RESPONSES TO COMMENTS RECEIVED ON THE
DRAFT FINAL REPORT OF THE
SECRETARY OF ENERGY ADVISORY BOARD
TASK FORCE ON RADIOACTIVE WASTE
MANAGEMENT

MASTER

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OVERVIEW OF THIS DOCUMENT

The Task Force solicited comments on its Draft Final Report from a variety of sources. Letters were sent to over 400 individuals who had expressed interest in the interest in the Department's radioactive waste management programs, a notice was placed in the *Federal Register*, the morning session of the January 1993 meeting of the full Secretary of Energy Advisory Board was given over to discussion of the draft, and Task Force members and staff presented the effort at several professional meetings.

Altogether 32 written comments were received. They are reproduced here, followed in each case by the Task Force's response to specific suggestions made to improve the draft. (The panel did not respond to comments that simply reflected policy preferences or that praised the group's effort.) With one exception, those specific suggestions are highlighted and given a letter designation from "A" to "Z". The Task Force's responses, written in the Fall 1993, are labeled in a like manner. For the one exception, a comments submitted by Judy Treichel, the Task Force's response is printed on copies of her annotated pages.

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DIRECTOR

Congress of the United States
OFFICE OF TECHNOLOGY ASSESSMENT
WASHINGTON, DC 20510-8025

December 29, 1992

Dr. Todd LaPorte
3207 Andreasen Drive
Lafayette, California 94549

Dear Todd:

Thanks for sharing the draft report on public trust and confidence. First rate. It should be one of the first things read by Secretary-designate O'Leary.

Since the report said "draft," I'd like to make a couple of relatively minor comments:

1. [page 5 -- The dotted line on the graph should probably read "NWPAs schedule," not "ideal."] A
2. [page 12 -- The paragraph discussing the attributes not associated with institutional confidence is not clear. I assume it would be a negative association that would have been expected for these attributes? But the correlations are near zero?] B
3. page 15 -- "First principles" and "conditions" -- Nice.
4. [pages 17 and 29 -- The discussion of the NWPAs bargains and their "collapse" and "almost irreconcilable" nature is not satisfying. I'd think this needs more like a page than a sentence or two. In what way were they contradictory? Would they not have had a chance of being reconciled or adjusted by normal, even if tumultuous, means if it had not been for Herrington's unilateral violation of the "political" bargain? My sense is that it was this act that tore apart whatever "public trust and confidence" DOE might have had on this issue.] (The close of the paragraph on page 29 -- "and so it goes" -- is reminiscent of David Rose. He used that well.) C
5. page 18 -- "... the best predictor of whether the recommendations are ignored seems not to be their intrinsic technical merits but whether they significantly alter the prevailing program philosophy or imply changes in approach that are perceived to cause serious delays in repository development." -- Nice. I hope the data behind this will be made available.
6. page 23 -- A fine chart.
7. page 43 -- There are typos here and there throughout the draft -- one that matters is here -- "simply that things could be any worse." Couldn't, I presume?

Good to see you again.

Sincerely,

John Andelin

John Andelin

Office of Technology Assessment (comment is not an official response from OTA)
Washington, DC

12/29/92

A. The Task Force agrees; see pages 23-29.

B. Language has been changed in the hope of increasing clarity. See pages 14-15.

C. The Task Force agrees; see pages 23-29.

United States Government

Department of Energy

memorandum

DATE: February 22, 1993

REPLY TO
ATTN OF: RW-1

SUBJECT: Secretary of Energy Advisory Board Task Force on Radioactive
Waste Management-Draft Final Report

TO: Jake Stewart, Executive Director
Secretary of Energy Advisory Board

In preparing its Draft Final Report, the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management has provided a valuable service to the Department and to the Civilian Radioactive Waste Management program. The Report, developed through an extensive process of study and gathering of information and opinions from many of the Department's constituents, attempts to place the issues of public trust and confidence in a fuller context. It illuminates the "interlocking vicious cycles that cause pressure to this program and slowly reduce its discretion." We appreciate the Task Force's recognition that these often conflicting pressures mean that "winning the trust of one segment of the public often involves losing the trust of some other." For many years, this tension has had a significant impact on the program's effectiveness.

We have read with interest the conclusions and recommendations of the Task Force. In our initial review of the Report, we find that we agree with many of the Task Force's ideas and hope to be able to implement many of its recommendations to help us earn the trust and confidence of our numerous constituents. In fact, several recommendations mirror steps we have already taken in this direction.

Our experience to date in implementing the Nuclear Waste Policy Act, as amended, leads us to conclude, as the Task Force did, that while adoption of these measures aimed at increasing trust and confidence may be necessary, there are no guarantees that these steps will be sufficient to engender that trust. The program remains committed to continuing and strengthening its efforts to increase its institutional trustworthiness while implementing the mandates of the Nuclear Waste Policy Act. In that vein, we look forward to the completion of the Task Force's Final Report.

Lake H. Barrett, Acting Director
Office of Civilian Radioactive
Waste Management

CC:
CP-1
EM-1

Lake Barrett
Acting Director
Office of Civilian Radioactive Waste Management
US Department of Energy

2/22/93

No substantive suggestions for revising the Draft Final Report were contained in this memorandum.

(Additional comments were submitted by Barrett on June 15, 1993 after the Final Report had been written. Those comments were considered seriously by the Task Force at its July 7th meeting.)

United States Government

Department of Energy

memorandum

DATE March 10, 1993
REPLY TO
ATTN OF RW-2
SUBJECT Comments on Secretary of Energy Draft Final Report

TO Director, Secretary of Energy Advisory Board Task Force, AC-1

Thank you for providing the opportunity to comment on the draft, "Final Report of the Secretary of Energy Advisory Board (SEAB) Task force on Radioactive Waste Management." These comments focus on public confidence issues in Nevada, specifically, and supplement those comments (attached) previously made by the Office of the Civilian Radioactive Waste Management. The SEAB recommendations related to public involvement and other efforts to increase public trust and confidence are generally excellent and consistent with policy the Yucca Mountain Site Characterization Project (YMP) has previously implemented or plans to adopt.

We freely admit that there is still much progress to be made--and as we think your report recognizes, "it's not as easy as it looks." There are numerous external political and internal obstacles to overcome in implementing the approach outlined in the SEAB report, but we are dedicated to overtaking them. Successful implementation requires the continued adjustment of U.S. Department of Energy (DOE) decision-making processes and mindsets that are firmly entrenched; the allocation of appropriate resources to support interactions; and the passage of time to overcome the legacy we have inherited.

[We believe that the text of the report paints a much darker picture than circumstances suggest of the status of, and the role the DOE's current program has played in influencing the level of, public trust and confidence as it relates to the YMP. Carl Gertz, Ace Robison, and their staff have done an excellent job supporting this mission. During the past year alone the YMP has conducted over 300 public presentations; over 5,000 Nevadans have toured Yucca Mountain, Nevada, and have talked with YMP scientists; thousands of citizens have visited our information offices located in three Nevada communities--over the past few years the YMP, on their own initiative, held 28 large-scale public meetings in Nevada; and, most importantly, we have made important strides through formal communications channels to increase pre-decisional involvement by "affected" parties. Interactions with the public, both one-on-one and in groups, suggest that these programs are well accepted and appreciated by the public. Only through these daily interactions can one fully appreciate the views, and developing trends in views, of informed Nevadans. Further, the report did not, in our opinion, fully reflect the balanced nature of testimony made by the public at your hearings in Las Vegas and Amargosa Valley. We believe significant progress is being made. We also accept that we have a long way to go.]

A

We thank you for your support. It was intellectually stimulating and served as an excellent confirmation of the approach we have been implementing. You have described an approach which is correct, and the only way the YMP, or for that matter any controversial Federal project, should be conducted.

Lake H. Barrett, Acting Director
Office of Civilian Radioactive
Waste Management

Attachment

cc:

C. Gertz, RW-20/YMPO

A. Robison, RW-20/YMPO

Lake Barrett
Acting Director
Office of Civilian Radioactive Waste Management
US Department of Energy

3/10/93

The Task Force did, in fact, paint a bleak picture of OCRWM's efforts to strengthen public trust and confidence. Modifications in the text (pages 23-29 and 34-36) describe and analyze the factors in the program's institutional setting that have brought about this unfortunate situation and reinforce the panel's view that improving the situation is not, in fact, "as easy as it looks."

The Task Force also recognizes that it failed in the Draft Final Report to call out explicitly instances when the program did act effectively. Appropriate changes have been made. (See, in addition to the pages cited above, page 50.)

Nonetheless, the Task Force attaches significantly less importance to the Yucca Mountain Project's outreach program than is implied in this comment. While apparently designed and carried out effectively and while necessary, that operation ought not to be held out as the prime example of how the civilian program is strengthening public trust and confidence. Doing so reinforces the Task Force's finding concerning OCRWM's rather narrow view of what is required to strengthen public trust and confidence.

(Additional comments were submitted by Barrett on June 15, 1993 after the Final Report had been written. Those comments were considered seriously by the Task Force at its July 7th meeting.)

