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Ward Valley

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OFFICE OF THE VICE PRESIDENT
WASHINGTON

August 16, 1993

The Honorable David Roberti
President pro Tempore
Senate
State of California
Sacramento, CA 95814

Dear Senator Roberti:

Thank you for contacting me regarding your thoughts about the proposed Ward Valley, California, radioactive waste facility. It was good to hear from you.

I appreciate learning your concerns about the proposed siting of a nuclear waste facility at Ward Valley. I understand your perspective on holding additional hearings on this very important matter.

It is my understanding that Secretary Babbitt has contacted Governor Wilson expressing this Administration's interest in conducting a formal hearing on the record, with expert testimony and cross-examination, before the issuance of a licensing for the proposed facility. The Bureau of Land Management (BLM), at Secretary Babbitt's request, has spent the last several months putting the decisionmaking process back on a track that fully complies with federal law.

After careful consideration, this Administration is not prepared to transfer the Ward Valley site to the State of California under FLPMA without there being a formal hearing. Because this project has created a substantial amount of controversy and genuine public concern, I believe that a formal public hearing would prove beneficial for the public to voice opinions on this issue. We have asked Governor Wilson to hold this hearing, which should be presided over by a disinterested party and should focus on the issue of the migration of radionuclides from the site.

I understand and share your concern that the problem of low-level radioactive waste disposal is a serious one. I think that the current situation will provide the opportunity necessary to open the process to the public.

Again, thank you for sharing your concerns with me. I look forward to working with you toward the resolution of this very important matter.

Sincerely,

Al Gore

AG/avl



STATE OF CALIFORNIA
SENATE
SACRAMENTO, CALIFORNIA 95814

DAVID ROBERTI
PRESIDENT PRO TEMPORE

July 8, 1993

Vice President Albert Gore
Office of the Vice President
The White House
Washington, D.C. 20501

Dear Vice President Gore:

Enclosed please find a copy of my June 3 correspondence with Secretary Babbitt regarding the proposed Ward Valley, California, radioactive waste facility. The letter deals with the recent announcement by Governor Wilson that he would proceed to a licensing decision on the Ward Valley project without conducting the adjudicatory hearing he had promised he would hold to address unresolved environmental issues. This commitment to an evidentiary hearing had been made repeatedly, including to the U.S. Interior Department, as a condition for the proposed transfer of the Ward Valley land from the federal government to the Wilson Administration.

I strongly urge that the federal government not transfer this land until and unless the condition on which the transfer was predicated -- successful resolution of outstanding safety issues via the promised adjudicatory hearing -- has been fully met. These radioactive materials are toxic for generations; mistakes can be irreversibly damaging.

The proposed Ward Valley nuclear waste facility has been exceedingly controversial in California. The designed dump contractor has a troubled history, having operated failed nuclear dumpsites in several other states; the proposed design (unlined trenches) is woefully primitive; and there are serious questions about the potential for leaking wastes contaminating the underlying aquifer and the nearby Colorado River, a major source of drinking water for much of the Southwest.

I have enclosed a copy of a study prepared by the California Senate Office of Research (SOR) that identifies a wide range of unresolved safety, environmental, and liability questions about Ward Valley, as well as potential alternatives -- the kind of issues that an adjudicatory hearing was to address. I have also enclosed my statement releasing the study, summarizing the issues raised therein, as well as a memorandum I sent to Secretary Babbitt in March, identifying what actions I think would be appropriate for the Interior Department to take. Recent editorials from the state's major newspaper supporting an adjudicatory hearing are also included.

Vice President Albert Gore
July 8, 1993
Page Two

Any assistance you can provide regarding this important issue would be most appreciated. Grave risks to this and future generations of California may result if we do not exercise great caution.

Sincerely,

A handwritten signature in black ink, appearing to read "David Roberti". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

DAVID ROBERTI
President pro Tempore

DR:nmba

Enclosures

Hello Cleveland?!?

What do I do w/ this?

Ltr to Teshi fr. KM?

Ltr to Roberti fr. VP?

Please help. TH

T

Send letter to Roberti saying we will have hearing -- use Babbitt language.

See

Babbitt

See attached Babbitt letter.

Katie --

This seems good -- its an intractable problem -- who wants nuclear waste ?? -- but I agree with Lesky that ~~an~~^a public hearing is essential b/f moving forward. It may not solve anything or change minds, but we need to be open in this process. While the end result will probably be that Ward Valley is the final site -- it doesn't affect the CA Desert bill or any Indian lands which would be my two biggest concerns @ the placement. Pam



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240



FAX TRANSMITTAL

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
1849 C STREET, N.W., MAIL STOP 6352
WASHINGTON, D.C. 20240

PHONE NO. (202) 208-4423 FAX NO. (202) 208-5584

FROM: John Lesky DATE: 8/3/93

	<u>TO</u>	<u>AGENCY</u>	<u>PHONE</u>	<u>FAX</u>
1.	Kate McHurdy	WH	456-6224	456-2710
2.	Hugh Simon	WH		
3.				
4.				
5.				
6.				

