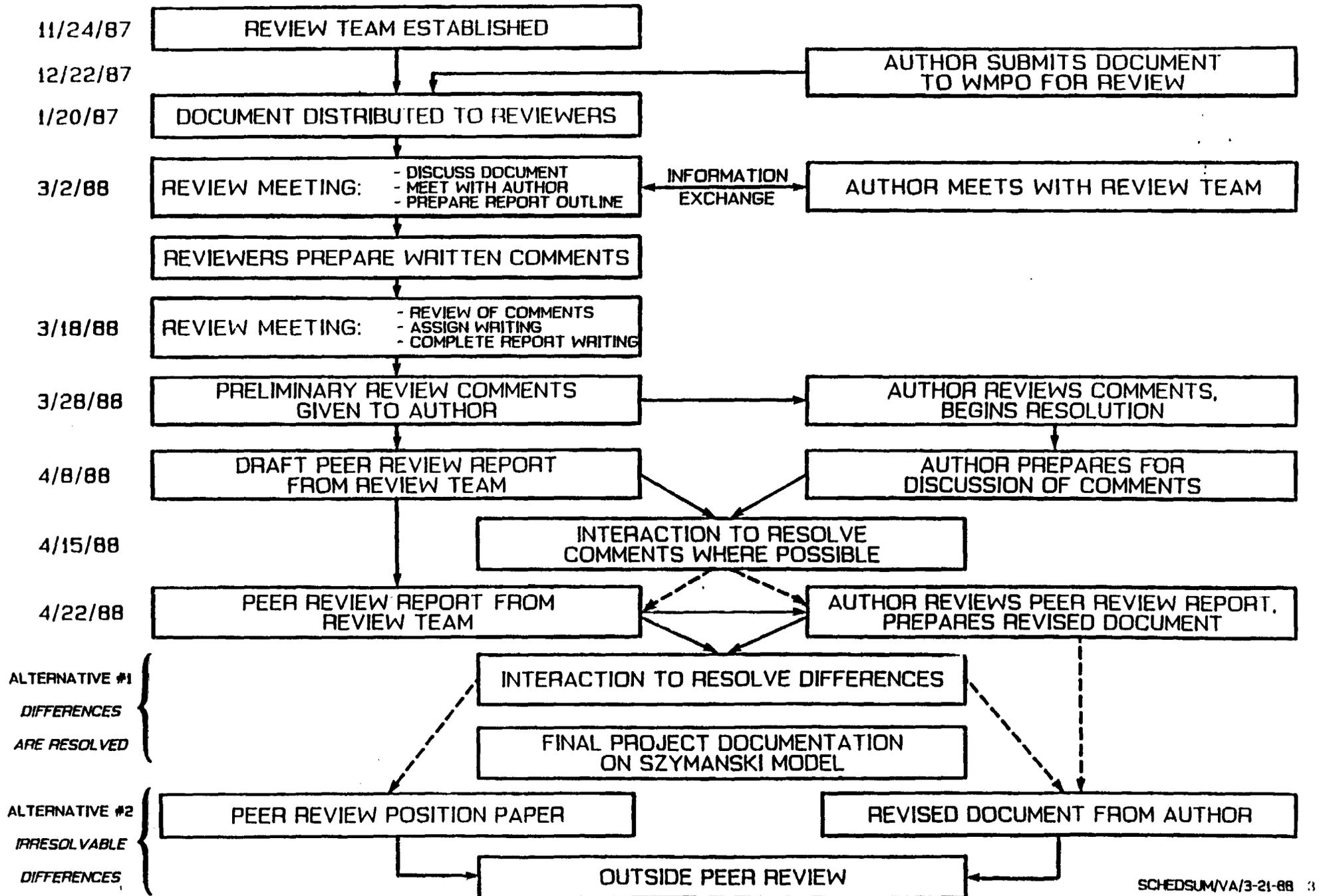
- HYDROLOGY
- TECTONICS
- ROCK MECHANICS
- GEOCHEMISTRY
- MODELING
- PERFORMANCE ASSESSMENT

● REPRESENTATIVES OF THE PROJECT PARTICIPANTS ARE INVOLVED IN THE REVIEW:

- USGS - 7 REVIEWERS
- LANL - 5 REVIEWERS
- SNL - 7 REVIEWERS
- SAIC - 5 REVIEWERS

● REFERENCE VERIFICATION BEING CONDUCTED BY GEOTECHNICAL STAFF FROM SAIC TO CHECK THE ACCURACY OF THE REFERENCE LIST, AND VERIFY THE VALIDITY OF REFERENCE CITATIONS IN THE DOCUMENT

SUMMARY OF SCHEDULE



CONCLUDING REMARKS

- **THE REPORT CONTAINS SOME IDEAS THAT ARE NOT WELL DEVELOPED IN OUR SITE CHARACTERIZATION PLAN**
- **WHEN WE ASKED FOR THE REPORT IT WAS OUR INTENT TO REVIEW IT, ASSESS THE VALIDITY OF THE MODEL IT PRESENTS, AND WHERE POSSIBLE TO PERFORM CALCULATIONS TO TEST THE CONCLUSIONS**
- **IT REMAINS OUR INTENT TO PROVIDE TECHNICAL COMMENTS TO THE AUTHOR TO ASSIST HIM IN DEVELOPING A FINAL DOCUMENT THAT IS TECHNICALLY CREDIBLE AND REPRESENTS THE BEST TECHNICAL JUDGEMENT OF THE PROJECT. IT FURTHER IS OUR INTENT TO ACCOMMODATE THE AUTHOR'S CONCERNS IN THE SITE CHARACTERIZATION PLANNING PROCESS**
- **NRC LETTER DATED MARCH 15, 1988 SUPPORTS DOE'S APPROACH TO SIMULTANEOUSLY CONDUCT SURFACE-BASED TESTING AND UNDERGROUND TESTING**

NRC REVIEW OF SCP/CD MARCH 1988

- **NRC STAFF REVIEWED THE YUCCA MOUNTAIN SCP CONSULTATION DRAFT AND IDENTIFIED, THROUGH POINT PAPERS:**
 - 1) **5 OBJECTIONS (NRC RECOMMENDS THAT DOE NOT START WORK UNTIL RESOLVED)**
 - 2) **108 COMMENTS (NEED ATTENTION, BUT NOT FATAL)**
 - **3 COMMENTS APPEAR TO BE INCONSISTENT WITH REGULATIONS AND COULD BECOME OBJECTIONS**
 - 3) **48 QUESTIONS (MISSING INFORMATION, INCONSISTENCIES, ETC.)**
- **NRC AND DOE STAFF MET MARCH 21-24, 1988, TO DISCUSS NRC CONCERNS**

OBJECTION 1

THE SCP/CD DOES NOT IDENTIFY THE FULL RANGE OF ALTERNATIVE CONCEPTUAL MODELS THAT IS CONSISTENT WITH THE EXISTING DATA FOR THE SITE. THUS, ALL INVESTIGATIONS NEEDED TO DISTINGUISH AMONG THE VARIOUS MODELS MAY NOT HAVE BEEN IDENTIFIED.

RESPONSE

- o SELECTING A PREFERRED MODEL IS CONSISTENT WITH SYSTEMS APPROACH (PERFORMANCE ALLOCATION).
- o THE FULL RANGE OF CREDIBLE CONCEPTUAL MODELS WILL BE IDENTIFIED IN THE SCP, INCLUDING RATIONALE WHY SPECIFIC MODELS WERE SELECTED AS PREFERRED.
- o TESTING PROGRAM WILL BE ANALYZED TO ENSURE IT ADDRESSES CREDIBLE MODELS.
- o A MEETING WITH THE NRC TO DISCUSS ALTERNATIVE CONCEPTUAL MODELS HAS BEEN SCHEDULED FOR APRIL 11-14, 1988.

OBJECTIONS 2, 3 AND 4

THE SCP/CD RAISES CONCERNS WITH THE EXPLORATORY SHAFT FACILITY:

- o THE PROPOSED SHAFT PENETRATION INTO THE CALICO HILLS UNIT AND THE HORIZONTAL DRIFTING, IF IT WERE TO OCCUR, MAY HAVE SIGNIFICANT NEGATIVE IMPACTS ON THE WASTE ISOLATION CAPABILITY OF THE SITE.
- o THE SCP/CD DOES NOT INCLUDE THE CONCEPTUAL DESIGN INFORMATION NEEDED TO ALLOW EVALUATION OF THE POTENTIAL INTERFERENCE OF PROPOSED INVESTIGATIONS.
- o THE SCP/CD DOES NOT ADEQUATELY CONSIDER THE POTENTIALLY ADVERSE IMPACTS THAT COULD RESULT FROM THE PROPOSED LOCATIONS OF THE EXPLORATORY SHAFTS IN AREAS THAT MIGHT BE SUBJECT TO EROSION AND FLOODING.