Department of Comprehensive Planning

Nuclear Waste Division

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December 21, 1992

Dr. Daniel S. Metlay
Director of Civilian Radioactive Waste
Management Task Force
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Room 7-B198
Washington, D.C. 20585

SUBJECT: COMMENTS ON DRAFT REPORT OF THE SECRETARY OF ENERGY'S ADVISORY
BOARD TASK FORCE ON WASTE MANAGEMENT

Dear Dr. Metlay:

On behalf of the Department of Comprehensive Planning, Clark County, Nevada, we would like to compliment the Task Force for compiling a draft report that frankly acknowledges the problem of trust and confidence in DOE programs, and makes an honest effort to propose some solutions. We are in agreement with the basic thrust of the Task Force recommendations, and believe you have accurately reflected many of our concerns. We particularly appreciate having the opportunity to present comments at meetings of the Task Force, and to participate in your deliberations. The Task Force itself has provided a good model for the kind of DOE consultations with affected parties that are recommended in your report.

GENERAL COMMENTS

1. [We agree that "Public trust and confidence is not a luxury" (p. 15). We would add that DOE not only has an obligation to merit trust, but that trust must be earned by the agency through consistent policies and actions over the long term.]
2. We also agree that "Public trust and confidence is not a one-way street" (p. 15). If DOE trusts the public by being candid about the problems to be addressed, there will be an increased prospect of long-term trust in DOE programs.

A

COMMISSIONERS

Jay Bingham, Chairman • Karen Hayes, Vice-Chairman
Paul J. Christensen, Thalia M. Dondero, William U. Pearson, Don Schiesinger, Bruce L. Woodbury
Donald L. "Pat" Shaimy, County Manager

3. [To establish a climate of trust in its program, DOE should develop, in consultation with affected parties, a set of technical and institutional principles to guide the program. Once adopted, the agency should resist pressures to change these principles for reasons of schedule, cost or political objectives. If changes must be made, or if actions inconsistent with the principles are contemplated, they should be worked out in consultation with affected parties.] B
4. [We agree that "actions taken by one unit within DOE influence the level of public trust and confidence in other units" (p. 27). Consistent with this finding, we suggest that it is not sufficient (p. 36, Section 2) to publish a summary of major positions to ensure that programs speak consistently to stakeholders. What is needed are internal procedures to ensure that activities of one program within DOE do not impinge on trust and confidence in other DOE programs.] Policymakers need to ask not only how this policy will affect stakeholders' trust in my program, but also how it will affect stakeholders' trust in other DOE programs. Too much compartmentalized thinking undermines trust in the agency as a whole. Discussions among DOE programs are also cost effective since many of the issues are the same. C
5. We particularly support recommendations to "empower host states, communities, and citizens groups" (p. 37, Section 6) by providing guaranteed access to resources for oversight activities. We support the concept of locally controlled Safety Review Boards with the power to suspend operations at a facility until questions about its operations have been satisfactorily answered. The idea of local representatives having control over questions and being able to call "Time Out" from operations that may affect their citizens would significantly enhance trust in the repository program.
6. [We note that there are no recommendations that address the need for confidence in DOE's willingness to address socioeconomic impacts resulting from the proposed repository. Socioeconomic impacts are among the greatest concerns to the public on issues related to radioactive waste.] D

SPECIFIC COMMENTS

1. [In discussing "filters" on page 4, the order in which technical and non-technical filters are applied is important. The traditional "Decide, Announce, Defend" approach to facility siting, which has adversely affected public trust, assumes that the technical filter will precede the institutional filter. In fact, the opposite should be the case if public trust is to be enhanced. An institutional E

framework based on open consultation with affected parties should precede technically based decisions by the implementing agency.]

2. [The discussion of EPA Standards on page 5-6 is less than candid because it leaves the impression that the provisions of the 1992 National Energy Policy Act were simply a sequential step toward resolving EPA's "state of flux" since the court remanded certain sections of the standard for further work by EPA. The congressionally mandated standard not only ignores EPA's scientific findings and the sections approved by the courts, it also establishes separate standards for Yucca Mountain and for all other repositories (notably WIPP). The action of Congress has the effect of creating different levels of protection for Nevada citizens than for other Americans, and in itself has contributed to the erosion of trust in the repository siting process. DOE could enhance trust by insisting that a single set of standards be established that apply equally to all sites.] F
3. [The use of terms like "socially acceptable" (p. 6 and 8) and "social judgment" (p. 7) should be carefully defined. Some decisions may be socially acceptable to Congress but not to impacted parties.] G
4. [The footnote on page 8 says that it is "impossible to find a socially acceptable, i.e., non-dictatorial way" of making choices. If so, how will trust be enhanced and who will address it?] H
5. [On Page 36, Sections 2, 3 and 4, we believe that all publics should be allowed early involvement in all programmatic decisions being made by DOE. This involvement should begin at the conceptual stage of policy development and should assume a continuously interactive process with stakeholders.] I
6. [The qualifying phrase "to the maximum extent possible" on Page 36, Section 2 detracts from the recommendation and should be deleted, since the actions either will or will not be accomplished.] J
7. [To make the Department's scientific work more credible (p. 37, Section 5), the Department should acknowledge the extreme uncertainties and complexities of the problems to be resolved in forecasting geohydrological performance at the proposed repository as well as human behavior with respect to the repository over the next 10,000 years.] K
8. [Honest self-assessment should not be rewarded (p. 39) but should be expected or demanded as a norm within the DOE culture.] L

Letter to Mr. Dan Metlay
December 21, 1992
Page Four

9. [Regarding the location of the Director within a "host" community (p. 38, Section 1), we would encourage the project director to take up full time residence (as at WIPP), but not until and unless a decision has been made to proceed with the project.] The OCRWM Director should remain in Washington, but maintain an office locally for a designated portion of his time to ensure public access. M
10. [We suggest that on Page 40, Section 2, bullet 1, the phrase "for this and all other Departmental programs" be added.] Also bullet 3, add "in relation to any Departmental program." N/O
11. [We question the concept of offering "terms and conditions," (p. 41, Section 1), which are not defined, to Nye or any affected county. In Nevada, this implies an effort to "go around" the State as well as to ignore the other counties that have been designated by DOE as "affected parties." We suggest that any "offers" be made to both the state and the affected counties.] P

In conclusion, the recommendations contained in this report are comprehensive and far-reaching, and we appreciate the efforts of the Task Force to enable our participation in its process through public commentary. We trust that the Department will adopt the recommendations and make a sincere effort to implement them. In the future, the Task Force, or its successors, should choose to meet more frequently in Nevada and in communities affected by defense waste cleanup to discuss the implementation of the recommendations. To demonstrate trust, controversial topics should be aired in those communities with most potential to be affected by those activities.

Sincerely,

DENNIS A. BECHTEL
Coordinator

DAB/km

cc: Todd LaPorte, Chairman
Donald L. Shalmy
James L. Ley
Richard B. Holmes

L-923

Dennis Bechtel
Coordinator
Clark County
Department of Comprehensive Planning
Las Vegas, Nevada

12/21/93

A. The Task Force disagrees; a relationship of trust creates obligations for both parties.

B. Although this idea was not directly incorporated into the text, it is consistent with the general thrust of the Task Force's analysis and recommendations. In particular, it stresses the importance of consultation on program planning, especially when commitments need to be modified.

C. The Task Force believes that this was too detailed an explanation of a specific recommendation to be included in the Final Report. It does not, however, disagree with it.

D. The NWPA provides clear instructions to DOE about its obligations to assess and mitigate adverse socioeconomic impacts. Courts can hear claims that the Department has not lived up to its responsibilities. This is one of those instances where trust, while desirable, is not necessary.

E. The Task Force is still of the view that the order of applying the filters may not be important, so long as they are applied in a biased or arbitrary fashion. See pages 5-6 for a revision discussion of this issue.

F. The discussion about EPA standards was revised slightly. But the Task Force believes that the conclusions are premature if only because there is no "Congressionally mandated standard." The NAS panel will not issue its final report until December 1994. How EPA chooses to use the NAS advice will not be known for yet another year.

G. The terms are now defined. See footnote 21 and page 10-11.

H. That footnote was eliminated between the first working page and the draft final report.

I. The Task Force agrees. The draft has been modified accordingly.

J. The term "maximum extent possible" reflects a belief that it may not also be possible to provide notification very far ahead of time.

K. The Task Force believes that a credible scientific process is the best way of identifying precisely what the uncertainties and complexities are, and just as importantly, whether there are design options available to buffer the uncertainty and to simplified the complexities.

L. The Task Force agrees that honest self-assessment should become a norm of DOE's organizational culture. Providing rewards for it is not in conflict with that objective. In fact, rewarding it has the effect of legitimating it and, thus, making it easier to become accepted as an organizational norm. A parallel here is rewarding high quality, objective scientific and technical work.

M. This recommendation has been modified consistent with this comment. See page 54.

N/O. The Task Force feels that these changes are implicit in recommendations that "could be adopted across the Department."

P. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

Department of Comprehensive Planning

Nuclear Waste Division

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March 9, 1993

Dr. Daniel S. Metlay
Director of Civilian Radioactive Waste Management
Task Force
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Room 7-B198
Washington, D.C. 20585

SUBJECT: COMMENTS ON DRAFT FINAL REPORT OF THE SECRETARY OF ENERGY'S
ADVISORY BOARD (SEAB) ON WASTE MANAGEMENT

Dear Dr. Metlay:

This is an addendum to the comments submitted by the Clark County Department of Comprehensive Planning, Nuclear Waste Division, on December 21, 1992 on SEAB's Draft Final Report on Waste Management. There will be some redundancy with our December comments since there is some uncertainty as to how our original concerns will be resolved. We're confident that the comments provided will be considered as well as our earlier testimony.

As I mentioned at the January meeting, it is important that we have an accounting of how the public and other affected parties' concerns are addressed in the final document. We, therefore, look forward to the completion of Parts Two and Three of the report.