COMMENTS:

NUMBER OF PAGES (INCLUDING COVER PAGE):

Also see
117 comment

7

am --

Please
call Lesky

amp and tell him
We will get to him
7 amp. In meantime
please call Tom
Epstein & Sproul
w/ him

August 3, 1993

(BY FAX)

To: Katie McGinty
Greg Simon

From: John Leshy, Department of the Interior (208-4423)

Re: Proposed Transfer of Federal Land to California as a Site for
the Ward Valley Low-level Nuclear Waste Dump

Undoubtedly you've heard of this subject before. During the transition in December/January Secretary Lujan attempted to speed up approval of this land transfer, but the paperwork didn't get done before January 20. We have since been working to restore credibility to the process.

Attached is a draft letter that Secretary Babbitt is planning to send to Governor Wilson the end of this week or early next week.

Our aim is to remove federal obstacles to allow the project to move forward, while still giving the opponents an additional opportunity for a hearing (with expert testimony and cross-examination). I doubt if this (or anything other than total opposition) will satisfy the rabidly anti-nuclear opponents of the facility.

Governor Wilson has been stubbornly opposed to any further hearing. Our letter would put the ball back in his court.

Most of the state's leading newspapers have editorialized in favor of at least some additional hearing. We have worked with George Miller's office in designing this approach, and we believe he will help gain support for it from other Democrats in the California delegation.

Let me know as soon as you can if you have any problem with sending this, its substance, or its timing.

cc: Tom Collier
Stephanie Solien

DRAFT

Specifically, if I accede to your request to make the disposal under FLPMA, I have a statutory mandate to insure that it "will serve important public objectives which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values" 43 U.S.C. § 1713(a)(3). Moreover, FLPMA also requires me to make such transfers on "such terms, covenants, conditions, and reservations as [I deem] necessary to insure proper land use and protection of the public interest." 43 U.S.C. § 1718.

In short, while federal law makes the licensing and operation of Ward Valley, including attendant health and safety issues, primarily a state concern, federal law also requires me to consider the site in relation to its proposed use in deciding whether or not to transfer the land. It was in response to this latter mandate that the Bureau of Land Management (BLM), beginning in the Bush Administration, prepared and then supplemented an environmental impact statement on the proposed transfer.

THE QUESTION OF A FORMAL HEARING

I understand that you agreed with my predecessor, Secretary Lujan, to conduct a formal hearing on the record, with expert testimony and cross-examination, before issuing a license for the facility. Indeed, your Administration proposed to expressly condition the transfer of federal land on such a hearing being held.

Although an ill-advised attempt was made to short-circuit the procedural requirements of federal law and complete the transfer before the Bush Administration left office, the transfer was not consummated and the matter was left for me to resolve. The BLM has, at my direction, spent the last several months putting the decisionmaking process back on a track that fully complies with federal law.

During that time, a California state court has decided that the state is not obliged by state law to hold a full-blown adjudicatory hearing on Ward Valley. In the wake of that decision, your Administration has retreated from its earlier commitment to hold any further hearings.

After careful consideration, I do not believe I can do any less than my predecessor was prepared to do. Therefore I am not prepared to transfer the Ward Valley site to you under FLPMA without your Administration conducting a formal hearing, as described below.

This project has created a substantial amount of controversy and genuine public concern. It is essential that the public have confidence that the problem of low-level radioactive waste

DRAFT

disposal is real, that it is manageable, and that a credible process has been followed in determining that this site is appropriate. This is especially true given the effort in the previous Administration to derail the normal decisionmaking process, and given the emotionalism that has sometimes engulfed this subject and this project.

I have no doubt that this project has some determined and conscientious opponents who will never be persuaded of the wisdom of going forward. Doubtless there are also determined proponents who think any further inquiry is a waste of time and money. But I also believe that there are many who still genuinely have open minds on the question. Their understanding could be advanced by additional public airing of these issues. In short, what is needed in this climate is not less but more public exposure.

Equally important, a hearing would give me an additional measure of confidence before I make a final decision on transfer. Responsible Departmental officials have conducted a careful review of the NEPA documents and other pertinent information. This review indicates the transfer of federal land at this site for this purpose may well be in the public interest.

If the hearing discloses no important new information suggesting the site is not an appropriate one for this purpose, I am prepared to make the transfer expeditiously. I believe, in other words, that given the environmental impact evaluation that has been done to date it is fair to place the burden of proof on opponents of the transfer.

I understand you now to take the position that the state court decision in May, in addition to concluding that a formal hearing was not required under state law, actually prohibited such a hearing. The legal experts I have consulted express doubt that the opinion goes this far. Indeed, it would be extraordinary, perhaps even unprecedented, for a court to prohibit a government agency from choosing to hold a public hearing on a matter of public importance.

In any event, I believe the court decision is inapplicable here. My considered judgment is that you should hold a hearing to help me, in these unique circumstances, discharge my responsibility under federal law (NEPA and FLPMA) in deciding on this transfer. That is, your obligation to hold a hearing (assuming you decide to pursue the transfer) springs from federal, not state law. Therefore whether the state courts have prohibited you from holding a hearing under state law is irrelevant.

This also means that the results of the hearing would not be subject to judicial review under state law. (Furthermore, because neither NEPA nor FLPMA requires a hearing, the nature or conduct of the hearing - as opposed to my ultimate decision on

DRAFT

the transfer - would not be subject to judicial review under federal law.)

