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Attached are the comments of the Nevada Nuclear Waste Task Force on the Draft Environmental Impact Statement for the proposed Holtec Consolidated Interim Storage Facility in Lea County, New Mexico.

Submitted by:

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## NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

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The Nevada Nuclear Waste Task Force (Task Force) was formed more than 30 years ago when the Nuclear Waste Policy Amendments Act (NWPAA) was passed. The singling out of Yucca Mountain, Nevada to be the only site considered for a national high-level nuclear waste repository created the need for the public in Nevada to become aware of the law and to have a voice in federal government agency deliberations and actions. This organization continues to serve Nevadans and to stay abreast of issues and participate in the opportunities for public input on related actions.

The following are two issues we believe to be of the utmost importance to Nevadans. Additionally, other members of the public nationally who have any involvement or interest in Nuclear Regulatory Commission (NRC) licensed facilities or potential installations requiring NRC licenses should be aware of them as well.

We have reviewed the Draft Environmental Impact Statement (DEIS), prepared by the NRC to accompany the license application submitted by Holtec for the construction authorization to build a Consolidated Interim Storage Facility (CISF) in Lea County, New Mexico. The docketing of this application was illegal because it violates Section 148 (d)(1) of the NWPAA. A Monitored Retrievable Storage (MRS) facility referred to in the Amendments Act is the same as a CIFS. It is clearly prohibited for such a facility to be licensed until a repository for final disposition of the waste held at an MRS/CISF has been licensed.

For many years the U.S. Congress has debated changes to the NWPAA to allow for an MRS/CISF independent of a repository, but no bill has passed. Therefore, there is no justification for NRC to accept or docket this application.

If I or someone in my residential neighborhood decided to build a commercial facility on a vacant lot adjoining their home, the county would not accept or grant a permit for the building. If we submitted the permit application with the assumption and promise that our county would or could be expected to change the local zoning law to allow construction and operation, it would still not be accepted. To do so would be a

violation of the existing law and break the trust of the residents in the neighborhood who depend on our Commission to adhere to and enforce the laws for the protection of the residents they serve. Likewise, NRC has an obligation to recognize and follow existing laws to preserve the trust of the citizens in our federal government.

The Task Force was well aware of and involved in the licensing process that occurred for the Private Fuel Storage facility in Skull Valley, Utah – an MRS/CISF. As is the case here, that facility should never have been licensed by the NRC for the same reason. The issuance of that construction authorization, against the will of the State of Utah, Native Americans of the Paiute and Western Shoshone Nations, as well as a majority of Utah citizens, was a violation of trust and a stain on the reputation of the NRC. Because of that strong and enduring official and public opposition, the facility was never built. Similarly, the formal consideration of the Holtec license application for an unlawful facility will again be evidence of the NRC's disregard for the law and a violation of trust and disrespect of the U.S. public.

The second issue to be addressed here is the assumption made both by Holtec and the NRC that the proposed CISF can be considered for license as an “interim” facility that will not violate the terms of its forty-year license period. The license application and this DEIS assume that waste would leave the CISF and be taken to a repository at Yucca Mountain, Nevada.

As stated above, accepting and processing the license application for a facility that would be unlawful under current statute is wrong. The assumption that there will be a licensed, constructed and operating repository at Yucca Mountain is outrageous.

From before Yucca Mountain was singled out, the Task Force played an active role in the public meetings that were held as well as helping the people of Nevada to represent themselves in ways that were acceptable to the federal government process of public involvement. Our activity as well as that of elected officials, business people, and the residents of Nevada, was constant through the time of the 2008 submission of the Department of Energy's (DOE) license application, continuing on to the halt of activity in 2010. During this last decade, the official and public opposition to a Yucca Mountain repository has only grown stronger as the population of Nevada has increased.

The Task Force was an active participant in the pre-licensing activities of both the DOE and NRC. Throughout the more than twenty-year period of our mutual activity and communication with both government agencies, officials and staff constantly

insisted that the process was fair, objective, and deliberate. We were repeatedly assured that all of us in Nevada could place our trust in the NRC because before any license was granted for construction or operation at Yucca Mountain, a thorough and unbiased process would fully play out. We were told that there was no reason for questioning the fairness of the NRC licensing process.

Needless to say, there was skepticism after what we had seen in the PFS licensing process, but we were told that in the case of Yucca Mountain, NRC could be trusted. It is clear to see now that those assurances were false and to trust them would be foolhardy. Both the Holtec CISF license application and this supporting DEIS assume a Yucca Mountain repository will be licensed, constructed, and in operation so as to allow for the New Mexico CISF to comply with the 40-year license time period. It may be understandable that Holtec would try to convince the NRC that future agency and Congressional actions could be counted on to validate their application assumptions. For NRC to not only accept such myths in docketing the application but to go one better and express the same fantasy in the DEIS is incredible.

How can any Nevadan believe that a licensing proceeding will honestly consider the hundreds of accepted contentions submitted by the parties to the Yucca Mountain licensing process? Likewise, why would any resident in a community with an NRC licensed facility believe that they can trust the safety of the operations? How can the people of New Mexico possibly believe that the licensing process for the Holtec CISF will be fair and objective when they can see in the DEIS that NRC assumes a non-existent future decision as fact?

The license application has been docketed but this DEIS must not be allowed to stand with the assumption of a Yucca Mountain repository, and the licensing process for this facility must not go forward.