RESPONSE TO QUESTIONS 2, 3 AND 4

- o THE SCP/CD WAS PUBLISHED BEFORE COMPLETION OF THE PERFORMANCE ANALYSIS AND TITLE II DESIGN OF THE EXPLORATORY SHAFT. THIS FACT WAS DISCUSSED WITH NRC MANAGEMENT.
- o THE SCP WILL INCLUDE A PERFORMANCE ANALYSIS THAT WILL ADDRESS THE CONCERNS ABOUT SHAFT LOCATIONS AND POTENTIALLY ADVERSE IMPACTS.
- o THE SCP WILL BE ACCOMPANIED BY TITLE I ESF DESIGN AND ELEMENTS OF TITLE II DESIGN THAT ARE IMPORTANT TO HEALTH AND SAFETY, OR TO WASTE ISOLATION.
- o ESF DESIGN HAS BEEN A TOPIC OF INTERACTIONS WITH THE NRC AND WILL BE PROPOSED AS A POTENTIAL TOPIC FOR CONTINUED INTERACTION WITH THE NRC.

OBJECTION 5

THE SCP/CD REFERENCES QA PLANS AND PROCEDURES FOR DOE AND ITS CONTRACTORS THAT ARE CURRENTLY UNDERGOING REVISION, HAVE NOT ADDRESSED OUTSTANDING NRC COMMENTS, OR HAVE NOT UNDERGONE NRC STAFF REVIEW. THUS, DATA COLLECTED UNDER THESE EXISTING PROGRAMS MAY NOT BE USABLE IN LICENSING.

RESPONSE

- o THE DOE FULLY INTENDS TO HAVE APPROVED QA PLANS IN PLACE BEFORE COMPLETION OF THE SCP.
- o THE NNWSI QA PLAN HAS RECENTLY BEEN REVISED IN RESPONSE TO NRC COMMENTS. OTHER PROJECT PARTICIPANT QA PLANS HAVE BEEN, OR WILL BE, SUBMITTED TO THE NRC.
- o A DOE/NRC MEETING IS CURRENTLY SCHEDULED FOR MARCH 18, 1988, TO DISCUSS THE NNWSI QA PLAN.

FIRST MAJOR CONCERN

THE SCP/CD'S INTERPRETATION OF THE TERM "SUBSTANTIALLY COMPLETE CONTAINMENT" AND THE THREE DESIGN OBJECTIVES FOR PERFORMANCE OF THE WASTE PACKAGE AND FOR RADIONUCLIDE RELEASE FROM THE ENGINEERED BARRIER SYSTEM ARE INCONSISTENT WITH THE NRC'S INTENT AND INAPPROPRIATE TO GUIDE THE WASTE PACKAGE TESTING AND DESIGN PROGRAM

RESPONSE

- o THE REQUIREMENT IN 10 CFR PART 60 DOES NOT EXPRESS A QUANTITATIVE INTERPRETATION OF THE MEANING OF "SUBSTANTIALLY COMPLETE CONTAINMENT."
- o A PRELIMINARY SET OF DESIGN OBJECTIVES IS USED IN THE SCP/CD TO GUIDE THE EARLY STAGES OF SITE CHARACTERIZATION TESTING.
- o REFINEMENT OF DESIGN OBJECTIVES WILL BE THE SUBJECT OF FUTURE DOE/NRC INTERACTIONS.

SECOND MAJOR CONCERN

THE SCP/CD DOES NOT INCLUDE DETAILS OF THE IN SITU TESTING FOR PROPOSED SEAL DESIGN CONCEPTS. IN SITU TESTING TO EVALUATE SEAL COMPONENTS AND PLACEMENT METHODS WOULD NOT START UNTIL AFTER SUBMISSION OF THE LICENSE APPLICATION.

RESPONSE

- o THE SEALS TESTING PROGRAM IS BASED ON THE ASSUMPTION OF NEGLIGIBLE WATER INFLUX UNDER ANTICIPATED CONDITIONS. IF NOT CONFIRMED, THEN AN IN SITU SEALS TESTING PROGRAM WILL BE IMPLEMENTED.

- o THE DOE EXPECTS THAT TESTING OF THE SEAL DESIGN CONCEPTS WILL CONTINUE AFTER LA SUBMITTAL; UP TO 50 YEARS MAY PASS BEFORE THE SEALS ARE INSTALLED, AND DESIGN COULD CHANGE.

THIRD MAJOR CONCERN

THE PERFORMANCE CONFIRMATION PROGRAM HAS NOT BEEN ADEQUATELY DEFINED, AND APPROPRIATE DETAILS ARE NOT INCLUDED IN THE SCP/CD. THE DISCUSSION CONCERNING CONFIRMATION, ISSUE 1.7, HAS NOT PRESENTED THE STRATEGY OR A PLAN TO MEET THE REQUIREMENTS SET FORTH IN SUBPART F OF 10 CFR PART 60.

RESPONSE

- o DOE'S PERFORMANCE CONFIRMATION STRATEGY IS TO ACQUIRE BASELINE INFORMATION ON SITE CHARACTERISTICS AND CONDITIONS AS REQUIRED BY SUBPART F.

- o DISCUSSIONS IN THE SCP WILL BE EXPANDED. A NUMBER OF TESTING ACTIVITIES CONDUCTED TO DEVELOP THE BASELINE WILL BE CONTINUED DURING CONSTRUCTION AND OPERATIONS TO CONFIRM THE ASSUMPTION.

3/31/88

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PM/TPO MEETING

OVERVIEW OF THE NRC POINT PAPERS ON THE SCP/CD

- o A WORKSHOP WAS HELD WITH THE NRC THE WEEK OF MARCH 21-24, 1988, TO ALLOW THE DOE TO DEVELOP A THOROUGH UNDERSTANDING OF THE NRC CONCERNS

- o DOE TECHNICAL STAFF ASKED CLARIFYING QUESTIONS OF THE NRC TECHNICAL STAFF THAT REVIEWED THE SCP/CD

- o NRC STAFF WERE VERY HELPFUL IN CLARIFYING THEIR CONCERNS AND PROVIDING FURTHER EXPLANATIONS ABOUT SCP/CD TOPICS THAT WERE CONFUSING OR NOT WELL INTEGRATED

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PM/TPO Meeting

PRELIMINARY ASSESSMENT OF THE POTENTIAL EFFECTS OF NRC COMMENTS

- o **POTENTIAL FOR CHANGES IN THE SCOPE OF SITE CHARACTERIZATION ACTIVITIES**

- o **POTENTIAL FOR REDIRECTION OF REPOSITORY PERFORMANCE AND SAFETY ASSESSMENT ACTIVITIES**

- o **POTENTIAL FOR REDIRECTION OF REPOSITORY AND WASTE PACKAGE DESIGN ACTIVITIES**

PRELIMINARY OVERVIEW OF POTENTIAL IMPACTS OF NRC COMMENT DISPOSITION

	POTENTIAL FOR CHANGES IN SITE ACTIVITIES	POTENTIAL CHANGE IN PERFORMANCE/SAFETY ASSESS. ACTIVITIES	POTENTIAL CHANGE IN DESIGN ACTIVITIES.
GEOLOGY			
MIN. RESOURCES	EXPAND MINERAL RESOURCE EVALUATIONS	REEVALUATE HUMAN INTERF. SCENARIOS	
TECTONICS	INCREASED EMPHASIS ON DETERM. SITE DATA	EMPHASIZE DETERMINISTIC CALCULATIONS	REEVAL. DESIGNS PER DETERMIN. METHOD.
REPRESENTATIVENESS	REEVALUATE UNDERGROUND LAYOUTS AND DRIFTS	REEVALUATE SENSITIVITY TO SAMPLE DISTRIBUT.	RETHINK UNDERGROUND FACILITY PLANS
INTEGRATION	INCREASED PRIORITY ON INTEGRATED DRILLING PLAN	REEVALUATE NEED FOR STATISTICAL DRILLING	
HYDROLOGY			
FASTEST PATH	FOCUS SITE PROGRAM ON EMPIRICAL "FASTEST PATH"	MAY REQUIRE CHANGES TO TRAVEL-TIME MODEL APPROACH	MAY NEED TO MAINTAIN FLEXIBILITY IN UNDERGROUND FACILITY LOCATION
ALTN. CONCEPTUAL MODELS	REEVAL. SITE PROGRAM	REVIEW SCENARIOS	