TIMING AND CONDUCT OF THE HEARING

While we have substantially completed our environmental review of Ward Valley under NEPA, we have one additional concern. As you know, we have been in litigation over designation of critical habitat under the Endangered Species Act (ESA) for the desert tortoise, a species formally listed for protection under the Act. The Fish & Wildlife Service will shortly release its draft critical habitat designation, with the final designation scheduled for around the end of this year.

While BLM has already completed its ESA-required consultation with the Fish & Wildlife Service (FWS) on the Ward Valley project, further consultation would be necessary if the Ward Valley site is designated as critical tortoise habitat. Being in the tortoise's critical habitat would not necessarily prevent the Ward Valley project from going forward, but it would require a more careful look at the project's impacts on the tortoise and suitable mitigation measures.

It seems to me the best course here is to assume that further consultation will be necessary. This consultation, if begun promptly, could be completed by the end of the year. (The alternative is to wait until then to decide whether consultation is necessary, which could set the decisionmaking schedule back another several months if the Ward Valley site in fact is ultimately designated as critical habitat.)

This conservative course with respect to the ESA means that you have ample time to conduct a hearing and provide me with the results in December without delaying the project. At that point, all procedural hurdles in federal law will have been crossed, and all the information necessary for decision will have been gathered. I would then promptly make the decision on the transfer.

I understand your concern that a hearing, once begun, might prove interminable because of the fervor and perseverance of some project opponents. As a result, I am not requiring that the hearing be open-ended or so loosely structured as to invite that result. To the contrary, I want the hearing to start promptly and move expeditiously to a conclusion. To that end, my only requirements are as follows:

- a. The hearing should be presided over by some disinterested person acceptable to you and me.
- b. The hearing should focus on the issue of the migration of radionuclides from the site, by whatever means (e.g.,

DRAFT

floods, seismic activity). These directly relate to my responsibility under federal law regarding the suitability of the site, although addressing them would demand some attention being paid to facility design and the character of the waste to be disposed. I leave to you whether the hearing addresses other issues, such as the suitability of the proposed operator of the facility.

c. Testimony by appropriate experts will best ventilate the central issue. Therefore there should be reasonable opportunity for testimony by qualified experts from both proponents and opponents, under oath, with a reasonable opportunity for cross-examination.

d. At the conclusion of the hearing, 30 days would be allowed for any participant to file briefs or arguments. You would then as promptly as possible supply me with a summary of any new information emerging as a result of the hearings (beyond that already contained in the NEPA/CEQA documentation to date), along with any recommended findings you wish to make.

Thus a schedule for the next few months might look like this:

August/early September - design and make arrangements for hearing;

late September/early October - conduct hearing;

November - posthearing briefs/summary/recommended findings, forwarding them to me in December.

My staff is available to consult with you on the details.

CONCLUSION

I understand and share your concern that the problem of low-level radioactive waste disposal is a serious one, especially for universities, the medical community, the biotechnology and electrical utility industries. A project of this character will always create controversy, and no outcome will satisfy everyone. But I also look at the current situation as an opportunity - to help educate the public and instill it with some confidence in our ability to safely contain low-level radioactive byproducts of modern medicine, research, and industry. Refusing to take shortcuts, and choosing instead to go the extra mile in building procedural safeguards in our decisionmaking processes, is not only the best, but may be the only, way we can move forward.

Sincerely,



STATE OF CALIFORNIA
SENATE
SACRAMENTO, CALIFORNIA 95814

DAVID ROBERTI
PRESIDENT PRO TEMPORE

June 3, 1993

The Honorable Bruce Babbitt
Secretary, U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Secretary Babbitt:

This morning I met with Governor Wilson, at his request, regarding the proposed Ward Valley nuclear waste disposal facility. I was extremely disappointed to be informed by the Governor that he had decided to proceed to a licensing decision without conducting an adjudicatory hearing to resolve the large number of outstanding safety and scientific issues about the proposed project.

As I indicated when you and I met in Washington last March, I have long felt such an evidentiary hearing was essential. After all, some of these wastes remain radioactive for centuries, if not millennia. The proposal to contract with a company that has operated failed nuclear waste facilities in other states, to dump large quantities of wastes from nuclear power plants and other generators in unlined trenches, above a pristine aquifer, twenty miles from the Colorado River, a major water source for much of the Southwest, requires the most careful analysis before we make what could be an irreversible mistake.

In March, I provided you with a copy of a report by the California Senate Office of Research, which identified in detail many of the unresolved safety, environmental, and liability issues that an adjudicatory hearing needed to address. Among these issues are:

- * potential interconnections among the Ward Valley aquifer, neighboring aquifers, and the nearby Colorado River.

* discrepancies between U.S. Ecology's claims that radioactive materials would take many thousands of years to migrate to groundwater and actual measurements of tritium migration at the site (apparently from fallout) suggesting very much faster migration.

* the extremely primitive design proposed (unlined trenches), when one cannot build other kinds of dumps now without at least liners, let alone engineered concrete structures.

* the troubled track record of U.S. Ecology, whose radioactive waste dumps in Kentucky, Illinois, and Nevada have all been shut after a history of safety and contamination problems.

