UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

In the Matter of	)	**Docket No. PAPO-00**
	)	
U.S. DEPARTMENT OF ENERGY	)	**ASLBP No. 04-829-01 PAPO**
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	**November 10, 2008**

STATE OF NEVADA'S EXPLANATION OF ITS DISAGREEMENT
WITH PROPOSED SIXTH CASE MANAGEMENT ORDER

In accordance with this Board's October 9, 2008 Order, the State of Nevada hereby explains why it believes that limited portions of DOE's proposed Sixth Case Management Order and related Protective Order should be changed.

Specifically, Nevada believes that the provisions in the proposed Sixth Case Management Order and related Protective Order limiting access to classified information to U.S. citizens should apply only to information that is Restricted Data or Formerly Restricted Data under the Atomic Energy Act, and not extend broadly to all information classified under Executive Orders 13292 and 12958, as amended. See proposed Sixth Case Management Order at IV, paragraph 1, page 9, and related Protective Order at paragraphs (2) and (4) (a), page 1. Nevada's reason is straightforward – neither Executive Order specifically prohibits granting access to citizens of foreign countries. Indeed, DOE has not provided Nevada with any legal authority for the proposition that DOE and NRC lack authority to grant access to classified information to citizens of foreign countries, except for information that is Restricted Data and Formerly Restricted Data.

This issue is important because it may become necessary for Nevada's expert Dr. Thorne, a citizen of the United Kingdom, to examine classified information that is not Restricted Data and Formerly Restricted Data, if DOE adds this kind of information to its application, or to a critical reference. As the Board is aware, Nevada found it impossible to hire highly qualified experts in the field of performance assessment who are U.S. citizens because qualified U.S. citizens were working with, or hoping to work with, DOE or NRC, and were generally reluctant to affiliate with "anti-Yucca" forces.

Respectfully submitted,

(*signed electronically*)
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Dated: November 10, 2008

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Explanation of Its Disagreement with Proposed Sixth Case Management Order has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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