	IMPACTS ON SITE ACTIVITIES	IMPACTS ON PERFORMANCE & SAFETY ASSESSM. ACTIV.	IMPACTS ON DESIGN ACTIVITIE
PERFORMANCE ASSESSMENT MUTUALLY EXCLUSIVE SCENARIOS SCENARIO LIST ANTICIPATED/ UNANTICIPATED CONCEPTUAL MODELS VS. SCENARIOS	REEVALUATE SITE DATA NEEDS IN LIGHT OF NEW SCENARIOS AND ALLOCATIONS " COULD REQUIRE RETHINKING OF SITE DATA NEEDS PER NEW PERF. ALLOCATIONS REEVALUATE SITE DATA NEEDS	BASIC METHODOLOGY COULD NEED REVISIONS COULD IMPACT PERF. ALLOCAT. " BASIC METHODOLOGY COULD BEED REVISIONS COULD IMPACT PERF. ALLOCAT. BASIC APPROACH COULD BE IMPACTED	

	IMPACTS ON SITE ACTIVITIES	IMPACTS ON PERFORMANCE & SAFETY ASSESSM. ACTIV.	IMPACTS ON DESIGN ACTIVITIES
ENGINEERING/ESF ESF DESIGN ISOLATION IMPACTS SEALS/GAS RELEASES	COULD IMPACT IN SITU TESTING PLANS MAY REQUIRE REEVALUATION OF CALICO HILLS PENETRAT. AND ALTERN. METHODS TO OBTAIN DATA	RETHINK CONFIDENCE IN PREDICTIONS W/O DATA FROM CALICO HILLS REASSESS PERFORMANCE. CALCULATIONS	MAY REQUIRE PRIORITIZ. OF CERTAIN DESIGN ACT. MAY REQUIRE CHANGES IN DESIGNS SEAL DESIGNS MAY NEED TO BE RETHOUGHT
ENGINEERING/WASTE PACKAGE SUBSTANT. COMPLT. CONTAINMENT	REEVALUATE SITE DATA NEEDS PER NEW DEFINITION	NEW DEFINITION MAY REQUIRE REDDING PERFORMANCE ALLOCATIONS	MATERIALS AND TESTING MAY NEED TO BE RETHOUGHT
GENERAL ALTERN. TESTING STRATEGIES SENSIT/UNCERTN. ANALYSES	REVIEW STRATEGIES IN CD COULD IMPACT SITE DATA NEEDS	COULD CAUSE REVISIONS TO ALLOCATIONS	COULD RESULT IN DESIGN CHANGES

DETAILED BACKUP INFORMATION FOR ITEMS IN TABLE THAT COULD CAUSE MODIFICATION OF THE SCOPE OF SITE CHARACTERIZATION ACTIVITIES:

GEOLOGY

1. QUESTIONS RELATED TO THE REPRESENTATIVENESS OF IN SITU AND SURFACE-BASED EXAMPLES SUGGEST THAT THE LOCATION OF THE EXPLORATORY SHAFT, THE UNDERGROUND DRIFTS FROM THE EXPLORATORY SHAFT, AND DRILLHOLES MAY NEED TO BE REEVALUATED
2. COMMENTS QUESTIONING THE LACK OF INTEGRATION OF THE DRILLING AND OTHER SITE INVESTIGATIONS SUGGEST THAT ACTIONS ALREADY UNDERWAY TO BETTER INTEGRATE THE VARIOUS SURFACE-BASED ACTIVITIES SHOULD RECEIVE HIGH PRIORITY.

-- RELATED TO THIS QUESTION WAS A CONCERN ABOUT WHETHER ADEQUATE INVESTIGATIONS ARE PLANNED TO ESTABLISH THE MINERAL RESOURCE POTENTIAL IN THE VICINITY OF YUCCA MT.
3. THE NRC STAFF AGAIN REQUESTED THAT THE DOE EXPLICITLY TREAT SEISMIC HAZARDS USING BOTH DETERMINISTIC AND PROBABILISTIC METHODS -- THE STAFF HAS PREVIOUSLY EXPRESSED CONCERNS ABOUT RELIANCE ON PROBABILISTIC TECHNIQUES

COMMENTS THAT COULD CAUSE DOE TO MODIFY THE SCOPE OF SITE CHARACTERIZATION
ACTIVITIES - CONTINUED

HYDROLOGY

1. THE NRC QUESTIONED IF THE PLANNED INVESTIGATIONS WERE ADEQUATE TO ESTABLISH THE "FASTEST PATH OF LIKELY RADIONUCLIDE TRAVEL" FOR THE GROUND-WATER CALCULATIONS -- THIS COMMENT COULD LEAD TO A REEVALUATION OF THE SCOPE AND FOCUS OF THE HYDROLOGY PROGRAM
2. THE COMMENTS RELATED TO THE ADEQUACY OF CONCEPTUAL MODELS INCLUDED HYDROLOGIC FLOW PATHS AND POSSIBLE DISRUPTIONS TO THOSE PATHS. THE CURRENT CONCEPTUAL HYDROLOGIC MODELS MAY NEED TO BE REVISED IF ADDITIONAL FLOW PATHS AND DISRUPTIVE CONDITIONS ARE TO BE INCORPORATED.

COMMENTS THAT COULD CAUSE DOE TO MODIFY THE SCOPE OF PERFORMANCE OR DESIGN ACTIVITIES
PERFORMANCE ASSESSMENT

1. THE NRC STAFF EXPRESSED CONCERN WITH THE APPROACH BEING USED TO DEVELOP SCENARIOS FOR ESTIMATING RELEASES TO THE ACCESSIBLE ENVIRONMENT. THIS CONCERN COULD NECESSITATE SIGNIFICANT REVISIONS IN THE STRATEGY FOR CALCULATING COMPLIANCE WITH THE EPA STANDARDS.
2. THE STAFF ALSO REQUESTED THAT AN IN-DEPTH DISCUSSION BE ADDED TO THE SCP/CD EXPLAINING HOW THE LIST OF SCENARIOS WAS DEVELOPED, INCLUDING WHICH SCENARIOS WERE EXCLUDED AND WHY. THIS COULD RESULT IN ADDITION OF SIGNIFICANT VOLUMES OF TEXT.
3. THE MANNER IN WHICH THE TERMS ANTICIPATED AND UNANTICIPATED ARE APPLIED WAS THE SUBJECT OF A NUMBER OF NRC STAFF COMMENTS. THE SCOPE OF CERTAIN ASPECTS OF PERFORMANCE ASSESSMENT CALCULATIONS IS DIRECTLY IMPACTED BY THIS CATEGORIZATION OF EVENTS AND PROCESSES.
4. THE STAFF ALSO EXPRESSED CONCERN WITH THE STOCHASTIC APPROACH GROUND-WATER TRAVEL TIME WAS BEING CALCULATED. THIS CONCERN COULD NECESSITATE REEVALUATION OF THE APPROACHES CURRENTLY BEING DEVELOPED TO PREDICT TRAVEL TIMES.

WASTE PACKAGE

1. THE STAFF QUESTIONED THE DESIGN OBJECTIVES FOR THE WASTE PACKAGE, AND REQUESTED THAT THE DEFINITION OF SUBSTANTIALLY COMPLETE CONTAINMENT BE RETHOUGHT. THIS REQUEST MAY RESULT IN CHANGES IN THE MATERIALS PROGRAM, AS WELL AS THE WASTE PACKAGE PERFORMANCE ALLOCATIONS.

ENGINEERING

1. MORE DETAIL WAS REQUESTED ABOUT THE DESIGN FOR THE EXPLORATORY SHAFT. THESE DESIGN ACTIVITIES ARE UNDERWAY, AND WILL RECEIVE HIGH PRIORITY.
2. THE NRC STAFF REQUESTED MORE DETAIL ABOUT THE IMPACT OF THE ESF AND SURFACE-BASED TESTING ON THE ISOLATION CAPABILITY OF THE SITE. THIS COMMENT MAY REQUIRE A LARGE EFFORT TO DEVELOP THE APPROPRIATE ANALYSES OF THE POTENTIAL INTERFERENCE OF ACTIVITIES AND THEIR IMPACTS ON THE ISOLATION CAPABILITY OF THE SITE.
3. THE NRC QUESTIONED THE ADEQUACY OF THE SEAL DESIGN PROGRAM AND WHETHER IT HAD ADEQUATELY CONSIDERED PROBLEMS RELATED TO GASEOUS RELEASES. THIS PROGRAM WILL NEED TO BE REEVALUATED PER THE NRC COMMENTS.