* large uncertainties about the nature of wastes projected for Ward Valley -- what kinds, how much, and from what sources,

* and a range of alternatives to the project as proposed (e.g., tritium recycling, a storage-to-decay facility for short-lived medical and biotech wastes) that have not been thoroughly assessed to date.

The Governor has said that an adjudicatory hearing is an appropriate way to address these issues and to assure public confidence in a decision that will affect generations of Californians. Indeed, the Governor has repeatedly committed to the Interior Department to hold an adjudicatory hearing as a condition of the transfer of the federal land at Ward Valley to the state.

However, last year the Wilson Administration joined U.S. Ecology (the proposed dump contractor), Cal Rad Forum (an organization of radioactive waste generators), and others in asking a state court to stay the hearings. The Administration joined in the arguments before the court against the hearing. It conceded it had the discretion to hold the hearing if it wished, but told the court it did not wish to do so.

The Honorable Bruce Babbitt
June 2, 1993
Page Three

Nonetheless, the Governor and his staff repeatedly stated publicly, including to the Interior Department, that he would hold such a hearing unless expressly prohibited by a court from doing so. The court's May 7 decision left him broad discretion to decide whether to hold such a hearing. It declined to issue the petitioner's writ requesting that the hearing be prohibited, saying to do so would be unacceptable judicial interference in the Administration's discretion.

The federal government should not transfer the land until and unless the condition upon which the transfer was predicated -- the satisfactory conclusion of a full and fair adjudicatory hearing -- has been met. I urge you to insist upon full compliance with that condition before considering transferring the Ward Valley land.

Generations to come may be adversely affected if we do not act with care. I ask you to be firm in declining to transfer this land to the state until and unless adjudicatory hearings, which the Governor himself made a condition of the proposed land transfer, are successfully completed. Your assistance in this matter is most appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "David Roberti", with a stylized flourish at the end.

DAVID ROBERTI
President Pro Tempore

DR:nmba

Enclosures



California Legislature

Senate Rules Committee

DAVID ROBERTI

Chairman

MEMBERS

WILLIAM A. CRAVEN
VICE CHAIRMAN
RUBEN S. AYALA
ROBERT G. BEVERLY
NICHOLAS C. PETRIS

CLIFF BERG
EXECUTIVE OFFICER

WARD VALLEY BACKGROUND MEMORANDUM

TO: Interior Secretary Bruce Babbitt

FROM: President pro Tempore David Roberti

SUBJECT: Suggested actions by U.S. Department of Interior
Relative to Ward Valley Nuclear Waste Facility

As we discussed at our March 8, 1993, meeting in Washington, D.C., I am very concerned about the proposal to construct a nuclear waste facility at Ward Valley, California, on land now owned by the Bureau of Land Management. I believe that should the proposed project be permitted to go forward, it may pose substantial risks to the Southwest for generations to come. This is due to the location near the Colorado River, the troubled history of the proposed contractor, the primitive design, uncertainties about the nature and quantities of wastes to be disposed of there, and a number of other concerns identified in the study by the California Senate Office of Research (SOR) report, which I provided you during our meeting. (I have enclosed here for your information a copy of the news release that accompanied the SOR report.)

The actions taken by your predecessor to attempt to ram through the land transfer in his last weeks in office were especially disturbing because of the large number of unresolved environmental questions associated with the proposal and the effort to bypass legal requirements and opportunities for meaningful public input. I am gratified by your decision to rescind former Secretary Lujan's last-minute actions and to institute a full review of the Ward Valley matter.

This is particularly important because then-Secretary Lujan, in announcing his decision to transfer the land, admitted that necessary environmental studies had not yet been completed and that the Department of Interior was taking no position on the merits of the site for the proposed use. Federal law, of course, requires the Department to complete all necessary environmental studies and to make precisely such a merit determination prior to taking final agency action.

During our meeting, I was quite heartened by your commitment to take no short cuts whatsoever and to follow the law fully in reaching a final decision whether to permit the transfer of federal land for the proposed use as a radioactive waste dump.

THE DEPARTMENT OF INTERIOR IS OBLIGATED UNDER FEDERAL LAW TO DETERMINE IF THE WARD VALLEY PROJECT IS ENVIRONMENTALLY SAFE

The Department of Interior has major obligations under federal law to determine that there are no untoward environmental risks associated with the proposed action. These federal responsibilities are independent of any obligations the State of California may have under state law.

The Ward Valley proposal is, as you know, a joint federal/state undertaking. The Environmental Impact Report/Statement (EIR/S) for the project is a joint environmental document by both the Bureau of Land Management (BLM) and the California Department of Health Services (DHS), prepared pursuant to the separate responsibilities of each agency as under the federal National Environmental Policy Act (NEPA) and the state California Environmental Quality Act (CEQA).

Interior has additional responsibilities under the Federal Land Policy and Management Act (FLPMA) to determine that the proposed project meets important public purposes. Finally, under the Endangered Species Act (ESA), Interior must assure that the Desert Tortoise, a threatened species, is protected and that critical habitat has been set aside.

In keeping with your concern about endangered species like the Desert Tortoise, which thrives in Ward Valley and adjacent areas, we would ask you to release for public review the draft report by the U.S. Fish and Wildlife Service regarding the designation of critical habitat for the tortoise. It is my understanding that the entire Ward Valley area should be designated critical habitat and thus is not compatible with the construction and operation of a radioactive waste dump.

