

PRELIMINARY COMMENTS OF THE STATE OF NEVADA ON NRC STAFF'S
DRAFT SUPPLEMENT TO THE U.S. DEPARTMENT OF ENERGY'S
ENVIRONMENTAL IMPACT STATEMENT FOR A GEOLOGIC REPOSITORY
FOR THE DISPOSAL OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE
WASTE AT YUCCA MOUNTAIN, NYE COUNTY, NEVADA (NUREG-2184)

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Thank you for the opportunity to offer comments today on NRC Staff's draft Yucca Mountain environmental impact statement supplement on groundwater. I am speaking today on behalf of the State of Nevada.

Nevada's technical experts are reviewing the draft supplement and, as Staff noted in last week's conference call, Nevada has asked for a 60-day extension to file comments so that its experts will have an adequate time for review. Others on the call supported Nevada's request; no one on the call opposed it. We hope that Staff will promptly grant Nevada's request.

Nevada plans to file timely and very detailed written comments on Staff's groundwater supplement. It would be premature for me to discuss these comments today in any detail, but I thought it would be useful at this early stage to highlight three areas of likely focus.

First, there is the important matter of scope. The scope of Staff's current draft supplement is apparently controlled by Staff's September 5, 2008 adoption decision. That decision included, in section 3.1.2, an evaluation of whether significant new information or other considerations had arisen since the DOE's

2002 and 2008 environmental impact statements that could affect the conclusions in those documents. That was seven years ago. At least four significant events have occurred since then that could affect the conclusions in DOE's environmental documents. All of them warrant further Staff review. These are:

- (1) The President's March 24, 2015 decision that defense high-level wastes should be disposed of in a repository devoted exclusively to that purpose. In light of this decision, the proposed action in DOE's 2002 and 2008 environmental documents - to comingle defense and commercial wastes in Yucca Mountain-violates the NWPA.
- (2) The President's July 10, 2015 designation of the Basin and Range National Monument. This may affect the conclusions in DOE's rail corridor supplemental environmental impact statement because some of the Caliente corridor transects the new Monument.
- (3) Since the application was filed in 2008, work was terminated on the TAD (Transportation, Aging and Disposal) canisters assumed in the license application and a large amount of commercial used nuclear fuel is now loaded in different canisters. If re-packaging is required, this could give rise to environmental impacts not evaluated previously.
- (4) A critical part of DOE's evaluation of the no-action alternative was its evaluation of scenario 2, a total loss of institutional controls at used fuel storage sites after 100 years. In its "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel "(NUREG-2157), the Commission held that this scenario was contrary to the rule of reason and violated NEPA. Yet a fair reading of the DOE analysis is that Yucca Mountain is not the preferred option under NEPA if this scenario is eliminated from consideration.

Nevada is continuing its review of these matters and its written comments will have more details.

Second, the concentration of contaminants in the groundwater at the regulatory compliance location as calculated in DOE's 2008 Yucca Mountain repository license application is used in the draft supplement as the source term, or beginning point, for the NRC's groundwater and groundwater discharge impact

assessment. This source term for radionuclides is a result of DOE's Total System Performance Assessment ("TSPA") that in the end calculates the dose to an individual at the compliance location from releases from the repository over time. Staff's reliance on the DOE's TSPA would appear to render material and relevant to the draft supplement many – if not all – of Nevada's TSPA safety contentions, most of which were not addressed specifically in Staff's SER (Volume 3) and raise issues that have never been the subject of public comment under NEPA and CEQ regulations. Nevada plans to offer more detail on this matter in its written comments.

Finally, the NRC is subject to the Information Quality Act (44 U.S.C. § 3516 note), as implemented by a January 14, 2005 OMB Bulletin (70 Fed. Reg. 2664) and by an NRC Handbook that is part of NRC Management Directive section 3.17. It seems clear that the draft supplement constitutes a "highly influential scientific assessment" that is "scientifically and technically novel" and should be the subject of a peer review by independent experts not employed by NRC. We are not aware of any NRC plans to sponsor such a review. It would appear that an independent peer review would be practical, appropriate, and required by law.

Furthermore, the February 22, 2002 OMB guidelines implementing the Information Quality Act (67 Fed. Reg. 8452) require the NRC to comply here with certain generally applicable quality principles in the Safe Drinking Water Act (42 U.S.C. § 300g-1 (b) (3) (A) and (B)). It is not apparent that the draft supplement complies with these principles.

Again, thank you for the opportunity to comment. Nevada will provide more details and supporting analyses in its written comments.