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PM/TPO Meeting

PLANS FOR RESOLUTION OF NRC POINT PAPERS AND FOR INCORPORATION OF APPROPRIATE CHANGES INTO THE SCP/CD:

COMMENT RESOLUTION COULD INVOLVE THE FOLLOWING ACTIVITIES

1. PREPARE SIMPLE RESPONSE TO QUESTION.
2. HOLD FURTHER INTERACTIONS WITH THE NRC STAFF TO BETTER UNDERSTAND THEIR CONCERNS. THEN EITHER PREPARE SCP/CD MARKUP OR CARRY AN OPEN ITEM FORWARD FOR LATER RESOLUTION BY INCORPORATION INTO OTHER DOCUMENTS (E.G. PROGRESS REPORTS).
3. PREPARATION OF A MARKUP OF THE SCP/CD TEXT FOR REVIEW AND APPROVAL BY THE PROGRAM REVIEW GROUP.

NOTE: ALL OF THE ABOVE RESOLUTIONS WILL STRICTLY ADHERE TO THE COMMENT RESOLUTION AND TRACKING PROCEDURE ESTABLISHED IN THE HQ AND PROJECT OFFICE SCP MANAGEMENT PLANS

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PM/TPO MEETING

ACTIVITIES PLANNED OR UNDERWAY TO RESPOND TO NRC COMMENTS

- o THE PROGRAM REVIEW GROUP HAS REQUESTED THAT WESTON TECHNICAL STAFF REVIEW THE COMMENTS AND PRIORITIZE THEM ACCORDING TO THEIR POTENTIAL IMPACTS ON THE SCP/CD
- o THE PROGRAM REVIEW GROUP WILL DEVELOP COMMENT-BY-COMMENT GUIDANCE TO THE INTEGRATION GROUP TO PROCEED WITH DISPOSITION OF THE COMMENTS
- o THE INTEGRATION GROUP WILL INSTRUCT THE WORKING GROUPS TO INCORPORATE APPROPRIATE CHANGES INTO THE TEXT OF THE SCP/CD AND TO PROVIDE OTHER RESPONSES, AS APPROPRIATE
- o CHANGES RESULTING FROM THE SCP COMPLETION PROCESS, TOGETHER WITH CHANGES RESULTING FROM NRC AND STATE COMMENTS ON THE SCP/CD WILL BE INCORPORATED INTO A FINAL MARKUP OF THE SCP/CD IN LATE SUMMER, 1988
- o THE STATUTORY SCP WILL BE PREPARED FOR FINAL PRINTING AND DISTRIBUTION IN DECEMBER, 1988

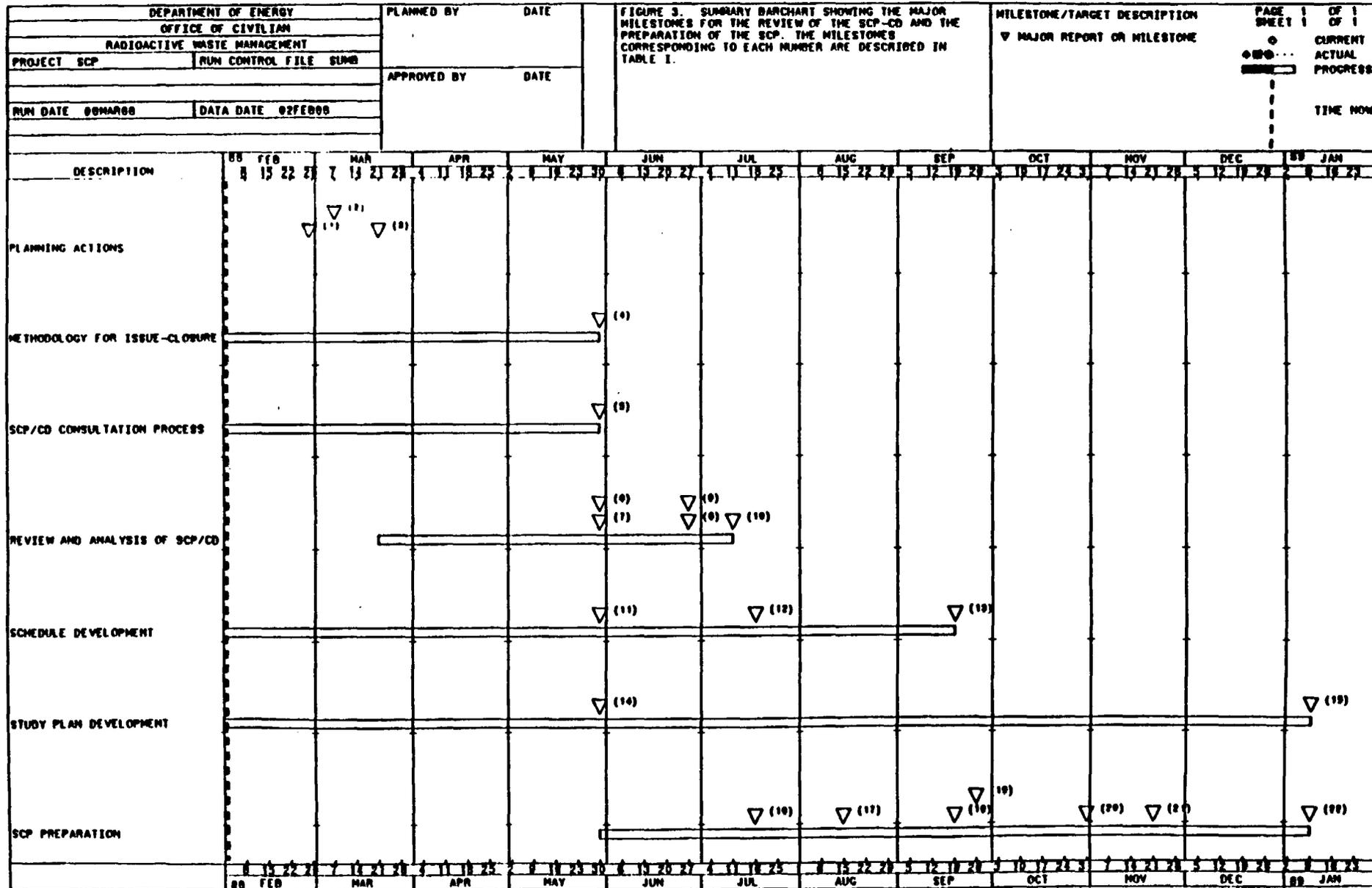


Table 1. SCP Completion Milestones

1. Management approval of SCP completion process and commitment to allocation of necessary resources.
2. Finalize SCP completion guidance.
3. Establish review groups and finalize instructions (PRG¹, IG²).
4. Finalize description of issue-closure methodology to be incorporated into the SCP.
5. Complete consultation interactions with the State of Nevada and the NRC on the SCP/CD.
6. Complete identification of the range of options for the scope of each activity in the SCP/CD and recommend the preferred options (IG, WGs³).
7. Complete evaluation of the performance allocations for each issue, focusing on the licensing strategies, and recommend possible alternatives to these allocations (PRG).
8. Complete evaluation and recommendation of the changes in the nature and scope of activities necessary to accommodate any proposed changes in or alternatives to the performance allocations (IG, WGs).
9. Complete evaluation of comments/questions received through the consultation process and the development/recommendation of proposed dispositions (PRG, IG).
10. Complete review, approval, and concurrence on all proposed changes to be incorporated in the SCP (PRG, Management).
11. Complete development of schedule and identify cost considerations for the revised SCP/CD case, based only on the options selected for the scope of site characterization activities identified in the SCP/CD.
12. Complete development of SCP (based on milestone #10, above) schedules for incorporation into Sections 8.3 and 8.5 of marked-up review draft SCP.
13. Finalize SCP schedules for incorporation in Sections 8.3 and 8.5 of the final draft SCP.
14. Establish priorities for the development of study plans for near-term activities and to accompany the SCP.
15. Issue study plans to accompany SCP issuance.
16. Revised SCP text-markup, incorporating approved changes available for DOE-HQ review.

Table 1. (cont'd.)