My understanding of what the law entails is that Interior must complete a thorough environmental evaluation of the site, complete all necessary studies, and make a final merit determination of the alternative proposed uses of this land, including the proposal for using it as a nuclear waste dump. These actions must be completed before taking any action regarding the transfer, and these federal responsibilities cannot be artificially delegated to Governor Wilson.

REOPEN THE ENVIRONMENTAL IMPACT PROCESS

I am pleased that you have rescinded Mr. Lujan's actions returning the Ward Valley situation to the status quo ante of December 28, 1992, when the comment period expired on the draft SEIS.

I am concerned, however, about problems with the way BLM was handling the environmental impact review, restricting the scope of the SEIS so as to not consider any environmental, safety, endangered species, or other related issues. Comments touching on these issues -- the central matters in any environmental review -- were ignored, as were scoping comments urging their consideration.

Serious questions have been raised about the adequacy of the original EIR/S. Additionally, a number of important new issues have arisen since the completion of the comment period on the original EIS. For example, only through the intercession of Congressman George Miller, Chairman of the House Natural Resources Committee, were data about the sources and quantities of wastes projected for Ward Valley released, and there only after the close of the comment period on the original EIR/S. As the SOR report points out, serious questions remain about tritium recycle, radionuclide migration rates at the site, hydroconnectivity of the Ward Valley aquifer and other aquifers and the Colorado River, design and other alternatives to the project as proposed, potential upward migration of radioactive wastes and subsequent airborne distribution, and many other issues.

Furthermore, the alternative uses proposed for the land -- e.g., inclusion as critical habitat for the Desert Tortoise -- have not been analyzed; nor has the potential impact of a radioactive waste dump at the border of the proposed Desert Protection Area. These and a raft of other issues have either not been addressed at all, or have been inadequately addressed.

I suggest that a true supplemental EIS may need to be prepared. All issues that have been inadequately addressed or not addressed at all should be considered, including the questions raised in the SOR report and its appendices. Public scoping comments should be entertained, as well as public input received on whatever supplemental EIS results. Public hearings on the supplemental EIS might also be appropriate.

There are major unresolved issues associated with the proposed Ward Valley nuclear waste project, and the NEPA process should be reopened to address these outstanding questions.

INTERIOR SHOULD NOT TRANSFER THE WARD VALLEY LAND UNTIL THERE HAS BEEN AN ADJUDICATORY HEARING.

I was also very pleased that you indicated in our meeting that you would seriously consider requiring successful completion of a full and fair adjudicatory hearing on the project proposal before the land can be transferred. As you know, the Wilson Administration promised both BLM and the California Senate that such a hearing would be conducted, but shortly thereafter joined radioactive waste generators and the proposed dump contractor in asking a state court to relieve it of that commitment. I believe such a hearing is essential to resolve outstanding safety and environmental issues about the proposal.

The application from DHS to BLM for the land expressly committed to hold such a hearing; I believe BLM should require fulfillment of that commitment prior to contemplating any transfer of land. Should the state court rule that current state law does not explicitly permit or require an adjudicatory hearing, I would urge you to continue to hold DHS to its commitment in this regard, giving it a reasonable time (say 6 months) to get approval for any amendment to state law that may be necessary in order for the hearing to be held.

I note also that BLM has previously indicated that should new information about environmental issues arise in the adjudicatory hearing, a supplemental EIS may be necessary to address that new information. This is one more reason why no transfer should occur until the adjudicatory hearing is completed, and why the environmental impact process needs to be reopened.

If, as I believe is the case, there are substantial unresolved environmental and safety issues about the proposed radioactive waste project, an evidentiary hearing with discovery, expert testimony under oath, cross-examination, and a determination on the record, is critical.

To summarize my recommendations:

(1) That Interior make no decision on whether to transfer the Ward Valley land for use as a nuclear dump until successful completion of the promised adjudicatory hearings, which must be full and fair.

(2) That Interior reopen the Environmental Impact Statement process, through preparation of a supplemental or subsequent EIS, with full public input, that deals with the full range of unresolved environmental and safety matters of the sort identified in the California Senate Office of Research Report.

Should there eventually be a decision to transfer the Ward Valley land to the state, I believe it should be transferred to the State Lands Commission, via the indemnity selection process, rather than the Department of Health Services via a direct sale. The State Lands Commission application has precedence over that of DHS, and only the State Lands Commission has been insistent on resolution of outstanding issues. However, I believe no transfer whatsoever should take place unless and until there has been a full and fair adjudicatory hearing and completion of a reopened environmental impact statement process, with a thorough review of all the issues by the Interior Department.

It is my earnest hope that your review of the matter results in a determination not to proceed with the transfer, as I think the project as currently proposed poses unacceptable risks to the people of California. The report by the California Senate Office of Research identifies a whole host of unresolved safety problems associated with the facility's proximity to the Colorado River, the primitive design (unlined trenches), and the proposed contractor, whose poor safety record has resulted in the closure of three of its four nuclear dumps in other states.

I have come to the conclusion that the project as proposed is unsafe. Serious environmental damage, affecting generations to come, may result if we do not act cautiously and responsibly at this juncture. Your assistance in this regard is most appreciated.

