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Yucca Mountain [Folder 1]

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To: Carol
From: Katie

Re: Backgrounder on Yucca Mountain

The issue of depositing nuclear waste at Yucca Mountain, Nevada, started in 1982 when Congress passed the Nuclear Waste Policy Act. The law called for the Department of Energy to open a underground repository for commercial high level radioactive waste by 1988 and to recommend a second site that would receive waste five years later. Nuclear utilities have been paying into a trust fund for this purpose, while they continue to store radioactive waste on site. The federal government's obligation was to site a permanent repository by 1998 and take the waste off the utilities hands.

In 1986, Reagan named three sites that were final candidates for the first repository - Hanford in Washington state, Deaf Smith County in Texas, and Yucca Mountain, Nevada. These sites were supposed to be characterized, a process that involves the drilling of exploratory shafts to determine rock stability. In 1987, Congress canceled the search for a second repository, citing Reagan's claim of lower than anticipated waste volume, and decided to restrict characterization to Yucca Mountain only. (This was passed as part of the 1987 budget reconciliation act (PL 100-203). If Yucca Mountain was found to have fatal flaws, a new search would have to be started from scratch. If Yucca Mountain was suitable, then Nevada would receive \$10 million a year until waste deliveries begin and \$20 million per year thereafter, until the shipments ended. Although the state has the authority to veto the decision to site a repository, Congress has the authority to override that veto and situate the repository anyway.

Senators Reid and Bryan, and Governor Miller of Nevada are all on record as stringently opposing the repository. The Nevada delegation has fears that the selection of Yucca Mountain is a foregone conclusion and that DOE will not conduct a objective characterization in light of that. Therefore, in the past, Nevada has refused to process state air and water quality permit applications for the DOE to begin the characterization. In June of 1991, a federal court order required Nevada to process two applications. All of these permits have since been granted and preliminary work has been done on characterization. Responding to Nevada's pre-court order recalcitrance, the House in 1991 passed a proposal to allow DOE to preempt Nevada's state environmental permits as part of the National Energy Policy Act.

The legislative battle in 1992 was then was fought on two fronts: First, the National Energy Policy Act of 1992. The House version passed in 1991 included a provision that granted DOE authority to proceed with site characterization work without state permits. The Bush administration had included the preemption in their National

Energy Strategy: however, the Senate passed its version of the NEPA without this provision, mainly as a way to avoid a filibuster of the bill by the Nevada delegation. Senator Johnston, an original supporter of the preemption, agreed in August to try to have the House proposal removed from the final energy bill in conference. In return, Bryan and Reid were to support the bill and Gov. Miller committed himself to processing the remaining permits for characterization. HOWEVER, the conference committee on the energy bill that met in October 1992 added a provision that specifically exempted Yucca Mountain from the EPA waste disposal regulations that are issued for WIPP, the repository in NM for nuclear weapons waste and made it theoretically possible for the EPA's standards for radioactive exposure at Yucca Mountain to be unique (and less stringent). In order to make it easier to license and open Yucca Mountain, the energy bill directs the National Academy of Sciences to conduct a year long study of possible radioactive gases from the repository. The new standards would automatically be based on the NAS recommendation, due on Dec. 31, 1993. This particular provision has Nevadans worried for two reasons:

- 1) The standards would be based on INDIVIDUAL exposure to radioactivity, which would be less stringent than the measure of radioactivity on a POPULATION. Current standards at YM (promulgated by the EPA in 1985) are based on population studies and DOE claims they can't meet them. Note that the EPA standards have been challenged in court anyway -- see discussion below. Now DOE wants special standards for Yucca only.

- 2) There is a feeling, especially on the part of the Nevada delegation and among environmentalists, that NAS will merely rubber stamp what DOE wants. This idea of using the NAS to set EPA standards based on only one site is unusual, and some fear it will set a dangerous precedent.

Reid and Bryan did attempt to filibuster the final energy bill but could not muster enough votes. (Gore missed this vote and the vote on the final passage of the energy bill. Reid and Bryan both voted against cloture along with Environment members Chafee, Graham, and Moynihan (if he's still sitting on the committee when the hearing takes place). Other votes against cloture came from Wellstone and Shelby. However, Gore did publically oppose the initial inclusion of the energy bill provision on the nuclear waste repository -- not specifically because of Yucca Mountain, but because Johnston's original language also included language "delinking" the siting of a monitored retrievable storage (MRS) facility -- a temporary and retrievable facility for high level waste -- from the siting of a permanent repository. It is my understanding that there were no votes in the Senate on this delinking proposal and it was finally removed from the energy bill.