17. Complete comment resolution workshops and final text mark-up.
 18. Final draft SCP text available for DOE-HQ audit.
 19. Complete DOE-HQ audit of final draft SCP text.
 20. Camera-ready concurrence draft SCP available for DOE-HQ review.
 21. DOE-HQ concurrence on SCP.
 22. Issue SCP for public review and comment.
-

PRG¹: Program Review Group

IG²: Integration Group

WGs³: Working Groups

SCP ACTIVITIES SCHEDULE FOR 1988

	SUN	MON	TUES	WED	THURS	FRI	SAT
	21 FEB	22	23	24	25	26	27
	28	29	1 MAR	2	3	4 Int. Grp. Kick-Off	5
MARCH	6	7 IG FINALIZES WORKING	8	9 GROUP GUIDANCE	10	11	12
	13	14	15 IG MEETING	16	17 IG FINALIZES PHASE I WG GUIDANCE	18	19
	20	21	22 WGS 1-4 Kick-off Mtg.	23	24 WGS STAB PHASE I	25	26
	27	28 WGs continue Phase 1	29 assessment	30	31	1 APR	2
	3	4 WGs 1-4 WGs 4 & 5	5 Start Phase 1	6	7 IG Mtg. Denver, CO	8	9
APRIL	10	11 WGs 1-4 start Phase 2 WGs 4 & 5 continue Phase 1	12 start Phase 2 scope/duration continue Phase 1 assessment	13	14 analyses	15	16
	17	18 WGs 4 & 5 WGs 1 - 4	19 Complete Phase 1 and continue Phase 2	20	21 Start Phase 2 analyses IG Mtg. - Las Vegas	22	23
	24	25 WGs 1-6	26 continue and complete	27 Phase 2 scope/duration	28	29	30
	1 MAY	2 IG prepares materials for PRG Phase 2 costing continues	3	4 for PRG review	5	6	7
MAY	8	9 IG finalizes materials for PRG Continue Phase 2 Costing of alternate cases	10	11 for PRG review	12	13	14
	15	16 PRG begins review of recommendations from IG/WGs (continue Phase 2 costing)	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30 MEMORIAL DAY	31 All recommendations to PRG complete	1 JUN	2	3	4
	5	6 PRG reviews recommendations	7	8	9	10	11
JUNE	12	13 PRG Reviews recommendations	14	15	16	17	18
	19	20 PRG provides instructions to IG/WGs to start text	21	22	23	24	25
	26	27 revisions	28	29	30	1 JUL	2
	3	4 INDEPENDENCE DAY	5	6	7	8	9
JULY	10	11	12	13	14	15	16
	17	18 HQ reviews marked-up SCP/CD text	19	20	21	22	23
	24	25 Continue HQ reviews and hold workshops to resolve all comments	26	27	28	29	30
	31	1 AUG	2	3	4	5	6
AUGUST	7	8 Integrate compiled markup of SCP/CD to prepare for production	9	10	11	12	13
	14	15	16	17	18	19	20

SCP ACTIVITIES SCHEDULE FOR 1988

	SUN	MON	TUES	WED	THURS	FRI	SAT
SEPTEMBER	21	22 Produce final draft	23	24	25	26	27
	28	29 Produce final draft	30	31	1 SEP	2	3
	4	5 LABOR DAY Produce final draft	6	7	8	9	10
	11	12 HQ audit of final draft text	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	1 OCT
OCTOBER	2	3	4	5	6	7	8
	9	10 COLUMBUS DAY ---Camera-ready production	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31	1	2	3	4	5
NOVEMBER	6	7 HQ final concurrence of SCP	8	9	10	11 VETERANS DAY	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	1	2	3
	4	5	6	7	8	9	10
DECEMBER	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25 CHRISTMAS DAY	26 Make copies	27	28 Formal SCP Issued	29	30	31
	1 NEW YEARS DAY JAN	2	3	4	5	6	7
JANUARY	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				

STUDY PLAN STATUS AS OF 3/28/88

Number	Title	Status
STUDIES WHICH HAVE BEEN REVIEWED AT HQ		
8.3.1.15.1.5 (SNL)	Excavation Investigations	3rd draft to HQ for final approval 3/20/88
8.3.1.2.2.2 (LANL)	Cl-36 Tracer Tests	3rd draft to HQ for final approval 4/4/88
8.3.1.4.2.2 (USGS)	Structural Features	2nd draft to HQ for final approval 4/15/88
8.3.1.2.2.4 (USGS)	ESF Percolation Studies	2nd draft to HQ for final approval 4/15/88
8.3.1.15.2.1 (USGS)	Ambient Stress	2nd draft to HQ for final approval 4/4/88
STUDIES WHICH HAVE NOT YET BEEN REVIEWED AT HQ		
8.3.1.5.2.1*** (USGS)	Quaternary Regional Hydro (includes calcite-silica)	1st draft to HQ for review 3/31/88
8.3.1.3.2.1*** (LANL)	Mineralogy and Petrology of Transport Pathways	1st draft to HQ for review 4/4/88
8.3.1.3.2.2 (LANL)	Alteration History	1st draft to HQ for review 4/15/88
8.3.4.2.4.1 (LLNL)	Waste Package Environment	1st draft to HQ for review 4/4/88
8.3.1.2.3.1*** (LANL)	C-Wells Tracer Tests	1st draft to HQ for review 4/4/88
8.3.1.15.1.1 (SNL)	Lab Thermal Properties	1st draft to HQ for review 4/4/88
8.3.1.15.1.3 (SNL)	Lab Mechanical Properties	1st draft to HQ for review 3/31/88

1 BRIAN MCKAY, ATTORNEY GENERAL
STATE OF NEVADA
2 Harry W. Swainston, Deputy Attorney General
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4 Carson City, NV 89710
(702) 885-5866

5 Attorneys for Plaintiff

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF NEVADA

8 * * *

9 THE STATE OF NEVADA]

Civ. No. _____

10 Plaintiff,]

11 v.]

COMPLAINT FOR MANDAMUS,
INJUNCTIVE AND DECLARATORY
RELIEF AND FOR JUDICIAL
REVIEW

12 ROBERT F. BURFORD, Director,]
Bureau of Land Management,]
13 Department of Interior,]
EDWARD F. SPANG, Nevada State]
14 Director, Bureau of Land]
Management, Department of]
15 Interior,]

16 Defendants.]

17
18 Plaintiff alleges:

19 FIRST CAUSE OF ACTION

20 1.1 The jurisdiction of this Court arises under 28 U.S.C. §
21 1331, 28 U.S.C. § 1361, 28 U.S.C. §§ 2201-2202, and 5 U.S.C. §§
22 702-706, as hereinafter more fully appears.

23 28 U.S.C. § 1331 provides that the District Courts shall
24 have original jurisdiction of all civil actions arising under
25 the Constitution, laws or treaties of the United States.

26 28 U.S.C. § 1361 provides that the District Courts shall
27 have original jurisdiction of any action in the nature of

Mifflin & Associates, Inc.
2700 East Sunset Road, Suite B13
Las Vegas, Nevada 89120
(702) 798-0402, (702) 798-3026

01 October 1987

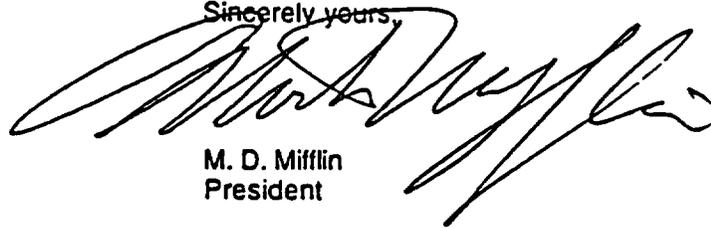
Ms. Sharon DiPinto
United States Bureau of Land Management
P. O. Box 26569
Las Vegas, Nevada 89126

Dear Ms. DiPinto:

This letter is to inform you that Dr. Atef Elzeftawy, Senior Scientist with Mifflin & Associates, Inc., and a member of the Board of Directors is authorized to sign and represent MAI with respect to the Right of Way grant with the U.S. Bureau of Land Management.

Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'M. D. Mifflin', written over the 'Sincerely yours,' text.

M. D. Mifflin
President

MDM:gt.

1 mandamus to compel an officer or employee of the United States
2 to perform a duty owed to the Plaintiff.

3 28 U.S.C. § 2201 provides that in a case of actual
4 controversy within its jurisdiction any Court of the United
5 States, upon the filing of an appropriate pleading, may declare
6 the rights and other legal relations of any interested party
7 seeking such declaration.

8 5 U.S.C. § 702 provides that a person suffering legal
9 wrong because of agency action is entitled to judicial review
10 thereof and an action seeking specific relief may not be
11 dismissed nor relief be denied on the ground that it is against
12 the United States or that the United States is an indispensable
13 party. 5 U.S.C. § 706 provides that the reviewing court shall
14 interpret and decide the relevant question of law and compel
15 agency action unlawfully withheld or unreasonably delayed and
16 hold unlawful and set aside agency action under certain listed
17 circumstances of unlawfulness.