#

Senate President Pro Tempore

DAVID ROBERTI

CONTACT:

Steven Glazer
State Capitol, Room 205
(916) 445-8390

RELEASE DATE:

January 15, 1993
No. 5
CC/Special

**ROBERTI RELEASES SENATE OFFICE OF RESEARCH
REPORT ON WARD VALLEY RADIOACTIVE WASTE DUMP**

Numerous Unresolved Safety, Liability Problems Identified

SACRAMENTO --- Despite being under review for many years, numerous safety and liability issues concerning the proposed Ward Valley radioactive waste disposal facility remain unresolved, a study by the California Senate Office of Research has concluded.

The report, released today (January 15) by Senate President pro Tempore David Roberti (D-Van Nuys), identified a number of serious unanswered questions about the adequacy of the proposed site, facility design, and contractors, as well as uncertainties about the quantities and types of wastes that may find their way to the radioactive dump, if built as planned. Additionally, scant attention has been paid to evaluating various alternative approaches to addressing the radioactive waste problem. The study concludes that a full adjudicatory hearing, if conducted properly, could provide an important mechanism

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for resolving these issues.

At a news conference in his Capitol office, Roberti said the report "makes clear that substantial risks to the environment may result if we do not proceed carefully and thoughtfully in this very dangerous area of radioactive waste. That is why I have felt so strongly that an adjudicatory hearing, of the sort agreed to by the Wilson Administration and the Senate Rules Committee last April, is so essential. It is why the Senate has intervened in the lawsuit filed by dump advocates last July to block the hearings."

The hearing has been stayed by the court pending its decision in the case. Proceeding with the proposed radioactive waste project in the absence of resolution of these issues via an adjudicatory hearing is unacceptable."

Roberti continued: "These nuclear wastes are toxic for hundreds, if not thousands of years. Generations to come will pay the price in unnecessary cancers and genetic defects if we rush into such a project without fully resolving the outstanding safety and environmental issues. The effort in the last week by outgoing Interior Secretary Lujan, at Governor Wilson's request, to bypass normal environmental review procedures in order to complete the transfer of the Ward Valley land to the state before Bill Clinton takes office, is particularly misguided in this regard."

The Senate Office of Research study detailed

unresolved matters associated with:

Potential for waste migration and groundwater contamination. Optimistic assumptions by project proponents about radioactive migration taking thousands of years at the site are contradicted by measurements at the site that indicate that one radionuclide, tritium, which occurs both naturally and from nuclear testing fallout, has already migrated at least 100 feet downward in less than 35 years. The proximity of the Colorado River and interconnections with neighboring aquifers raise concern about potential water contamination. Claims by project proponents that water migration direction is primarily upward at the site, if true, could provide a mechanism for radionuclides being brought back to the surface, where they could be widely distributed by winds. These issues have not been adequately addressed to date.

Adequacy of shallow land burial as a disposal method. The disposal method proposed by U.S. Ecology -- shallow land burial -- has led to massive contamination problems at three other sites across the country, leading many experts to conclude that it is not a reliable method of LLRW disposal.

According to many experts, containment of such wastes in shallow land disposal sites is virtually impossible. Despite these concerns, the State Department of Health Services (DHS) has failed to give serious consideration to other less risky methods such as above and

below-ground storage vaults and mounded bunker storage systems.

Lack of consideration of measures to minimize waste disposal. Despite requirements in state and federal law to consider less environmentally disruptive alternatives such as increased emphasis on waste minimization, DHS and the Bureau of Land Management (BLM) do not appear to have seriously considered several demonstrated alternatives. Those include mandatory tritium recovery and waste disposal-pricing schemes that would place more of the cost of disposal on generators of more hazardous wastes, encouraging conservation and recycling of those materials. Last year the Governor vetoed a bill by Assemblyman Richard Katz (D-Sepulveda) that would have required large tritium waste producers to use inexpensive technology similar to that employed at Lawrence Berkeley Laboratory to recycle rather than dump tritium wastes.

Risks of waste stream understated. Long-lived nuclear power plant wastes represent the bulk of the hazard from the proposed nuclear facility, hazards which have been understated in evaluations performed to date by DHS and U.S. Ecology.

Lack of redundancy system for waste containment. The proposed design is primitive, placing wastes in unlined trenches. Redundant containment, both in terms of stricter packaging requirements and engineered features at the site itself, might substantially improve the likelihood of

preventing waste migration.

Operator track record. Three of U.S. Ecology's four original radioactive waste facilities -- in Illinois; Kentucky; and just a few days ago, Nevada -- have been closed due to a variety of safety problems. The company had been ranked by California's Department of Health Services as the least qualified of the firms which had applied for the contract to operate the site.

Financial responsibility for damage caused by unplanned releases. State taxpayers may be stuck with liability should this dumpsite leak, as have several other U.S. Ecology sites, because of the Governor's veto of liability legislation last session authored by Assemblyman Byron Sher.

Potential for importation of out-of-compact wastes. Since most of the rest of the country is far behind California in progress toward opening new radwaste dumpsites, pressures may be substantial to make a California dumpsite a "national dump."