We would like to reiterate that the SEAB's work was valuable in identifying problems that the Department of Energy (DOE) is experiencing with public trust. It is also important in providing solutions that may begin to restore credibility to the organization. The SEAB, I continue to believe, offers an excellent guide to how DOE (and probably other governmental entities) can address contentious problems. It is gratifying to note that DOE is taking this message seriously as evidenced by the creation of the Environmental Restoration and Waste Management Committee (EMAC), currently wrestling with the weapons program cleanup issues.

The SEAB process was not perfect. An inordinate amount of time, for example, was spent in avoiding meeting at locations where DOE is experiencing difficult credibility problems. The problems involved in scheduling a meeting in Las Vegas, to cite one instance, I feel, adds to the public's distrust. The meeting, once held however, provided the Board with excellent insight into issues of trust. If DOE can draw one lesson from this experience it would be that the earlier and more complete the coordination, the greater the potential for trust to occur. (Hanford, Washington, is one excellent example where trust is beginning to be restored by actively involving the public early in the cleanup process).

COMMISSIONERS

Jay Bingham, Chairman • Karen Hayes, Vice-Chairman
Paul J. Christensen, Thalia M. Dondero, William U. Pearson, Don Schiesinger, Bruce L. Woodbury
Donald L. "Pat" Shaimy, County Manager

Dr. Daniel S. Metlay
March 9, 1993
Page two

Despite this somewhat minor distraction the process is to be commended. We look forward to the publication of the final report and the opportunity to participate if another meeting is to be held. We're also hopeful that the process and the recommendations are conveyed to the Clinton administration with a strong endorsement for implementation.

Thank you again for being able to provide input into what I feel was an extremely valuable exercise. If you have any questions on the comments provided, please feel free to contact me.

Sincerely,

DENNIS A. BECHTEL
Coordinator

DAB/km/al

Attachment

cc: Dr. Todd LaPorte, Chairman
Donald L. Shalmy
James L. Ley
Richard B. Holmes

L-230

March 9, 1993

COMMENTS ON DRAFT REPORT OF THE SECRETARY OF ENERGY'S ADVISORY BOARD
TASK FORCE ON WASTE MANAGEMENT

GENERAL COMMENTS

1. [The Final report should include an Executive Summary, Conclusions and Recommendations, in the beginning of the document.] A
2. [Page 14 We agree that "Public trust and confidence is not a luxury." We would add that DOE not only has an obligation to merit trust, but that trust must be earned by the agency through consistent policies and actions over the long term.] B
3. Page 15 We also agree that "Public trust and confidence is not a one-way street." If DOE trusts the public by being candid about the problems to be addressed, there will be an increased prospect of long-term trust in DOE programs.
4. [To establish a climate of trust in its program, DOE should develop, in consultation with affected parties, a set of technical and institutional principles to guide the program. Once adopted, the agency should resist pressures to change these principles for reasons of schedule, cost or political objectives. If changes must be made, or if actions inconsistent with the principles are contemplated, they should be worked out in consultation with affected parties.] C
5. [Pages 27 and 37 We agree that "actions taken by one unit within DOE influence the level of public trust and confidence in other units". Consistent with this finding, we suggest that it is not sufficient (Section 2) to publish a summary of major positions to ensure that programs speak consistently to stakeholders. What is needed are internal procedures to ensure that activities of one program within DOE do not impinge on trust and confidence in other DOE programs. Policymakers need to ask not only how this policy will affect stakeholders' trust in my program, but also how it will affect stakeholders' trust in other DOE programs.] Too much compartmentalized thinking undermines trust in the agency as a whole. D

Discussions among DOE programs are also cost effective since many of the issues are the same.

6. **Page 39** We particularly support recommendations to "empower host states, communities, and citizens groups" (Section 6) by providing guaranteed access to resources for oversight activities. We support the concept of locally controlled Safety Review Boards with the power to suspend operations at a facility until questions about its operations have been satisfactorily answered. The idea of local representatives having control over questions and being able to call "Time Out" from operations that may affect their citizens would significantly enhance trust in the repository program.
7. **Page 41** It would be useful to separate the "action" recommendations from the general "conceptual" ones. For example, the recommendation (first bullet in Number 3) on "devolving responsibilities to the Field Offices" could be a useful one but it gets "lost" in the other statements. E
8. **Page 42** Some of the recommendations require more substance. For example, "instituting overlapping self-regulatory processes" is undoubtedly useful. It would be more substantive, however, if specific implementation recommendations were provided to DOE. The testimony that you received probably provided some examples. My concern is that some of the recommendations are so general that they may not be considered. F
9. **We note that there are no recommendations that address the need for confidence in DOE's willingness to address socioeconomic impacts resulting from the proposed repository. Socioeconomic impacts are among the greatest concerns to the public on issues related to radioactive waste. Recommendations are needed to address this shortcoming.** G

SPECIFIC COMMENTS

1. **Page 4** **In discussing "filters", the order in which technical and non-technical filters are applied is important. The traditional "Decide, Announce, Defend" approach to facility siting, which has adversely affected public trust, assumes that the technical filter will precede the institutional filter. In fact, the opposite should be the case if public trust is to be enhanced.** **An institutional framework based on open consultation with affected parties should precede technically based decisions by the implementing agency.** H

2. **Pages 6 and 7** [Terms like "socially acceptable" and "social judgment" are subjective and should be carefully defined. Generally, the definitions may depend on the perspective of the parties reviewing the activity.] Some decisions may be socially acceptable to Congress but not to impacted parties. I
3. [Footnote number 10 (Page 9) needs to be reworded. Section 801(c) requires DOE "Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of (1)) breaching the repository's engineered or geologic barriers, etc."] J
4. [Page 11 The definition for "Public" should exclude the word "outside" in line one. While this may be a subtle change it somewhat describes the "them" versus "us" mentality that DOE needs to change if they are truly to become an organization worthy of trust.] K
5. [Page 17 - First full paragraph. In addition to Nye County's special rights it should be noted that the Nuclear Waste Policy Amendments Act also includes in its provisions "affected units of local government,"-those counties adjacent to Nye County that will experience impacts from the proposed repository [See Section 2 (definitions) and Section 116(c) of Title V of PL 100-203].] L
6. [Page 24 (General Findings - Number 2) While an increase in trust is evident in the EM side of DOE it is much less evident in the OCRWM (Yucca Mountain) area. This section needs to more accurately reflect this dichotomy.] M
7. **Pages 27 and 28 (Findings with respect to Organizations - Number 1)** While it is probably uncertain whether any governmental agency in the public's mind can credibly handle radioactive materials, I will be interested in reading the backup material that led to the conclusion that program reorganization is not the answer. Several witnesses at the Irvine, CA meeting seemed to be convinced that a quasi-public (COMSAT?) or private organization may be the only answer instilling credibility to the program.] It would seem that such recommendations (or at least considerations) would fall within the "terms of reference" approved by Admiral Watkins. N

8. **Page 28 (Number 2)** The recent revelations on lack of DOE guidance with respect to Contractors and the indiscretions by Contractors further detracts from trustworthiness on this item. [A House of Representatives hearing on February 17, 1993 and an upcoming Senate hearing on March 16, 1993 are evaluating DOE contracting practices and the expenditure of the public's money. The House hearing had some disconcerting testimony on DOE's lack of proper oversight of contractors.]
9. **Page 30 (Number 2)** It should be noted that although the "Strategic Principles" workshops, at which the *Draft Mission Plan Amendment* was discussed, were very interactive with all major public parties involved, we have still yet to receive the final document. This will determine, how in fact, our input was considered.] O
10. **Page 30 (Number 3)** [Hopefully, the SEAB will provide strong support for the continuation of the "Director's Forum."] Former OCRWM Director Bartlett should be commended for its creation. Having been a participant in the first Forum, however, I felt it could have been more successful if there had been preliminary discussions about topical areas that needed to be deliberated and if the group had had more time to review the "Earl Site Suitability" questions that were reviewed. In other words, more adequate preliminary preparation could have made the Forum more effective. P
11. **Pages 31 to 34 (Findings With Respect to EM)** One question that will be interesting with respect to EM recommendations is the issue of "equity" in the resolution of waste management problems. There is a concern in Nevada whether solutions will be regional or whether individual areas will be earmarked to receive much of the waste. The solutions recommended will demonstrate whether there will be an equitable resolution to the final disposition of the waste.
12. **Pages 29 through 34 (Findings with Respect to OCRWM and EM)** These sections are very well written and offer excellent insight.
13. **Page 36 (Design Basis) - First Paragraph** Rather than "strive" to involve all groups or give them "a sense of involvement" this should be reworded to state that DOE "will" involve or "give" representatives involvement, etc.] Q