18 1.2 This action arises under federal common law; the
19 equal-footing doctrine; Article I, § 8, cl. 17 of the
20 Constitution; Article IV, § 3 of the Constitution; the Fifth
21 and Tenth Amendments to the Constitution, the Federal Land
22 Policy And Management Act of 1976 (FLPMA), 43 U.S.C. § 1701, et
23 seq.; the National Environmental Policy Act of 1969 (NEPA), 42
24 U.S.C. §§ 4321, et seq.; the Classification and Multiple Use
25 Act of 1964, 43 U.S.C. § 1411-15 (now expired); the Mining Law
26 of 1872, as amended 30 U.S.C. § 21, et seq., the Minerals
27 Leasing Act of 1920, 30 U.S.C. §§ 49, 50, 181 et seq.; the
28 Mining and Mineral Policy Act of 1970, 30 U.S.C. § 21a; the

1 Geothermal Steam Act, 30 U.S.C. §§ 1001-1025; the Nuclear Waste
2 Policy Act of 1982 (NWPAA), 42 U.S.C. § 10101, et seq., as
3 amended by the Nuclear Waste Policy Act Amendments Act of 1987,
4 Title V, Pub. L. 100-203; and the Atomic Energy Act of 1954, 42
5 U.S.C. §§ 2011, et seq.

6 1.3 Plaintiff State of Nevada brings this action in its
7 sovereign capacity, its proprietary capacity and as parens
8 patriae of its citizens.

9 1.4 Plaintiff State of Nevada is a sovereign State of the
10 United States. On February 2, 1983, the Governor and
11 Legislature of the State of Nevada were notified pursuant to
12 Section 116(a) of the Nuclear Waste Policy Act of 1982 (NWPAA),
13 42 U.S.C. § 10136, that a repository for the disposal and
14 storage of high-level radioactive waste and spent nuclear fuel
15 may be located in a tuff medium at Yucca Mountain in
16 southeastern Nevada. On December 21, 1987 the Congress enacted
17 the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.
18 Title V of the Act contains the Nuclear Waste Policy Amendments
19 Act of 1987 (NWPAA). In the 1987 amendments Congress selected
20 the Yucca Mountain site as the only site to be characterized
21 for possible development as a repository site. Congress,
22 however, did not withdraw, segregate or set aside the Yucca
23 Mountain site from the public lands. General provisions of law
24 were, therefore, to remain applicable for this purpose.

25 1.5 The Plaintiff State of Nevada, has oversight and
26 monitoring responsibility for the Department of Energy's
27 program to characterize the site and, if subsequently selected,
28 for the construction of a high-level nuclear waste repository

1 at Yucca Mountain, Nevada. The State's oversight role extends
2 to agency action by the BLM insofar as it affects site
3 characterization.

4 1.6 Defendant Robert F. Burford is the duly appointed,
5 qualified and acting Director of the Bureau of Land Management,
6 Department of Interior. Defendant Edward F. Spang is the
7 Nevada State Director of the Bureau of Land Management,
8 Department of Interior. Section 120 of the NHPA, 42 U.S.C. §
9 10140, requires Defendants Burford and Spang to expedite the
10 issuance of appropriate authorizations for land use in
11 connection with the characterization of Yucca Mountain "to the
12 extent permitted by the applicable provisions of law
13 administered by such agency or officer."

14 1.7 Officials of the Department of Energy, on or about
15 November 23, 1987, filed an Application For Transportation And
16 Utility Systems And Facilities On Federal Lands (Form 299) with
17 the Nevada Bureau of Land Management Office seeking a
18 right-of-way reservation to perform site characterization
19 studies at the Yucca Mountain site.

20 1.8 On January 6, 1988, Defendant Edward F. Spang granted the
21 Department of Energy's application for a right-of-way
22 reservation (ROWR) pursuant to presumed authority in Section
23 507 of FLPMA despite the Nevada Attorney General's vigorous
24 opposition to an approval of a ROWR and his contention that a
25 withdrawal established pursuant to the substantive and
26 procedural provisions of FLPMA is the only appropriate land use
27 instrument to establish an appropriate land status in advance
28 of site characterization. The Attorney General further

1 contended in written memoranda that the withdrawal must be
2 established with Congressional approval and the Nevada
3 Legislature's consent as required by Article I, § 8, cl. 17.
4 He argued that a withdrawal with these legislative approvals
5 was the only instrument under the circumstances and the law by
6 which Defendants could authorize land use for the proposed site
7 characterization activities.

8 1.9 On February 5, 1988, the State of Nevada and its Nuclear
9 Waste Project Office, represented by the Nevada Attorney
10 General, timely filed a Notice of Appeal of Defendant Spang's
11 decision with Spang's office, thereby initiating an appeal
12 before the Department of Interior Board of Land Appeals. The
13 State of Nevada has determined that resort to the Board of
14 Appeals process would be futile because the 18-month to
15 24-month backlog of cases before the administrative tribunal
16 would render a favorable decision too late to be an effective
17 remedy. Furthermore, the legal question of whether a
18 right-of-way reservation is an appropriate authorizing
19 instrument has been decided by the Bureau adverse to the
20 State's position and it is unlikely that a change in the
21 agency's interpretation of law will be provided by the Board of
22 Land Appeals. The legal question, in the final analysis, is
23 for the federal courts to make.

24 1.10 A case or controversy now exists between the State of
25 Nevada and the Defendant officials of the BLM involving their
26 issuance of the ROWR to the Department of Energy.

27 1.11 A case with overlapping issues is pending in the Ninth
28 Circuit Court of Appeals against the Secretary of Energy styled

1 State of Nevada, et al. v. John Herrington, Secretary of the
2 United States Department of Energy, Case No. 86-7308, alleging
3 his failure to seek a withdrawal and, contemporaneously, the
4 Nevada Legislature's consent as required by the NWSA, the
5 Nuclear Regulatory Commission regulations in 10 C.F.R. § 60.121
6 and Article I, § 8, cl. 17.

7 1.12 The primary litigable issue in the present complaint which
8 does not overlap the issues in Nevada, et al. v. Herrington,
9 supra, involves the validity of an ROWR as the authorizing
10 instrument for DOE site characterization activities. The State
11 contends that the Defendants' approval of the ROWR is not
12 authorized by FLPMA or any other lawful authority including any
13 of the lawfully established administrative regulations which
14 concern the granting of ROWR's in 43 C.F.R. § 2800.
15 Furthermore, the Defendants' approval of the ROWR constitutes
16 either an unlawful defacto reclassification of public land in
17 violation of FLPMA or an unlawful defacto withdrawal of public
18 land, also in violation of FLPMA. Defendant Burford is
19 presently enjoined from altering land use classifications
20 inconsistent with classifications existing on January 1, 1981
21 without compliance with the procedural and substantive
22 requirements of FLPMA. See National Wildlife Federation v.
23 Robert R. Burford, U.S.D.C. District of Columbia, Civil Action
24 No. 85-2238, affirmed, 835 F.2d 305 (DC Cir. 1987). Defendant
25 Burford is also prohibited from maintaining defacto
26 withdrawals. See e.g., Mountain State Legal Foundation v.
27 Andrus, 499 F. Supp. 383 (D. Wyo. 1980).
28

1 1.13 The 51,789 acres included within the BLM managed public
2 land portion of the ROWR are presently classified pursuant to
3 the Classification and Multiple Use Act of 1964, 43 U.S.C. §§
4 1411-18, and the regulations in 43 C.F.R. 2410 and 2411, for
5 multiple-use management. See Notice of Classification of
6 Public Lands, Serial Number N-1574 dated February 27, 1970
7 attached hereto as Exhibit "A." Numerous mining claims have
8 been filed consistent with this classification, some of which
9 are on the top of Yucca Mountain on sites which the Secretary
10 of Energy proposes to use for site characterization purposes.
11 Other mining claims may also be anticipated. As the lands are
12 within a known geothermal resource area, geothermal exploration
13 and leasing activity may be anticipated. Site characterization
14 activities as planned by the DOE are inconsistent with the
15 current classifications.

16 1.14 An ROWR is a legally defective instrument for authorizing
17 site characterization. Site characterization is an extensive
18 investigative process involving mining operations and surface
19 and subsurface exploration involving geological, hydrological,
20 geophysical, geochemical, paleoclimatic, and meteorological
21 studies which physically put people and equipment a thousand to
22 two thousand feet below the surface of the geologic formation
23 to evaluate the site to determine its potential capability for
24 meeting the requirements for a repository. Two exploratory
25 shafts, 12 feet in diameter, whose walls will be encased with
26 concrete two feet thick, 1100 and 1480 feet deep, are part of
27 site characterization. These shafts, connecting drifts and the
28 breakout rooms will become a part of the repository if it is

1 eventually authorized and constructed. Site characterization
2 will extend over a period of several years and will cost in
3 excess of one billion dollars. Section 507 of FLPMA did not
4 authorize a right-of-way permit for the extensive disruption to
5 the surface and subsurface and interference with multiple use
6 necessarily included in the site characterization process.