Problems with "low-level" radioactive waste classification scheme. The "low-level" radioactive waste category contains both small quantities of short-lived medical wastes and very large quantities of long-lived, very toxic nuclear reactor wastes. Institutional controls for the site are designed for only 100 years, yet some of the wastes will remain hazardous for hundreds, if not thousands of years.

Roberti said, "These are among the outstanding issues that should be resolved by an adjudicatory hearing and by strict compliance with environmental review requirements. Efforts by U.S. Ecology, supported at times by the Administration, to force licensing without such a hearing; and land transfer without full environmental evaluation, can come back to haunt us in years to come. After all, the State is currently facing massive potential liability for the contamination at the Stringfellow Acid Pits in Riverside County because it is accused of having hastily licensed a hazardous waste facility which later leaked terribly. An ounce of prudence now will be paid back many-fold in the future. After all, we have a moral obligation to future generations, as well as ourselves."

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EDITORIALS

A Nuclear Flip-Flop

ON AT LEAST three occasions in the past year, state officials have promised everyone from the Legislature to the federal government that California would not license a nuclear waste dump 19 miles from the Colorado River until the state held a binding evidentiary hearing on outstanding safety issues. Now the Wilson administration has seized on a recent Court of Appeal ruling, which held that the promise is not legally binding, to abandon it and press forward on licensing the proposed dump within 30 days, with no further review.

Why? That is one of the questions that U.S. Secretary of the Interior Bruce Babbitt must consider before he agrees to hand over the federally owned Mojave Desert dump site to state control. Babbitt's concern should be with the substance, not the legality, of the promise.

Certainly there can be no debate over the need to deal with the growing volume of low-level radioactive waste that is generated by utilities, industry and hospitals. Our lives depend on it. But public fears about nuclear waste disposal also require that every effort be made to demonstrate that the disposal methods are as safe as humanly practical. And while the proposed dump in the Mojave's Ward Valley, near Needles, may be the safest, most sensible option available, the public nonetheless deserves answers to some outstanding questions:

- Should more than 100,000 cubic feet of radioactive waste be dumped annually in unlined trenches in the desert, 650 feet above a water table, as the proposal stipulates?

State law requires that even non-toxic dumps be lined to protect aquifers. The Environmental Protection Agency and state water quality and waste management boards have all urged the use of liners at the proposed Ward Valley nuclear dump. Yet the would-be operator's design still calls for four unlined trenches.

- Could radioactive materials reach the water table? Computer models provided by U.S. Ecology, the proposed private operator, claim that the most mobile radionuclides would take thousands of years, if ever, to reach the water

table. Yet the company's own soil tests at Ward Valley found leached tritium at a depth of 100 feet, presumably from atmospheric nuclear tests conducted within the last 35 years. No tests have been conducted at greater depths.

- If radioactivity does reach the water table, so what? U.S. Ecology says the Ward Valley aquifer is "closed" and does not drain into any other body of water. But a 1984 U.S. Geological Survey study suggests that the basin may drain into the Colorado River, 19 miles away, which is a major drinking-water source for the entire Southwest. Accordingly, Los Angeles and six other cities have formally opposed the dump.

- Is U.S. Ecology a reliable firm? Of the four companies that bid to operate the dump, U.S. Ecology received the lowest rating. The state Department of Health Services noted that its troubled history of nuclear waste disposal in other states "casts doubt on its ability to perform future activities." The firm won the Ward Valley contract only after its three competitors pulled out due to liability concerns.

- Are there alternatives to Ward Valley? Certainly lining the desert trenches is a simple, inexpensive alternative. So is storage at the site in sealed vaults. In addition, the roughly 5 percent of wastes that come from biotechnology and medical producers are short-lived and could be safely stored anywhere until they decay.

And scientists at the Lawrence Berkeley Laboratory have developed an inexpensive means of recycling waste tritium, which would constitute about 34 percent of the unrecycled wastes destined for Ward Valley.

★ ★ ★

THE STATE CLAIMS to have addressed these questions to its satisfaction. If so, why should it refuse to make the case for the dump's safety before an impartial judge, as it repeatedly promised to do? California needs a safe means of radioactive waste disposal, but pushing through a plan on a fast track of broken promises is not the way to win the public confidence that is also required.

Message to Babbitt From the Mojave

Los Angeles Times

Secretary should require nuclear-dump hearings

TUESDAY, MAY 18, 1993

In April, 1992, the California Senate was poised to reject Russell Gould, Gov. Pete Wilson's nominee for secretary of health and welfare. At issue was Gould's supervision, during the year he was acting secretary, of the licensing of a radioactive waste dump at Ward Valley in the Mojave Desert. Responsibility for the licensing rests with the Department of Health Services, whose chief, Molly Coye, reports to Gould; and though he and she were prepared to license the dump, serious questions remained. It was particularly troubling that the technical information Gould and Coye were relying on had come, at key points, from U.S. Ecology, the private firm that was to operate the dump.

Among the Senate's concerns were the potential for radioactive contamination of ground water and of the 20-miles-distant Colorado River, the extremely poor track record of USE as an operator of waste facilities, the neglect of recycling alternatives, and the inadequacy of the liability protection provided for California taxpayers.

STATE ISSUES: These were grave concerns. However, the Senate agreed to confirm Gould when he agreed, with Wilson's backing, to hold an adjudicatory hearing—that is, an evidentiary hearing before an administrative law judge—on the unresolved issues. Though Wilson resented having to make a political deal to win confirmation for his nominee, he also said at the time that he thought the hearing justified in view of the controversy.