14. [On Page 36 (Design Basis) We believe that all publics should be allowed early involvement in all programmatic decisions being made by DOE. This involvement should begin at the conceptual stage of policy development and should assume a continuously interactive process with stakeholders.] R
15. [Page 37 The qualifying phrase "to the maximum extent possible" (Section 2) detracts from the recommendation and should be deleted, since the actions either will or will not be accomplished.] S
16. [Page 37 To make the Department's scientific work more credible (Section 5), the Department should acknowledge the extreme uncertainties and complexities of the problems to be resolved in (a) forecasting geohydrological performance at the proposed repository as well as, (b) human behavior with respect to the repository over the next 10,000 years.] T
17. [Page 38 (Recommendations - Number 4) The first bullet is an excellent recommendation. The formal and informal "consultations" should be noted as requiring close "interaction" rather than "presentations," as has been too often the case.] U
18. [Page 38 (Recommendations - Number 5) The first bullet comments on expanding the peer review group to include those from other countries. The "Strategic Principles" and "Director's Forum" groups, noted earlier, also commented on the need for more independent peer review groups for DOE in general. It is the feeling of Clark County, for example, that the "Peer Review" group evaluating the Early Site Suitability (ESS) Issues needed to be selected from outside of DOE. This recommendation should be strengthened by stating that it is important that DOE activities requiring peer review be done so by including authorities outside of DOE.] ✓
19. [Page 39 Regarding the location of the Director within a "host" community (Section 1), we would encourage the project director to take up full time residence (as at WIPP), but not until and unless a decision has been made to proceed with the project. The OCRWM Director should remain in Washington, but maintain an office locally for a designated portion of his time to ensure public access.] W
20. [Page 40 Honest self-assessment should not be rewarded but should be expected or demanded as a norm within the DOE culture.] X

21. [Page 43 We question the concept of offering "terms and conditions," (Section 1), which are not defined, to Nye or any affected county. In Nevada, this implies an effort to "go around" the State as well as to ignore the other counties that have been designated by DOE as "affected parties."] Y
22. [Page 43 (Specific Measures - Number 2) Bullet Number 3 should probably become the Number 1 recommendation for the SEAB. The most positive way to engender trust in the OCRWM program would be to start over. If the deep-rock repository concept is deemed to be the most favored method of storage, a national site selection process should be initiated to find the "best" site and not merely a "suitable" site (similar to the truncated process used to evaluate the "second" repository location).] Z

DB/km

R-923.1

Dennis Bechtel
Coordinator
Clark County
Department of Comprehensive Planning
Las Vegas, Nevada

3/9/93

- A. An Executive Summary has been included in the Final Report.
- B. The Task Force disagrees; a relationship of trust creates obligations for both parties.
- C. Although this idea was not directly incorporated into the text, it is consistent with the general thrust of the Task Force's analysis and recommendations. In particular, it stresses the importance of consultation on program planning, especially when commitments need to be modified.
- D. The Task Force believes that this was too detailed an explanation of a specific recommendation to be included in the Final Report. It does not, however, disagree with it.
- E. The Task Force considered several ways of reorganizing its recommendations. It concluded, while each method had its advantages and disadvantages, ordering them in a way that separates those needed to sustain trust from those required to recover it was more appropriate for the panel's purposes.
- F. The Task Force discusses its views on implementing the recommendations on pages 61-64. It recognizes that some of its suggestions are cast in general terms, in part, because it believes that the specific details will vary from one program activity to another. The example cited in the comment is surely one such recommendation. Despite its being cast in general terms, however, it will not be hard to ascertain whether genuine steps have been taken to implement it. The same holds true for many other suggestions that seem "too general."

G. The NWPA provides clear instructions to DOE about its obligations to assess and mitigate adverse socioeconomic impacts. Courts can hear claims that the Department has not lived up to its responsibilities. This is one of those instances where trust, while desirable, is not necessary.

H. The Task Force is still of the view that the order of applying the filters may not be important, so long as they are not applied in a biased or arbitrary fashion. See pages 5-6 for a revised discussion of this issue.

I. The terms are now defined. See footnote 21 on page 8 and pages 10-11.

J. See the revisions on footnote 41 on page 19.

K. The Task Force agrees; see pages 14-15.

L. The Task Force agrees; see revised language on page 27.

M. The Task Force agrees, see revised language on page 17.

N. The Task Force has substantially revised its discussion of this Finding. See pages 41-42.

O. This Task Force understands this comment, but it does not feel it should be included in the Final Report.

P. The Task Force has voiced its support for a number of different mechanisms that offer opportunities for affected parties to participate in the decision-making processes of the Department's radioactive waste management programs. In its view, structuring those opportunities is the critical issue. They could be given any name.

Q. The Task Force agrees; see page 53.

R. The Task Force agrees; its overarching philosophy is one of inclusion.

S. The term "maximum extent possible" reflects a belief that it may not also be possible to provide notification very far ahead of time.

T. The Task Force believes that a credible scientific process is the best way of identifying precisely what the uncertainties and complexities are, and just as importantly, whether there are design options available to buffer the uncertainty and to simplified the complexities.

U. The Task Force agrees; see revised language on pages 51-52.

V. The Task Force agrees, see revised language on page 56.

W. This recommendation has been revised; see pages 54-55.

X. The Task Force agrees that honest self-assessment should become a norm of DOE's organizational culture. Providing rewards for it is not in conflict with that objective. In fact, rewarding it has the effect of legitimating it and, thus, making it easier to become accepted as an organizational norm. A parallel here is rewarding high quality, objective scientific and technical work.

Y. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

Z. The Task Force agrees that this is a key recommendation. But it does not agree that the objective of a siting process ought to be finding the "best" site. The NWPA recognized that such an objective had no stopping point. Thus it required only that the site satisfy the standards prescribed by the EPA and NRC.

March 2, 1993

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Washington D.C. 20585

Dear Dr. Metlay:

Thank you for the opportunity to comment on the Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. Many of the Task Force recommendations, if accepted, will do much to improve the credibility of the U.S. Department of Energy (USDOE). More importantly, it will give affected states, Tribes, and citizens a more meaningful involvement in major decisions which affect them.

I agree that the USDOE has made considerable progress in recent years towards better involving the public. However, there are still many within the Department who resist the "culture change" begun by Secretary Watkins. As a result, recent gains are precarious. A vigorous effort must continue if these changes are to have any lasting and meaningful effect.

While some of the recommendations of the Task Force are truly inspired, I feel others do not go far enough to offer sincere and meaningful public participation in nuclear waste siting and cleanup issues. My specific comments are attached.

I would be happy to discuss my comments further with you. I can be reached at 503-378-5544.

Sincerely,

Mary Lou Blazek, Manager
Nuclear Waste Program

Barbara Roberts
Governor

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STATE OF OREGON COMMENTS ON
DRAFT FINAL REPORT
OF THE SECRETARY OF ENERGY ADVISORY BOARD TASK FORCE
ON RADIOACTIVE WASTE MANAGEMENT

- [Page 36, under "Design Basis". First paragraph says "agency leaders should strive to give all groups of citizens and their representatives a *sense of* involvement and fairness..." The involvement and fairness should be real, not artificial, as "sense" seems to imply.] A
- [Page 36, under "Design Basis", first bullet. Potential host states are among the list of stakeholders. Yet some adjacent states are also stakeholders in many of these issues.] For example, cleanup decisions at the Hanford Site in Washington state have a definite impact on the State of Oregon. High-level liquid radioactive waste threatens the Columbia River. Potentially explosive waste tanks present a potential hazard to at least two Oregon counties. And the transport of radioactive waste either to or from Hanford crosses 200 miles of Oregon highways. If a Monitored Retrievable Storage facility is proposed at the Hanford Site (and it is now being studied), the transportation impacts on Oregon would be substantial. Adjacent states need formal recognition from USDOE as legitimate stakeholders and should be listed as such. B
- [Page 37, 3rd bullet under item 2. Recommendation is that USDOE should identify positions it is planning to alter either *unilaterally* or with the concurrence of other parties. USDOE has already attempted to make unilateral changes to the Tri-Party Agreement, which directs Hanford cleanup. The state of Washington and the U.S. Environmental Protection Agency properly opposed USDOE's attempts at unilateral changes. Changes to cleanup agreements or applicable regulatory standards should always be made with the concurrence of other parties, not through USDOE's unilateral decisions.] C
- [The same bullet also implies that relevant State and EPA may not be notified promptly. Any proposed changes to negotiated milestones or applicable regulatory standards should be discussed with the relevant State(s) and EPA **before** USDOE makes any final decisions about them.] D

Oregon Comments on Draft Final Report
of the Secretary of Energy Advisory
Board Task Force on Radioactive
Waste Management

March 2, 1993

Page 2

- [Page 38, 1st bullet under item 4. Wording seems to indicate that any USDOE initiatives are inevitable ("ultimate implementation"). If there is to be meaningful public participation in the decision-making process, the outcome can not be inevitable.] E
- [Page 38, 2nd bullet under item 5. Adjacent states should also be privy to this data, for reasons listed above.] F
- [Page 38, last bullet under item 5. USDOE needs to do much more than simply "clarify" why advice from technical overseers is not accepted. It must justify these decisions and allow opportunity for appeal of its decision.] G
- [Page 39, item 6. Adjacent states should also be empowered, for reasons listed above.] H
- [Page 39, last bullet under item 6. What is meant by "comply with all State regulations that are administered even-handedly?"] Who determines whether the state is administering its regulations even-handedly? USDOE has for too long ignored state and federal laws. Congress has recently directed USDOE to abide by environmental laws. If USDOE is having difficulty with a state, USDOE has the option of taking that state to court. It should not simply be allowed to ignore state regulations when it feels it is not getting cooperation. I
- [Page 39, ADD a bullet under item 6. Apply the transportation safety standards developed for transuranic waste shipments to the WIPP site to other major USDOE shipping campaigns.] This includes: J
 - early involvement of corridor states and tribes
 - costs borne by USDOE
 - certification of shipping casks by the Nuclear Regulatory Commission
 - route selected by safety analysis
 - careful selection of carriers and drivers
 - independent state safety audits of carrier