7 1.15 The ROWR authorization to the Department of Energy is
8 defective for the additional reason that it does not legally
9 describe all of the lands which the Department of Energy will
10 need for characterization purposes. Sections 10, 11, 14, 15,
11 22, 23, 26, 27 and 36 of Township 12S, Range 49E, Mount Diablo
12 Meridian, unsurveyed, were omitted.

13 1.16 The adoption by Defendants of the Department of Energy's
14 Environmental Assessment (DOE/RW 0073) which was required by
15 the NHPA in connection with the Secretary of Energy's
16 recommendation of the Yucca Mountain site to the President on
17 May 28, 1986 for site characterization is unlawful as it does
18 not satisfy the BLM's NEPA responsibility. The DOE's
19 environmental assessment addresses only items i-vi of Section
20 112(b)(1)(D) of NHPA, 42 U.S.C. § 10132, and need not and does
21 not otherwise comply with NEPA. The nomination environmental
22 assessment is presently being contested in Nevada, et al. v.
23 Herrington, Case No. 86-7309, before the the Ninth Circuit
24 Court of Appeals. The State contends in that action that the
25 environmental assessment is null and void.

26 1.17 Section 112(b)(1)(D), 42 U.S.C. § 10132, of the NHPA
27 requires that an environmental assessment evaluate whether the
28 Yucca Mountain site is suitable for development as a repository

1 under each guideline in 10 C.F.R. Part 960 that does not
2 require site characterization as a prerequisite for application
3 of such guideline. The State contends that the guideline in 10
4 C.F.R. 960.5-2-2 relating to site ownership and control
5 requires a determination in advance of characterization that
6 the DOE can obtain "in accordance with the requirements of 10
7 C.F.R. 60.121, ownership, surface and subsurface rights, and
8 control of access that are required" The determination
9 that leaves the actual withdrawal and acquisition of State
10 Legislative consent to a point in time after site
11 characterization arbitrarily jeopardizes the expenditure of
12 billions of dollars of the ratepayers' contributions to the
13 Nuclear Waste Fund created by Section 302(c) of the NWSA. A
14 further pre-site characterization requirement of 10 C.F.R.
15 60.121 relates to the acquisition of water rights for site
16 characterization. Without a land withdrawal there is no
17 assurance that the water necessary for site characterization
18 may be obtained.

19 1.18 Plaintiff is entitled to an order in the nature of a Writ
20 of Mandamus to compel Defendant officials to rescind the
21 January 6, 1988 ROWR awarded to the Department of Energy for
22 site characterization purposes.

23 SECOND CAUSE OF ACTION

24 2.1 Plaintiff incorporates herein by reference the allegations
25 of Paragraphs 1.1 through 1.18 of its First Cause of Action.

26 2.2 While an ROWR is decidedly an improper authorization for
27 the Department of Energy's activities, it is appropriate under
28 FLMPA to authorize the limited activities of a private

1 enterprise. Defendant Spang has arbitrarily and unlawfully
2 refused to grant the State of Nevada's contractor, Mifflin and
3 Associates, access to the Yucca Mountain site for purposes of
4 geologic and hydrologic testing in connection with the State's
5 oversight role. Copies of the application filed by Mifflin and
6 Associates with the BLM is attached hereto as Exhibit "B."

7 2.3 Plaintiff is entitled to an order in the nature of a Writ
8 of Mandamus to compel Defendant officials to grant the State of
9 Nevada's contractor, Mifflin and Associates, a right-of-way
10 permit to permit access for site characterization studies as a
11 part of the State's oversight and monitoring function.

12 THIRD CAUSE OF ACTION

13 3.1 Plaintiff incorporates herein by reference the allegations
14 of Paragraphs 1.1. through 1.18 of its First Cause of Action
15 and Paragraphs 2.2 and 2.3 of its Second Cause of Action.

16 3.2 The acts of Defendants raise constitutional issues of the
17 highest order involving the land-holding function of the United
18 States. The Defendants have conspired with the Department of
19 Energy Officials to create a fait accompli in which the State
20 of Nevada's political right to object to its selection as the
21 host for a repository for the nation's spent nuclear fuel rods
22 is rendered meaningless. The object of their conspiracy is to
23 render Nevada, a politically weak State, defenseless to the
24 interests of the other 49 states in solving a purely commercial
25 problem at the expense of Nevada which has played no part in
26 creating the problem. Unless the Defendants are permanently
27 restrained and enjoined, Nevada's equal footing and Tenth
28

1 Amendment rights will be seriously diminished to the detriment
2 of Nevada and the Union of States.

3 FOURTH CAUSE OF ACTION

4 4.1 Plaintiff incorporates herein by reference the allegations
5 of Paragraphs 1.1 through 1.18 of the First Cause of Action,
6 Paragraphs 2.2 and 2.3 of the Second Cause of Action, and
7 Paragraph 3.2 of the Third Cause of Action.

8 4.2 Plaintiff desires a judicial determination of her rights
9 and duties and those of Defendants and a declaration as to
10 whether Defendant officials may authorize, maintain and
11 administer an ROWR in favor of the Department of Energy for
12 site characterization of Yucca Mountain.

13 4.3 Plaintiff State of Nevada is entitled to a decree which
14 declares that the action of the Defendants is null and void for
15 the reasons that the nature and degree of infringement upon an
16 unconsenting state's sovereignty and equal footing under the
17 circumstances of this case and particularly upon Nevada's
18 sovereignty and equal footing is not authorized by any power
19 exercisable under the Constitution.

20 PRAYER FOR RELIEF

21 WHEREFORE, with respect to Plaintiff's First Cause of
22 Action, Plaintiff prays for relief as follows:

23 1. For an order requiring Defendant officials to rescind
24 the January 6, 1988 ROWR granted to the Department of Energy.

25 With respect to Plaintiff's Second Cause of Action,
26 Plaintiff prays for relief as follows:

27 2. For an order directing Defendant officials to grant
28 Mifflin and Associates a ROW permit.

1 With respect to Plaintiff's Third Cause of Action,
2 Plaintiff prays for relief as follows:

3 3. For an order enjoining Defendant officials from
4 conspiring with Department of Energy officials to permit access
5 and public land usage which entail an unlawful infringement
6 upon Nevada's constitutional and political rights to
7 participate on an equal footing with member states of the
8 Union.

9 With respect to Plaintiff's Fourth Cause of Action,
10 Plaintiff prays for relief as follows:

11 4. For a declaration of the rights and duties of the
12 parties with respect to federal land-holding and land usage
13 relative to the authorization of public land usage for site
14 characterization activities by the Department of Energy based
15 upon the facts and circumstances of this case, for a
16 declaration of the constitutionality of the FLPMA, NWPA and
17 NWPAA to the extent these statutes are relied upon for the land
18 use authorization and for a declaration that the January 6,
19 1988 ROWR is null and void.

20 With respect to all causes of action, Plaintiff prays for
21 relief as follows:

22 ---

23 ---

24 ---

25 ---

26 ---

27 ---

28 ---

1 4. For costs of suit herein; and

2 5. For such other and further relief as to the Court
3 appears equitable and proper.

4 Respectfully submitted this 24th day of March, 1988.

5 OF COUNSEL:

BRIAN MCKAY
ATTORNEY GENERAL

6
7 Malachy R. Murphy
8 James H. Davenport
9 Special Deputy Attorneys General
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15 (206) 754-6001

BY: Harry W. Swainston
Harry W. Swainston
Deputy Attorney General

Attorneys for Plaintiff
STATE OF NEVADA

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NEVADA

Serial Number N-1574

NOTICE OF CLASSIFICATION OF PUBLIC LANDS
FOR MULTIPLE USE MANAGEMENT

February 27, 1970

1. Pursuant to the Act of September 19, 1964 (43 USC 1411-18) and the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 USC Parts 7 and 9; 25 USC Sec. 334) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing or material sale laws, with the exception contained in paragraph 3. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

2. The record showing the comments received following publication of a Notice of Proposed Classification (33 FR 251), or at the public hearing at Tonopah, Nevada which was held on

EXHIBIT "A"

February 5, 1969 and other information is on file and can be examined at the Nevada Land Office. The public lands affected by this classification are located within the following described area and are shown on map designated H-1574 in the Battle Mountain District Office, Bureau of Land Management, Battle Mountain, Nevada 89820, and the Nevada Land Office, Bureau of Land Management, Room 3104, Federal Building, 301. Booth Street, Reno, Nevada 89502.