Later, however, USE sued in the state Court of Appeals

in Sacramento, asking that the DHS be compelled to do what it still wanted to do; that is, license the dump without a further hearing. On May 7, the court ruled that, legally, it was up to the governor to hold the hearing or not as he saw fit. Both the suit and ruling were odd because plaintiff and defendant began in agreement and because no one on the Senate side had ever contended that if the governor broke his word he would also be breaking the law. That aside, it now appears that the governor will indeed break his word and that, within the month, the DHS will license USE to operate the Ward Valley dump without the promised hearings.

FEDERAL ISSUES: As it happens, more is required for the opening of the dump than a license from the DHS. There is also the minor matter of the site itself, which belongs to the federal government. The U.S. Department of the Interior must transfer the 1,000-acre site to the State of California before work can begin.

As condition for the transfer, Secretary of the Interior Bruce Babbitt, who has already stepped in once to void a hasty transfer of the land made by then-Secretary Manuel Lujan Jr., has the right to require an environmental review.

If he chooses not to hold Wilson to his word, Babbitt certainly should require the equivalent of an adjudicatory hearing; for, at the end of the day, the questions remain. A solution to the nuclear waste problem must be found, but a solution that imperils a key source of water in a state as water-poor as California is no solution at all.

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Ward Valley hurtles forward

A state appellate court ruled Friday that the Wilson administration is not legally obliged to hold evidentiary hearings before licensing a low-level radioactive waste dump in San Bernardino's Ward Valley. That same afternoon, Gov. Pete Wilson ordered the Department of Health Services to make a decision on the license application within 30 days.

So a process that had been hung up in court for months now appears to be hurtling forward. That's good news for the biomedical companies, research universities and utilities that generate the waste: The South Carolina facility that now accepts it may soon close its doors to other states, and without a new dump the California concerns could be forced to store their waste on site. That's hardly an ideal alternative.

And yet, in trying to expedite the process, Wilson's actions may produce reams of litigation that will further delay the project and could even hasten its doom. Dump critics, including Senate President Pro Tem David Roberti and the Senate Rules Committee, plan to appeal the court ruling. The governor also needs the support of Interior Secretary Bruce Babbitt in order to get the federal dump site transferred to the state, and Bab-

bitt may resist unless he is satisfied — perhaps by just such a hearing as Wilson is trying to avoid — that safety issues have been resolved. Meanwhile, a couple of cities and a Los Angeles anti-nuclear group have filed a federal lawsuit to block the transfer because of environmental concerns.

In addition to solving political problems, a hearing would present the opportunity, once and for all, to address some important questions about the safety of the project: Will shallow land burial in unlined trenches be adequate? What is the exact makeup of the waste stream? What is the potential for waste migration and groundwater contamination? And is U.S. Ecology, a company with a history of failed dumps in other states, qualified to run Ward Valley safely? The state Department of Health Services itself has noted that the company's history "casts doubts on its ability to perform future activities."

U.S. Ecology and dump proponents insist those issues have been adequately addressed. But critics have produced enough data to the contrary and raised enough legitimate questions to make a hearing look like the most sensible way to get them answered.

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OPINION

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EDITORIALS

Hearing urged on Ward Valley dump

■ Now that a court has ruled the governor can hold adjudicatory hearings on safety and liability issues at the radioactive waste dump, Wilson should make good on last year's promise before land is transferred.

The maneuvering over the proposed Ward Valley radioactive waste dump near Needles is growing more perplexing.

In April 1992, the Wilson administration made a commitment to the state Senate to hold adjudicatory hearings on safety and liability issues associated with the dump. True, the commitment wasn't freely made (the Senate was threatening to hold up Health Department confirmations), but it was made.

Supporters of the dump filed suit to try to stave off the hearings. Last week, the state Third District Court of Appeals ruled, in essence, that the Wilson-Senate agreement wasn't legally binding, but Gov. Pete Wilson was free to hold the hearings if he wanted to.

Wilson, who once said he would hold the hearings unless the courts precluded him from doing so, now seems to be moving ahead, instead, with the licensing process with no clear sign of an adjudicatory hearing on the horizon.

Wilson should go ahead and make good on his promise to hold the quasi-judicial evidentiary hearing. The federal Interior Department, which must sanction a land transfer before the project can go forward, should motivate the governor to keep his word by telling him firmly, "No hearing, no transfer."

■ Write to Wilson at State Capitol Building, Sacramento, Calif. 95814. Or call (916) 445-2864.



THE HARD OF ADJUDICATORY HEARING

This editorial cartoon is by Ben Dib of The Sun. Letters to him may be sent to The Sun, 399 N. D St., San Bernardino, Calif. 92401.

CALIFORNIA EDITORIAL VIEWPOINTS

BAKERSFIELD CALIFORNIAN

Keeping half-cent state sales tax

The temporary half-percent increase in the sales tax has played a critical role in the state's financial situation.

deliberate deficit spending such as carrying over unpaid operating expenses from one fiscal year to the next. The problem, however, is that the distinction Wilson is making between ongoing deficits and long-term debt is a very fine one.