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Page 3

- independent state inspections of each shipment
 - avoiding unsafe road conditions
 - advance notice and shipment tracking
 - emergency response plans
 - radiation detection equipment provided to emergency responders
 - training for emergency responders
 - emergency exercises
-
- [Page 39, 3rd and 4th bullets under item 1, 2nd bullet under item 2. These call for OCRWM to stress the "pay-offs" it is willing to provide to waste storage site hosts. These are inappropriate in this document.] K
 - [Page 40, 2nd bullet under item 3. Adjacent states should also have a voice in determining the pace at which waste will be shipped to a repository.] L
 - [Page 41, 4th bullet under item 2. This sounds more like "damage-control" than a meaningful attempt to explain to the public USDOE's reasons for making decisions that weaken public trust and confidence.] M
 - [Page 42, 2nd bullet from top of page. This item should be strengthened to encourage and offer protection to whistleblowers. This protection must involve not only USDOE but also its contractors.] N
 - [Page 42, 2nd bullet under item 1. This sounds like "pay-offs" to the state of Nevada. It is inappropriate in this document.] O
 - [Page 43, ADD a bullet to item 3. If USDOE and OCRWM want to engender trust and confidence in Nevada and others states who feel threatened by USDOE's heavy-handed approach to site characterization of Yucca Mountain, the Department must clearly define and explain the course it will take IF Yucca Mountain is scientifically determined to not be suitable for the repository. Failure to do so undermines all credibility in the characterization. It leads everyone to believe that USDOE will find Yucca Mountain suitable, no matter what.] P

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of the Secretary of Energy Advisory
Board Task Force on Radioactive
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Page 4

Some of these recommendations may seem to the Task Force to be trivial or finding hidden meaning where none is intended. However, because USDOE does not now have the public's trust and confidence, these recommendations must leave no room for USDOE to maneuver its way out of a commitment. These commitments must be explicitly stated.

We recommend also that all of the Task Force recommendations be applicable to all USDOE contractors.

Task Force recommendations we strongly endorse:

- Page 36. "Early and continuous involvement of State and/or local advisory groups as well as national advisory bodies on which a broad range of stakeholders...are represented. That involvement would be characterized by frequent contact, complete candor, rapid and full response to questions, and assistance in increasing the technical and oversight skills of the community."
- Page 36. "Consistent and respectful efforts to reach out to state and community leaders and to the general public for the purpose of informing, consulting, and collaborating with them about the technical and operational aspects of Departmental activities."
- Page 36. "rely on the "pre-decisional" Freedom of Information Act exemption only under exceptional circumstances, which are candidly explained."
- Page 37. "Disseminate without exception information about past practices that may raise questions about potential health, safety, and environmental risks."
- Page 37. "Make training in public involvement principles and processes a requirement for managers, supervisors, and technical personnel who might interact with stakeholders."
- Page 37. "Make career advancement and promotion dependent on successful demonstration of the capability to interact positively with a wide range of sectors in the public."

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- Page 38. "Require DOE contractors to conduct equivalent training for their employees. Their performance evaluations and awards would be structured to include contributions to the overall public involvement efforts."
- Page 38. "Place greater emphasis on periodic informal consultations to supplement more formal public meetings, hearings, and updates."
- Page 38. "When formal processes are used, devise agendas and formats jointly with representatives of stakeholders."

Mary Lou Blazek
Manager
Nuclear Waste Program
State of Oregon
Department of Energy
Salem, Oregon

3/2/93

- A. The Task Force agrees; see page 50-51.
- B. The Task Force agrees; it was difficult, however, to state this idea generally because adjacent states may not always consider themselves stakeholders. The Final Report should be interpreted in ways that are consistent with the Task Force's prevailing philosophy of inclusion.
- C. The Task Force agrees; see the revised language on pages 50-54.
- D. The Task Force did not intend to imply any such thing.
- E. The term "ultimate implementation" refers to the decisions that emerge from collaborations with affected parties. Their outcome cannot be foreordained.
- F. See response to "B" above.
- G. The Task Force does not feel that the use of the verb "justify" instead of "explain" significantly changes the meaning or purpose of this recommendation.
- H. See response to "B" above.
- I. This language was revised. See page 52.

J. Although the Task Force does not necessarily disagree with the recommendation contained in this comment, it does not feel that such a detailed suggestion should be included in the Final Report.

K. The issue of compensation is a very delicate and sensitive one. If compensation comes to be seen as "accepting bribes" then providing it may be counterproductive. While the availability of benefits does have some effect on public trust and confidence, the Task Force does not believe it is wise to make compensation a centerpiece for proposals to strengthen institutional trustworthiness. Nevertheless, these "pay-offs" integrate the program more deeply in the community and, therefore, can lead to greater public trust and confidence.

L. See response to "B" above.

M. Although skepticism in this area is the norm not the exception, this interpretation is not consistent with the overarching approach taken by the Task Force.

N. The protection of whistleblowers is a necessary and logical adjunct to rewarding the discovery of error.

O. Language has been revised; see page 55.

P. The Task Force agrees; see page 59.

Dr. Jeremy M. Boak
9717 Stellar View Lane
Las Vegas, NV 89117
702-254-7313

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
1000 Independence Avenue SW
Washington, DC 20585

Dear Dr. Metlay:

Enclosed are a few brief comments on the report of the Secretary Of Energy Advisory Board's Task Force on Radioactive Waste Management. I have not had time to provide exhaustive comments, although I find much that I would like to comment on. It is clear that the Task Force worked under certain constraints in terms of time to do a comprehensive review of the existing program. It seems as if the focus has largely remained inside the Beltway, where many institutions are under fire for a kind of insulation from the concerns of the people. Many people working on Yucca Mountain are relatively unaware of the work of your group, in spite of the several headlines generated some time ago when Nevada politicians took advantage of the Task Force's choice not to conduct several of its meetings in Nevada. Those events were a fine example of the difficulty of gaining credibility for the Department, as the State used the Task Force's actions as a demonstration of DOE's unwillingness to pay more than lip service to stakeholder involvement.

I think that I could not have taken the job that I did with the DOE if I felt that my technical credibility would be substantially compromised by working for this institution. If I thought it were seriously threatened, I would feel obliged to leave. It is for this reason that the work of this Task Force is of some personal and professional importance to me. I hope that the Task Force will consider carefully the import of its comments, as I see wide potential for mischief, given the wording of some parts of this report. It is in this spirit that I submit these comments. My work cannot go forward in the absence of greater acceptance by the public of the technical judgments I must make as a manager in this program.

Sincerely

Dr. Jeremy M. Boak

Comments on Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management

On page 18 of the draft final report, the authors assert that:

"In recent months, OCRWM leaders have complained that EPA's high-level waste standard is ill-conceived and fails to justify with health benefits the substantially increased cost of development it seems to dictate. They have also hinted that NRC's regulations are overly burdensome. There are, of course, established administrative mechanisms for modifying promulgated or proposed regulations. These were not followed; instead the Department supported a legislative initiative to alter both regulatory regimes."

[This quote fails to acknowledge years of efforts to interact with the EPA about proposed draft revisions of the high-level waste standard, and especially a negotiated effort between EPA and DOE to present specific technical evaluations of aspects of the regulations. These efforts, within the normal administrative channels, resulted in a National Academy of Sciences review of the Department's technical analyses. Although the NAS panel had reservations about the adequacy of DOE's demonstration of its concerns, it did not reject the assertions. Given the extremely short time for the evaluations to be prepared, this result was not surprising. What is surprising is that the SEAB completely ignores this effort, which diverted substantial technical resources away from development of more comprehensive suitability evaluations for the site.]

To those of us actively seeking specific ways to improve the Project's credibility with the public, such an oversight suggests a superficiality of analysis that calls into question much that follows. This oversight was not a lone example. [To suggest that OCRWM consistently ignores the NWTRB recommendations ignores in turn the major changes, including a complete redesign of the Exploratory Studies Facility, and the use of Tunnel Boring Machines, which were in part responses to Board suggestions.]

Those of us who work in the trenches dedicate substantial time to developing reasoned cases for the DOE to make in the face of opponents, some of whom feel no such compunction to back up their assertions with reasonable technical data. [We did not get many opportunities to converse with the SEAB about our experiences. We do, however, spend time talking to more common folk on bus tours of Yucca Mountain, who seem pleased to hear our technical perspectives. It is very frustrating to these DOE people to read a report ignoring or dismissing our efforts. A casual reference to the possibility that some of the Task Force's recommendations may have been initiated hardly speaks to the time and effort many on the Project have dedicated to outreach efforts.]

[It hardly seems in the interest of improving public trust and confidence to respond to a potential charge that the report was "too academic" by stating, "For that, the Task Force does not apologize." This smacks of the elitist rhetoric that the public have regularly found offensive.] [The program proposed by the Board contains many laudable suggestions, but it pays only lip service to efforts undertaken, which in many instances already constitute "bending over backwards" to address potential scientific or technical controversies. Glittering generalities with no recognition of the cost in time and money of many of the Board's recommendations are of little help to the Department. They will only serve as a convenient whip for those who will note publicly with pleasure only those recommendations that DOE has not had sufficient funding or staffing to accomplish over and above the expected progress at Yucca Mountain. That progress, we are told by others, is also a critical prerequisite to establishing credibility.]

When USGS Hydrologic Research Facility workers spend up to 20% of their time giving tours, and millions of dollars go to required public interactions with regulators and advisory boards, at the same time the Office is accused of spending too much on "infrastructure costs," something is out of line. If the Board wants to make useful recommendations, let it give some specific details. How much more of our time must we spend responding to external comments (many of which are duplicative) and interacting with outside observers? If Congress will agree with the Board that 20%, 40%, or 50% of our time is not too much to spend on the Board's confidence-building measures, many of us will shoulder that burden. But the costs should be acknowledged.