The MRS was to begin taking wastes in 1998 - pursuant to the Nuclear Waste Policy Act of 1982 that set up a contract between DOE

and the nuclear utilities. In return for their payment to a trust fund (3 billion has been paid so far) the DOE was to begin taking wastes. However, it is now clear that a permanent repository will not be available before 1998. In 1987, Congress, concerned that the development of a MRS facility might become a substitute for a permanent repository, passed the Nuclear Waste Policy Amendments of 1987 that linked development of an MRS facility to progress in a permanent repository. DOE under law cannot build an MRS facility until a license has been issued for construction of the repository (which it has not for Yucca Mountain). This is what Johnston originally had proposed for the Energy bill - a change in the Nuclear Waste Policy Amendments that would have allowed an MRS to be built without progress in Yucca Mountain siting. Tennessee was originally pegged as the most likely site for the MRS which is why Gore led the fight in 1987 to pass the Nuclear Waste Policy Amendments and again why he opposed Johnston's proposal in the Energy Bill. (Gore and Sasser wrote a letter to Johnston on June 18, 1991 asking that this provision be dropped -- it was and there were not any votes that I know of on it).

The second legislative battle of 1992 involved the Waste Isolation Pilot Project legislation. WIPP, first authorized in 1976, is the permanent repository for radioactive waste generated by nuclear weapons facilities, and is slated for Carlsbad NM. A bill that withdraws the land that WIPP will be on from the jurisdiction of the Interior department to the Energy Department passed in the 102nd Congress. The bill includes a provision that no nuclear waste will be stored in WIPP until the Environmental Protection Agency rewrites regulations for the disposal of transuranic and high level radioactive waste. This issue is pertinent to Yucca Mountain because EPA originally issued waste disposal standards in 1985 but abandoned them two years later after a federal court struck down two provisions on grounds that they would fail to adequately protect groundwater. Under the WIPP bill, the standards that survived the court challenge can be reinstated, however, final standards for WIPP, especially groundwater standards, are to be promulgated by March 1993. Note that Yucca Mountain is not to be subject to these standards since the Energy Bill contained language limiting Yucca standards to the report issued by the NAS. The Nevada delegation believes that were Yucca Mountain subject to the new standards required for WIPP that Yucca would be disqualified.

There is also much concern about seismic activity near Yucca Mountain. The California desert earthquake in summer 1992 was only a few miles from Yucca Mountain. Some scientists have argued that groundwater levels will rise as a result of seismic activity, but DOE scientists disagree. DOE has said that the site is still viable, but ironically, only a few weeks before, DOE said the chance of seismic activity around YM was almost zero. DOE therefore does not have a great deal of credibility with Nevada citizens right now. The NAS report is going to analyze further the possibility of future seismic activity and its effects on groundwater.

The future of Yucca is uncertain, as only a few weeks ago, on December 17, Energy Secretary Watkins declared that a site will not be selected by 1998 as the original legislation had required. There is some talk that a temporary site may be selected. Nevada is concerned that they or a neighboring state will be selected for this temporary site -- which further reinforces in their minds that Nevada will be chosen as the final site no matter what scientific studies may prove. The siting of an MRS in the vicinity of Yucca Mountain seems to the Nevada delegation like an attempt to assume the the waste will eventually be transported to Yucca Mountain -- so why not make the temporary site as close to the final site as possible?? Watkins indicated in his letter to Sen Johnston of the 17th that although a permanent site has been delayed, that a temporary site - a MRS - could be located by 1998, particularly if the site is located on federally owned land - perhaps a current federal weapons facility. This may bring up the fight again over the siting of an MRS in Tennessee at the Clinch River site.

While the Nevada delegation is still unanimously concerned that Nevada is being railroaded into accepting the dump, temporary or otherwise, Senator Reid's staff has said that any attempts by the new administration to conduct a fair, scientific analysis without artificial time deadlines would be most welcome. Reid believes that since the capacity exists to continue to store radioactive waste on site at most nuclear plants for many more years, that attempts to site a repository within a short time line is unnecessary. Moreover, because of the complex questions involved, Reid feels that tight time pressures will force shoddy analyses. That is why Reid and Bryan opposed the energy bill provision requiring a NAS study in only one year. Reid would support, however, extended studies not only on a repository, but on new technologies to minimize or neutralize radioactive waste. {I am unclear, however, as to the feeling of Bryan about the time frame of the nas report??}.

WIPP:

* The Waste Isolation Pilot Plant was first authorized in 1976. It is to be the nation's only permanent underground repository for transuranic waste generated by DOE's nuclear weapons plants. Transuranic waste is more dangerous than low-level waste but is less radioactive than spent nuclear fuel and other high-level waste.

* The WIPP facility is essentially a giant nuclear waste tomb in the thick salt beds 2,200 feet beneath the desert floor near Carlsbad. It is expected to hold about 850,000 55-gallon drums of mixed radioactive and hazardous wastes. The site was chosen because it supposed to remain dry - free from groundwater. However, scientists from the U. of NM discovered in 1987 that water was seeping into some of the chambers. And in June of 1988 an unpublished DOE report was leaked that spoke of a large pressurized body of water under the WIPP site that could potentially carry radioactivity upward to the surface.

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FIFTH REPORT TO
THE U.S. CONGRESS
AND
THE U.S. SECRETARY OF ENERGY



FROM THE
NUCLEAR WASTE TECHNICAL REVIEW BOARD

June 1992

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May 1992

NUCLEAR WASTE

DOE's Repository Site Investigations, a Long and Difficult Task

