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Dr. Josephine Piccone  
Director, Division of Spent Fuel Alternative Strategies  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Mail Stop 13-C28  
Washington, DC 20555

Dear Dr. Piccone:

According to the NRC's latest monthly report to Congress on expenditures from the Nuclear Waste Fund, the NRC Staff will shortly prepare and send to the Commission estimates of the schedule and resources required for completing the supplemental environmental impact statement for the proposed Yucca Mountain Repository. It has been assumed that this supplement would be limited to post-closure groundwater impacts. However, as explained below, Nevada believes a recent Commission decision requires that a supplemental environmental impact statement include a revised evaluation of the "No-Action Alternative" as well.

The 2002 DOE FEIS for Yucca Mountain and the 2008 SEIS identify two No-Action Alternative scenarios: Scenario 1 is long-term storage of spent nuclear fuel and high-level radioactive waste at current sites with effective institutional control for at least 10,000 years; Scenario 2 is long-term storage of spent nuclear fuel and high-level radioactive waste at current sites with no effective institutional controls after 100 years. See *e.g.*, 2002 FEIS, Readers Guide and Summary at page S-74, and 2008 SEIS, Summary at page S-51.

The recent Commission-approved "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report" (NUREG-2157) (GEIS) concludes that indefinite *continuation* of effective institutional controls (as in Scenario 1) is "reasonable," consistent with the NEPA "rule of reason," and "enables an appropriate and reasonable evaluation of the environmental impacts of continued storage over an indefinite timeframe." In sharp contrast, the GEIS concludes that a *loss* of effective institutional controls (as in Scenario 2) is inconsistent with the "hard look" required by NEPA and would lead to an "unfocused, highly speculative and

ill-defined" analysis. See GEIS at pg. B-28; see generally GEIS comment analysis at D-170 to D-177.

The GEIS represents the latest evaluation of indefinite storage and there is no scientific or legal basis to conclude that a different analysis and conclusion would apply to DOE's 2002 FEIS and 2008 SEIS. Logic and regulatory consistency requires that any NRC decision to adopt the DOE FEIS be consistent with the GEIS. To be consistent with the GEIS and the NEPA "rule of reason," the NRC must conclude that DOE's Scenario 1 is the only reasonable No-Action Alternative and that DOE's No-Action Alternative Scenario 2 is remote and speculative and undeserving of consideration under NEPA. The NRC Staff must therefore include a revised evaluation of the No-Action alternative in any supplemental environmental impact statement. Staff's estimates to the Commission of the schedule and resources required for completing the supplemental environmental impact statement for the proposed Yucca Mountain Repository should reflect the need for this new evaluation.

Thank you.

Sincerely,



Robert J. Halstead  
Executive Director

RJH/sjh

cc Marta Adams, Chief Deputy Attorney General  
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