Dr. Jeremy Boak

No affiliation mentioned, but Dr. Boak alludes to his job as a manager in DOE's Yucca Mountain Project
Las Vegas, Nevada

No date

A. The Task Force has revised some of its discussion on the EPA standard to reflect the concern raised in this comment. See page 28. The comment's description of the interaction between DOE, EPA, and the NAS is at odds with the Task Force's understanding.

B. The Task Force never stated that OCRWM consistently ignores the advice of the NWTRB. Its precise language was: "While no general pattern holds true in every instance, the best predictor of whether the recommendations are ignored seems not to be their intrinsic technical merit but whether they significantly alter the prevailing program philosophy or imply changes in approach that are perceived to cause serious delays in repository development." In the Final Report, explicit mention is made of the redesign of the Exploratory Studies Facility as one example where that "best predictor" was off the mark. See page 27.

C. Revisions have been made in the draft to call out more explicitly some of the positive activities undertaken by the professionals and leaders of OCRWM. See, for example, page 50. But the Task Force still believes that the outreach efforts at the Yucca Mountain Project, while designed and carried out effectively and while necessary, are nonetheless indicative of the OCRWM's rather narrow view of what is required to strengthen public trust and confidence.

D. The Task Force agrees completely; that language has been eliminated from the Final Report.

E. The Task Force has made revisions to consider the questions of time and costs. See pages 61-63. It also now recognizes explicitly that the program dealt fairly and professionally with the scientific issues raised by Jerry Szymanski. See page 50.

February 26, 1993

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Daniel Metlay
Designated Federal Officer
Secretary of Energy Advisory Board
AC-1
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Dr. Metlay:

Enclosed you will find comments from the Midwestern High-Level Radioactive Waste Committee on the draft report of the SEAB Task Force on Radioactive Waste Management.

I feel it is important to call attention to several of the more general comments that follow. The draft report clearly represents the product of a great deal of effort; however, it is disappointing that the scope of the report seems to be limited to repository development. The reason for this narrow focus is unclear, especially in light of the fact that the terms of reference provided by the Secretary of Energy refer to the "civilian radioactive waste management program," which covers not only disposal but storage and transportation. Even the Secretary's instruction that the Task Force should look at steps to "strengthen public trust and confidence in efforts to dispose of radioactive waste" cannot be construed to mean the study should ignore storage and transport -- certainly "efforts" in support of disposal -- and focus solely on disposal.

[While siting storage facilities entails many (although not all) of the problems that befall disposal, transportation is unique in that it is a relatively short-term enterprise (covering approximately 30 years) with very clear feedback (e.g., successful shipments versus truck and rail accidents). According to the matrix on page 9 of the draft report, the combination of these factors would define transportation of spent fuel and high-level waste (or even TRU waste) as an activity for which DOE does not need a high level of trustworthiness. State authorities, residents of potential corridor states, and even DOE itself would strongly disagree with such an assessment.]

DOE opened the section on transportation in its *Draft Mission Plan Amendment* with a very strong statement: "The transportation of radioactive waste may do more to bring radioactive-waste disposal to widespread attention than any other aspect of the Federal waste-management program." The statement goes on to say that DOE will "emphasize demonstrating the safety of transportation to the public." Several department initiatives currently underway are geared toward

creating a two-way dialogue with stakeholders (e.g., the Transportation Coordination Group, the Transportation External Coordination Working Group, and cooperative agreements with states in the Midwest, West, and the South). The success of these initiatives depends squarely on the extent to which stakeholders feel they can trust DOE.

Given the fact that DOE, state authorities, and the people residing in potential corridor states (including Nevada) view transportation of radioactive waste as an integral part of the Civilian Radioactive Waste Management Program, it seems the Task Force's report should include an analysis of the unique public trust and confidence issues raised by transportation activities.

Thank you for providing this committee the opportunity to comment on the draft report. If you have any questions about these comments, please feel free to contact Lisa Sattler at 708/810-0210.

Sincerely,

A handwritten signature in cursive script, reading "Harold R. Borchert".

Harold R. Borchert, Director
Division of Radiological Health
Nebraska Department of Health and
Chairman, Midwestern High-Level Radioactive Waste
Transportation Committee

HRB/lrs

enclosure

Page	Paragraph	Comment
i	opening quote	The first sentence of the quote is very awkward -- perhaps part of the quote was inadvertently omitted.
	3 par, 2 sen	Delete "that" after "cultural change".
ii	2 par, 4 sen	Move comma from after " <i>Report</i> " to after "does".
3	4 par	[Transportation is omitted from the activities that fall under "radioactive waste management." Transportation is as distinct from disposal as is "stabilizing uranium mill tailings piles," yet it is a fundamental component of the Civilian Radioactive Waste Management Program and should be included.] A
9	3 par, 1 sen	Replace "affects" with "affect".
	Matrix	[Again, radioactive waste "management" appears to be used as a synonym for "disposal". If one were to analyze transportation according to the factors of time horizons and feedback about success, the results would be quite different from the conclusion reached for disposal. Feedback from transportation is fairly clear (e.g., accidents will be highly visible) and the time horizon can be considered short (several decades compared to thousands of years). According to the matrix, the combination of these factors implies that transportation of spent fuel, high-level waste, or TRU waste is an activity that requires only a small amount of trustworthiness, yet this is clearly not the case. State officials and the citizens of corridor states have a strong interest in making sure the transportation system is safe. Unfortunately, these same people are not convinced that DOE is capable of ensuring safety or that DOE will open its activities to public input.] B
10	ft 13	The title of the book should be corrected to read " <i>Nuclear Imperatives</i> ."
	ft 15	Is it possible the surveys were administered by Washington University (in St. Louis), not Washington State University? Also, the draft did not contain Appendix D (or C).
12	Figures	"Confidence in DOE" includes 4 points (very little, some, quite a bit, and great deal), whereas "Confidence in DOE by group" shows 5 points. Presumably both figures refer to the same question, therefore it appears one of the charts should be corrected.
	2 par, 4 sen	Replace "then" with "than".
	2 par, 5 sen	Replace "are" with "is" after "distribution of their views."
13	ft 16	The footnote is actually number 17.

Page	Paragraph	Comment
15	1 par	Replace "advance" with "advanced".
16	6 par, 1 sen	Replace "single-mined" with "single-minded".
	6 par, 5 sen	Delete comma after "'public'".
17	3 par, 3 sen	Replace "by" with "about" after "open-minded". [Also, it should be noted that if DOE has a hard time accepting the advice of the NAS or the NWTRB, the department finds it exceedingly difficult to listen to stakeholder groups who are less "technically qualified" to judge the radioactive waste management program. The Western Interstate Energy Board and the state of Nevada have argued that testing full-scale models of shipping casks would enhance public confidence in the safety of the casks, however DOE has consistently maintained that such testing is not necessary from a technical or regulatory standpoint and, therefore, would be a poor investment of resources.]
	4 par, last sen	[This statement applies to transportation as well. For instance, DOE points to the requirement that shipping casks receive NRC certification as evidence that the casks will be safe. Furthermore, the department takes every opportunity to mention the Sandia crash tests, despite the fact that those tests were performed 20 years ago on older designs (not the "new generation" casks DOE is developing) and the tests were not intended to demonstrate cask safety. In calling attention to these tests, DOE appears to deliberately cultivate the misconception that new casks will undergo these same spectacular crash tests. This misconception is strengthened by vague language in the <i>Draft Mission Plan Amendment</i> . Specifically, although it states on p. 110 that scale models will be used for "design-verification tests," the wording on p. 116 seems to imply that cask vendors will have to perform extensive physical testing on the casks they produce.]
	ft 21	", p. 81." should not be italicized. *
18	2 par, last sen	[Given that the subject of the report is public trust and confidence, it might be useful to flesh out the AEC's reasons for failing "to take the adequate steps to prevent widespread contamination and pollution."] E
	ft 22	Insert "a" between "licensing" and "defense".
19	ft 25, last sen	"EPA was again given original to implement . . ." is confusing -- something appears to be missing.
20	2 par, last sen	Replace "indicate" with "indicates" after "scheme".