The overall description of the area is:

Hye County

Mount Diablo Meridian, Nevada

The public lands proposed to be classified are wholly located within Hye County, Nevada.

The area described aggregates approximately 6,236,200 acres of public land.

3. The public lands listed below are further segregated from all forms of appropriation under the public land laws, including the general mining laws, but not the Recreation and Public Purposes Act (44 Stat. 741, 68 Stat. 173; 43 USC 369) or the mineral leasing and material sale laws:

Mount Diablo Meridian, Nevada

T. 15 S., R. 48 E.,
sec. 16, All;
sec. 17, All.

Big Dunes

T. 9 N., R. 51 E.,
sec. 21, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
sec. 27, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Mt. Morrey Wildlife-Livestock Enclosure
Morrey Bench Forage Improvement Test Plot

T. 6 N., R. 52 E.,
sec. 12, S $\frac{1}{2}$;
sec. 13, All.

Lunar Crater

T. 6 N., R. 53 E.,
sec. 7, SW $\frac{1}{4}$;
sec. 18, W $\frac{1}{2}$.

Lunar Crater

The areas described above aggregate approximately 2,800 acres of public land.

4. For a period of 30 days from date of publication in the Federal Register, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR Section 2411.2c. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LHM, 320, Washington, D. C. 20240.

Molan F. Keil
State Director, Nevada

Mifflin & Associates, Inc.

2700 East Sunset Road, Suite B13

Las Vegas, Nevada 89120

(702) 798-0402, (702) 798-3026

30 September 1987

Ms. Sharon DiPinto
United States Bureau of Land Management
P. O. Box 26569
Las Vegas, Nevada 89126

Subject: Land Use Permit on Federal Lands for the State-funded research vadose drilling project
in Nye County, Nevada.

Dear Ms. DiPinto:

As per our telephone discussions over the last few days enclosed are: the application for the Land Use Permit and necessary attachments for the three drilling sites for the State of Nevada funded Yucca Mountain Vadose Zone Research Drilling Project. The sites are within the boundaries of: T12S, R49E; T13S, R49E; and T14S, R49E; and are located near existing dirt roads in the Crater Flat area of Nye County, Nevada. Some improvements to these dirt roads may be required for drilling equipment access to the drilling locations.

Our application is for permission to use approximately one acre of land at each of the three mentioned sites for drilling operations and monitoring. The period of application is for about three years because of the required research monitoring project. The on-site drilling and construction may last between two to three months. We do not anticipate constructing large permanent surface structures, and due to the type of research undertaken, we will make every attempt to minimize our impact on the land surface.

The site within T12S, R49E, Sec. 26 requires overland crossing of the Federal Cooperative Agreement area with the U. S. Air Force. Mr. Harley Dickensheets of Nellis Air Force Base (telephone: 652-3650) stated that your office may grant us the permit for drilling after it has been coordinated with his office.

A cultural and archaeological survey of each site will be accomplished by a professor at the University of Nevada, Las Vegas. A copy of his report will be forwarded to you as soon as we receive it.

The description of each of the three sites is as stated (see attached map):

Site I: T12S, R49E, Sec. 26, SW, SE, SE.

Site II: T13S, R49E, Sec. 9, NW, SW, SE.

Site IV: T14S, R49E, Sec. 8, NW, SW, NW.

Note that Site III (1,2) on the attached map (USGS 30 x 60 Minute Quadrangle, 1:100,000 scale metric topo., Beatty, Nevada - California) are the same sites as listed in the Desert Research Institute application N39966.

We appreciate your timely review of our application as we anticipate drilling to begin by November 2, 1987. Thank you very much for your kind cooperation and assistance. If you have any questions or require further information, please call me at 798-0402 or 798-3026.

Sincerely yours,



Atef Elzettawy

AE:gt.
enclosure.

EXHIBIT "B"

MY870930t

These alternatives were evaluated and selected based on available hydrogeologic and geologic information. Research objectives.

Are these alternatives not selected?

Alternative sites considered were not selected due to access problems or unfavorable geology and geology.

Explanation as to why it is necessary to cross Federal lands. Sites for drilling are located within BLM land.

Authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (Specify, date, code, or name.)

Statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits. May be within \$200,000 - 400,000.

Probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles. Work supports the State of Nevada and its effort to judge the merits of the proposed high-level nuclear waste repository.

Likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and groundwater quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) surface of the land, including vegetation, permafrost, soil, and soil stability. Project calls for minimal disturbance of the surface to preserve the natural condition. Each site will encompass 10 acres.

Probable effects that the proposed project will have on: (a) populations of fish, plant, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

Name of the Department(s)/Agency(ies) where this application is being filed.

I CERTIFY That I am of legal age and authorized to do business in the State and that I have personally examined the information in this application and believe that the information submitted is correct to the best of my knowledge.

Applicant: [Signature] MAI Date: 9/30/1987

Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

APPROVED
1004-0060
May 31, 1986

BY USE ONLY
Number

ZONE (area code)
2)798-0402

by
Dr. M. D. Millin

structures and facilities
operation; (f) Vol-
needed for construc-

holes will be
at these test

(see on map)

which authorization

and operated

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide additional instructions.

CHECK APPROPRIATE BLOCK

I - PRIVATE CORPORATIONS

	ATTACHED	FILED*
a. Articles of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Corporation Bylaws	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications.	<input type="checkbox"/>	<input type="checkbox"/>
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	<input type="checkbox"/>	<input type="checkbox"/>

II - PUBLIC CORPORATIONS

a. Copy of law forming corporation	<input type="checkbox"/>	<input type="checkbox"/>
b. Proof of organization	<input type="checkbox"/>	<input type="checkbox"/>
c. Copy of Bylaws	<input type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input type="checkbox"/>	<input type="checkbox"/>
e. If application is for an oil or gas pipeline, provide information required by Item "f" and "g" above.	<input type="checkbox"/>	<input type="checkbox"/>

III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY

a. Articles of association, if any	<input type="checkbox"/>	<input type="checkbox"/>
b. If one partner is authorized to sign, resolution authorizing action is	<input type="checkbox"/>	<input type="checkbox"/>
c. Name and address of each participant, partner, association, or other	<input type="checkbox"/>	<input type="checkbox"/>
d. If application is for an oil or gas pipeline, provide information required by Item "f" and "g" above.	<input type="checkbox"/>	<input type="checkbox"/>

* If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information (e.g., number, date, code, name). If not on file or current, attach the requested information.

NOTICE

The Privacy Act of 1974 provides that you be furnished the following information in connection with information required by this application for an authorization.

AUTHORITY: 16 U.S.C. 310; 5 U.S.C. 301.

PRINCIPLE PURPOSE: The information is to be used to process the application.

ROUTINE USES: (1) The processing of the applicant's request for an authorization. (2) Documentation for public information. (3) Transfer to appropriate Federal agencies when concurrence is required prior to granting a right in public lands or resources. (4)(5) Information from the record and/or the record will be transferred to appropriate Federal, State, local or foreign agencies, when relevant to civil, criminal or regulatory investigations or prosecutions.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands.

The Federal agencies use this information to evaluate the applicant's proposal.

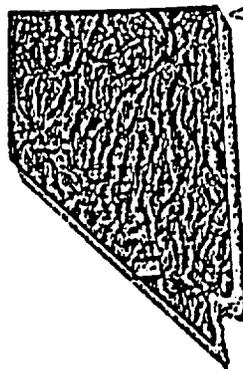
The public is obligated to respond to this information request if they wish to obtain permission to use Federal lands.

36116-E1-TM-100

Beatty

NEVADA—CALIFORNIA

1:100 000-scale metric
topographic map

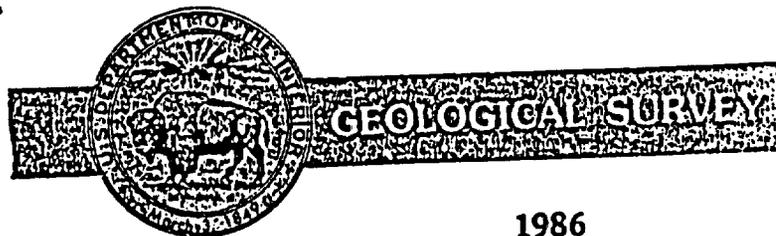


A

1986

30 X 60 MINUTE QUADRANGLE
SHOWING

- Contours and elevations in meters
- Highways, roads and other manmade structures
- Water features
- Woodland areas
- Geographic names



1986

