

DAN SCHINHOFFEN 9/15/15
NYE COUNTY

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The National Environmental Policy Act and its implementing regulations of the Council on Environmental Quality exist to ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. Moreover, Federal agencies are, to the fullest extent possible, to facilitate public involvement in decisions that affect the quality of the human environment. In crafting the Nuclear Waste Policy Act and the amendment that singled out Yucca Mountain in Nye County, Nevada, as the sole site to be studied as a location for a repository, Congress took care to ensure that the affected units of local government had the means to review activities with respect to Yucca Mountain for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on a unit of local government and its residents. Section 116 of the Nuclear Waste Policy Act directs the Secretary of Energy to make grants to any affected unit of local government for this purpose. The Act defines the term "affected unit of local government" to mean the unit of local government with jurisdiction over the site of the repository; in other words—Nye County.

Under the Act, the Department of Energy was assigned responsibility to prepare the License Application and the supporting Environmental Impact Statement; the Nuclear Regulatory Commission was to adopt the Environmental Impact Statement to the extent practicable. Beginning in 2010, a series of deliberate actions were undertaken by the Administration to try to destroy the program: the Department of Energy attempted to withdraw the License Application; the Nuclear Regulatory Commission failed to overturn the Atomic Safety and Licensing Board rejection of the attempted withdrawal; the Nuclear Regulatory Commission unilaterally stopped work on the review of the License Application; and a number of affected parties took the Nuclear Regulatory Commission to court and were successful in obtaining a writ of mandamus to force the Nuclear Regulatory Commission to resume review of the License Application.

Previous to these actions, Nye County and other affected units of local government received grants from the Department of Energy and actively participated in the License Application process. When the site was designated in 2002, the Nye County Board of County Commissioners passed resolutions that Nye County would constructively assist the United States in fulfilling the commitment to provide a geologic repository to protect the safety of its citizens.

The hearing tonight ultimately is a consequence of a commitment by the Department of Energy to supplement its Environmental Impact Statement to address certain questions raised by the Nuclear Regulatory Commission staff. However, the Department of Energy reneged on its commitment and left it to the Nuclear Regulatory Commission staff to answer its own questions. Whether or not there was an explicit collusion of two federal agencies is immaterial—the consequence is the same. If Department of Energy had done the Environmental Impact Statement supplement, there can be no doubt that Congress would have intended for the affected units of local government to receive grants that would allow them to participate in preparation of this document. Because the Nuclear Regulatory Commission staff prepared the supplement, the Department of Energy can argue that because it was not doing any work, the affected units of local government had no right to receive grant money.

I have no comments to offer tonight on the Environmental Impact Statement. However, Nye County will provide limited comments based on a cursory review of the document by the close of the public comment period. Without the Section 116 funds, Nye County and the other affected units of local government cannot afford to hire technical experts to help them critically review the document. Unless and until the affected units of local government receive grants sufficient to allow them to participate in the finalization of the supplemental Environmental Impact Statement, any action of the Nuclear Regulatory Commission to finalize the document makes a mockery of the intent of the National Environmental Policy Act, the implementing regulations of the Council on Environmental Quality, and the intent of Congress in the Nuclear Waste Policy Act for the Secretary of Energy to provide funds for such reviews.

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