Page	Paragraph	Comment
	4 par, 2 sen	Replace "is" with "are" after "standards".
	5 par, 3 sen	Replace "into" with "in" after "succeeded".
22	Table	<p>[DOE's statement in the <i>Draft Mission Plan Amendment</i> implies that the department feels transportation is a "major public focus." Transportation should be included in the table with site selection.]</p> <p>[With regard to attitudes (under "Organizational Culture"), it seems more the case that OCRWM acknowledges a low level of public trust, yet dismisses it as based on "irrational" fear of radiation and only of limited importance. In addition, the department appears to feel that it can start with a clean slate and build public trust and confidence, rather than first trying to wipe out a deficit and move on from there.]</p>
23	4 par, 2 sen	Replace "Department's" with "Department".
24	5 par, 2 sen	Replace "coming" with "forthcoming".
26	2 par, 1 sen	Transpose "not" and "depend".
27	5 par, 1 sen	Delete "of our" after "One".
28	1 par, 1 sen	Replace "advise" with "advice".
	2 par, 3 sen	Insert "of" between "restructuring" and "organizations".
	5 par, 2 sen	Replace "have" with "has" and "contractor" with "contractors".
	5 par, last sen	Replace "for" with "from" after "indistinguishable".
		<p>[Also, contractors play a key role in transportation activities. The Waste Policy Institute is responsible for organizing and planning meetings of the Transportation External Coordination (TEC) Working Group. This particular contractor has demonstrated extreme reluctance in accepting feedback from stakeholders, a characteristic that would help explain the tendency for stakeholders to lump DOE and its contractors together.]</p>

F

G

H

Page	Paragraph	Comment
30	2 par	[Regarding the inclusion of a section on public trust in the <i>Draft Mission Plan Amendment</i> : It is interesting that the tone and format of this document has changed significantly from previous versions. By using "we" liberally, DOE appears to be creating an image of itself as a team of individuals rather than a faceless bureaucracy. Also, many of the technical details have been eliminated, which streamlines the document and makes it easier for the general public to read, but at the same time diminishes its value as a complete source of information.]
	4 par	[More detail should be provided on the first Director's Forum. The topic of the first forum was early site suitability, a subject that clearly was of primary interest to citizens of Nevada. DOE's decision to hold the forum in Chicago sent a strong message -- namely, that the department not only does not <i>want</i> stakeholder input, but will take whatever steps necessary to <i>avoid</i> it.] [Regarding OCRWM's interaction with the public: Many of the participants at the last meeting of the TEC Working Group were disappointed in the poor planning that went into the meeting, especially in the fact that the Waste Policy Institute (DOE's contractor) had not thought it necessary or appropriate to provide an evaluation form to solicit comments from meeting participants on how to improve future meetings. WPI was very resistant to the suggestion that such evaluations should be standard practice.] [OCRWM has expressed the belief that demonstrating an ability to meet deadlines will enhance public confidence. Yet the department has consistently failed to meet <i>document</i> deadlines (e.g., a comprehensive transportation plan was initially scheduled for release in 1987 and has yet to be produced), which can only lead the public to question how the department could possibly meet its <i>production</i> deadlines.]
31	1 par	It seems "formally" should be replaced with "informally".
	4 par, 2 sen	Replace "in" with "which" after "ease".
32	1 par, last sen	Delete "be" before "viable".
	4 par, 3 sen	Insert "the" between "to" and "substance".
33	4 par, last sen	Delete "not" before "yet".
	5 par, 1 sen	Insert "to" between "likely" and "arouse".
35	ft 34	Replace "recommendations" with "recommendation".

Page	Paragraph	Comment
40	3 par	Although this sentence refers to shipments, it appears to consider only authorities in the host state. That is, it disregards the need to empower authorities in corridor states regarding the pace of shipments.
	4 par, 1 sen	Replace "internally" with "internal".
45	2 par, 2 sen	Replace "is" with "are" after "successors".

Harold Borchert
Chairman
Midwestern High-Level Radioactive Waste Transportation Committee

2/26/93

The Task Force agrees that considerable emphasis was placed in the Draft Report on repository development, perhaps to the exclusion of other issues. Revisions were made to highlight the special issues that arise from transporting waste. In particular, stakeholders that reside along transportation corridors were explicitly identified and the appropriateness of their involvement at many stages of the decision-making process was explicitly recognized. See, for example, pages 7, 14, 51, 54, and 56.

- A. See revised language on page 5.
- B. New language clarifies the implications of Figure 7. See page 19.
- C. Footnote 45 on page 27 reflects this view.
- D. The Task Force agrees.
- E. The Task Force refers to the importance placed on national security considerations on page 29 and notes on page 7 the dominance of a management culture that was relatively insensitive to the long-term consequences of environmental pollution.
- F. The purpose of Table 2 on page 35 is to identify aspects of the institutional content within which the Department's waste management activities operate, not to designate which of those activities are important or major public foci.
- G. Although there is some merit to this comment, the Task Force does not agree that OCRWM dismisses public concerns about trustworthiness because they derive from an "irrational fear" of radiation.
- H. This Task Force agrees, but it does not choose to mention this point specifically.

I. Additional observations about the Director's Forum are contained in footnote 67 on page 44. The Task Force disagrees completely with the assertion that the difficulties that process encountered were a reflection not only of OCRWM's lack of interest in stakeholder input but were also an indication that the program will take whatever steps necessary to avoid public involvement.

J. Appropriate changes have been made throughout the section entitled "Advice from the Task Force." See pages 50-51, 54, and 56-57.

March 26, 1993

Dr. Daniel Metlay
Secretary of Energy Advisory Board AC-1
1000 Independence Ave. S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Nye County appreciates the opportunity to comment on the discussion draft of the "Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management". Nye County has been an active observer of the Task Force's work and has regularly contributed to the Task Force's deliberations. We have appreciated the openness with which the Task Force has received our input, and the demonstrated effort to engender confidence and trust in its work -- notwithstanding a few instances where its "practices" were not consistent with its objectives. Of particular note was the Task Force members taking the time to ask follow-up questions of presenters with what appeared to be genuine and empathetic interest. This simple technique helped reinforce with the presenters that the Task Force was listening and attentive.

In general, the Task Force is to be commended for a thorough, thoughtful, and insightful analysis of the public trust and confidence issue. The conceptual underpinnings laid out in pages 1-22 were particularly helpful for focusing the reader on a subject that is admittedly more intuitive than intellectual. The findings with respect to the Office of Radioactive Waste Management were pointed and on the mark.

Please note the enclosed comments. We request that the Task Force give serious consideration to our analysis as it completes its final report. We also request that the Task Force add one additional recommendation:

OCRWM should support full affected party participation before the NRC in all licensing proceedings for the candidate repository site. Support should extend to the continuation of financial assistance for preparation and participation, as well as for potential adjudicatory hearings once DOE's license application has been docketed.

A

Page 2
Dr. Metlay
Comments on Public Trust and Confidence

Finally, you may be aware that Nye County has made a Repository Program transition during the time period of your study. The County just recently appointed me to assume the important role of managing Nye County's efforts to monitor and oversee DOE's implementation of the Yucca Mountain Project. Phillip Niedzielski-Eichner has returned to his projects administration role after performing interim program manager responsibilities.

Please feel free to contact me at (702) 482-8183, or Phillip Niedzielski-Eichner at (703) 818-2434, regarding our comments.

Very truly yours,

Les W. Bradshaw
Program Manager

By:

A handwritten signature in black ink, appearing to read "Phillip A. Niedzielski-Eichner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Phillip A. Niedzielski-Eichner
Projects Administrator

Enclosure

cc: County Commission
W. Offutt, County Manager
E. Holstein
M. Murphy
Planning Information Corporation

**NYE COUNTY, NEVADA COMMENTS ON DRAFT FINAL REPORT
SECRETARY OF ENERGY ADVISORY BOARD
TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT**

GENERAL OBSERVATIONS

The Task Force is to be commended for a thorough, thoughtful, and insightful analysis of the public trust and confidence issue. The conceptual underpinnings laid out in pages 1-22 were particularly helpful for focusing the reader on a subject that is admittedly more intuitive than intellectual. The findings with respect to the Office of Radioactive Waste Management were pointed and on the mark.

Nye County reiterates the program-level issues that continue to undermine the Federal government's credibility relative to Yucca Mountain:

- Adherence to an unrealistic schedule for acceptance of spent fuel from the utilities by 1998 and repository site suitability evaluation and licensing by 2010.
- An unwillingness to establish contingency plans for pursuing an alternative candidate site to Yucca Mountain, as well as a second repository site.
- Uncertainty relative to the characteristics and waste storage requirements of all high-level waste potentially destined for deep geologic disposal. In light of the potential volume and the weak Congressional and DOE commitment to the 77,000 metric ton limit, the first repository appears destined to become the second, third and fourth repository location.
- Continuing efforts to seek relief from established regulations, aided and abetted by Congressional intervention.
- Inefficiencies in contracting arrangements, ranging from overlaying old-time NTS contractor relationships onto the Yucca Mountain project, to proceeding with an M&O contractor arrangement even after two sites were eliminated by Congress. The result is an overhead-heavy program which drives up program costs and prevents a more comprehensive surface-based testing program.
- Persistence in constructing the ESF drifts to repository specifications.

SPECIFIC COMMENTS

The following specific comments are offered by Nye County to give additional strength to the analysis and recommendations offered by the Secretary of Energy's Advisory Board's Task Force on Radioactive Waste Management.

- [Page 2, third full paragraph. The Task Force acknowledges that within the American structure of government, the authority of those who govern derives from the willingness of the citizens to be governed. The Constitution, in effect, defines the process by which citizens delegate governing authority their government; it also the means by which that authority can be withheld. The ultimate way in which the public can hold government accountable is through the ballot box. B

If one accepts the principle that "all politics are local" then it would be useful as the Task Force builds its conceptual framework within these introductory pages to acknowledge the important role local government oversight can play in the overall context of public trust and confidence. }

Nye County respects the work of the U.S. Nuclear Regulatory Commission (NRC) and the Nuclear Waste Technical Review Board (NWTRB) as they conduct their oversight activities; the County is also on record admonishing the Federal government to give serious attention to the State's technical oversight work. The reality is, however, that in a national program as complex and controversial as the civilian high-level waste repository program, the residents would prefer to also have a local monitoring and oversight capability.

The point is accessibility and accountability. The Nye County Commissioners, the County Manager, and the Nye County Repository Program Manager can all be immediately reached by the residents of Nye County. In addition, Commissioners stand for re-election every four years. The County Commission and staff are able to focus solely on the interests and needs of Nye County residents. State, and certainly Federal, officials have many more considerations to balance than Nye County's best interests.

- [Page 4. The dotted line on the graphic might be more aptly named "Desired" as opposed to "Ideal." }
- [Page 6-8. The discussion of common choices and tensions was interesting and worthwhile. However, this section requires additional elaboration to be fully beneficial. As it stands, it is somewhat cryptic and academic.] The sections would benefit from a more operationally oriented discussion. One example of an overly abstract assertion is as follows:

"But what makes it (having to resolve difficult value trade-offs) even more daunting is the combination of how support is distributed for any given value and the strong correlation among them all."

The subsequent sentence then refers to a graphic that demonstrates a bimodal group reaction to the circumstances, but does not elaborate on the significance this reaction has for making value tradeoffs.

- [Page 8. Following up on the previous comment, the four-square matrix identifying problem solving strategies requires further elaboration and, again, an effort to provide operational examples.]
- [Page 9, second full paragraph. In referencing the technical expertise demanded by the project, an assertion is made that, "when validating alternatives, there must be trust that uncertainties are resolved in an unbiased fashion". Actually, the next sentence, "there must also be confidence that activities will be implemented in good faith" is the more relevant criterion.

The public appears to understand what the scientific community has not yet been willing to fully admit. A person cannot completely divorce himself from his personal belief system such that the science he practices can be conducted without personal bias. The belief that

there is such a thing as "totally objective science" has, unfortunately lead to scientists being affronted by citizen challenges to their credibility and national policy being formulated with misplaced confidence.¹

The "good faith" criterion calls for scientists to specify the biases that may affect their study design, data collection and analysis, and ultimate conclusions. Independent peer review or stakeholder oversight can then validate or challenge their assertions with all the "data", not just the experimental results and analysis.]

F

- [Page 9 second full paragraph. The discussion concerning the requisite level of trustworthiness or the imperative for trustworthiness is well taken. The Task Force notes the analysis it describes is not "novel". What perhaps is novel, is that local communities, confronted with a complex federal project like the Repository siting effort, need not rely solely on the Federal government for comfort. The unique experiment undertaken by Congress, perhaps unwittingly, through the Amendments to the Nuclear Waste Policy Act of 1982, is that for the first time, local communities were given the authority and funding to carry out a reasonably meaningful independent oversight effort.

Nye County is fearful that if the importance of this "experiment" is not explicitly acknowledged, in this instance by the Task Force, that those funds historically appropriated for this purpose will be too easily cut under the guise of cost saving.]

G

- [Page 11. Nye County suggests that the Task Force establish three definitions for the public which are now encompassed in one. The first public, and most important from the standpoint of accountability, is the general public; those citizens who make no assertions as to affiliation and are essentially "non-aligned." The second public is a "governmental stakeholder" consisting of State, Local, and Tribal Governments. The third public can be referred to as a "declared" stakeholder, consisting of all other outside groups and associations.]

H

The distinction is helpful, at least from Nye County's perspective, because it helps address the fact that governmental entities are directly accountable to the "public", while declared stakeholders are accountable only to their collective membership. DOE should bear this reality in mind when it initiates public participation strategies, or seeks to negotiate the resolution of problems. This is of particular interest, with the national emphasis directed toward establishing site specific advisory committees.

¹Please see two books from the series Environmental Ethics and Science Policy:

Mayo, Deborah and Hollander, Rachele, Acceptable Evidence: Science and Values in Risk Management, (Oxford University Press), 1991.

Cook, Roger M., Experts in Uncertainty: Opinion and Subjective Probability in Science, (Oxford University Press), 1991.

- [Pages 15-18. We applaud the Task Force's analysis of OCRWM's institutional context. We offer the following additional point:

As statutorily affected parties, the host State, and the situs county, do in fact have special and unique rights under the NWPA as amended. The key right is to on-site representation, and the affiliated access to data and information. All counties adjacent to Nye, though, also have rights to review and comment on site characterization activities.

The County particularly appreciates the Task Force's acknowledgement of its unique standing (in addition to "situs" the County refers to itself as the "first among equals"). Historically, the County has had to exert extraordinary effort to even be invited to the table. The reality is that the repository site and the end point for all transportation routes, with all the incumbent future risks, are within Nye County. I

Nye County supports the opportunity for adjacent counties to monitor repository-related activities and issues. However, their oversight role should be commensurate to their exposure to health and safety risks and socioeconomic impacts. J

- [Page 28, finding #2, regarding the Department's extensive use of contractors. The Task Force missed the mark when, after finding that there is only one DOE employee for every seven contractor employees working for the Department, it notes only that contractors will have to take the same steps as the Department to strengthen public trust and confidence. In reality, this finding goes to the very heart of the role of government and the accountability systems established by the Constitution that we so cherish. Who, for example, is in control of the Yucca Mountain Project? The National Academy of Sciences was recently told that its recommendation to DOE to enlarge its drilling program at Yucca Mountain would be "too expensive."² J

One might conjecture that the requested drilling would be too expensive because DOE has overlaid test site contracts onto the Yucca Mountain Project. Practices that have been built up over many years of testing are not likely to be the same that are needed to establish sampling and monitoring wells.

- Page 29, Finding #1, second paragraph. The Task Force notes that exploding repository related costs may foreclose the possibility of addressing concerns about equity. The interesting observation about the Task Force's assertion is that financial assistance costs to conduct monitoring and oversight activities are viewed by DOE as discretionary and not an entitlement. In this light, in tight budget years, financial assistance payments can become susceptible to being reduced or cut.
- Page 30, Finding #3. The Task Force references the draft mission plan amendment as an example of a document that was drafted without pre-decisional public input. Other examples include DOE's development of its issue resolution strategy, vis-a-vis, NRC licensing; the process for completing its Mission 2001 exercise; the end of the year announcement by the Secretary that DOE would proceed forward to develop a distributed

²See "Inside Energy/ with Federal Lands", March 15, 1993.

storage site alternative to the MRS; and, of course, the seminal decision to forgo the siting process for the second repository.

- [Page 33, second paragraph. EM does indeed set out an ambitious and comprehensive set of objectives for its public involvement activities. Nye County offers a case example of where the Nevada Test Site's actions have not been consistent with the Department's objectives. Since its inception as the site for nuclear testing, the Nevada Operations Office (NVO) has had very few official dealings with Nye County. Yet, the whole of the Test Site is within the County's jurisdiction. The County can surmise that its population base has historically been insignificant relative to Clark County, and in particular, Las Vegas, where NVO was established.

Where Nye County was once a population of a few thousand, it has now grown nearer to 20,000. Nye County believes that it is time that Nye County and NVO establish a government-to-government relationship on matters of interest and concern to both parties. This includes the implementation of clean-up planning for the Test Site, land use planning, and the establishment of a site specific advisory board.]

- [Page 35, third paragraph. The most significant mis-assertion made in the Task Force's report is that compensation can be an off-set to a loss of trust and confidence. Nye County has historically made distinctions between compensation and mitigation. Mitigation is an entitlement due the County to address negative Repository related socio-economic impacts. Compensation, on the other hand, has historically been viewed as a tool for off-setting the burden of potentially being the Nation's repository for the storage of high-level nuclear waste. In either case, compensation and mitigation will only affect public trust and confidence inversely; i.e., if they are not paid, they will diminish the public's trust and confidence in DOE. However, making a payment to them is highly unlikely to be the basis for restoring that which was previously lost. K
- [Page 36, fourth bullet. Again, clarity of terminology is very important when discussing the sensitive issue of financial arrangements between the federal government and other affected governments.] The following is recommended as an alternative design basis statement: L
 - Providing sufficient financial assistance to affected governments to conduct an effective monitoring and oversight program commensurate with the nature and degree of risk to which their citizens are exposed; mitigation funds to offset negative socio-economic community impacts; good faith compliance with payments-equivalent-to-taxes provisions; and finally, good faith negotiations with affected parties for benefit payments intended to compensate for inequitable distribution of the national burdens for treating or storing toxic waste.
- [Page 37, Recommendation #3, first bullet. Within the DOE system are a few site and headquarters' managers who seem to have achieved a degree of public trust and confidence. These individuals ought to be identified and the behaviors that they have exhibited documented. These traits could then be incorporated into the training program.] M

- [Page 38, Recommendation #5. The recommendation to expand the peer review network is highly desirable; this expansion, however, should not be limited to experts from other countries, but should include state and local representatives as well.] N

- [Page 40, Recommendation #3. The call to empower host states, affected communities and tribes and citizen groups is to be commended. However, the two mechanisms provided as bullet #1 and bullet #2 should only be considered examples.] The empowerment that will induce greater confidence will need to be negotiated on a site specific basis, since the risks, impacts and potentially interested parties are likely to be unique to each site. O

Parties seeking empowerment must also be willing to accept responsibility; those accepting responsibility must also be able to be held accountable for their actions. Governmental stakeholders should, therefore, take the lead with empowerment opportunities.

- [Page 40, fourth bullet under Design Basis. As has been pointed out by the NAS and the NWTRB, unreasonable schedule milestones are one of the core issues affecting public trust and confidence in DOE's past repository-related performance.] P

- [Page 43, Recommendation #3, first bullet. Regardless of the suitability of Yucca Mountain for a high-level waste repository, the source term and waste stream should be definitively established.] Ambiguity in the amount of commercial high level waste, the 77,000 metric ton statutory constraint notwithstanding, compounds the first repository uncertainty. DOE's inability to fully characterize defense waste is a significant contributor, as well. Q

The known waste volume far exceeds the 77,000 metric ton limit for the first repository. Ever since the decision was made not to pursue the siting of a second repository, DOE has adamantly refused to explore with interested and affected parties the need for additional storage space for high level nuclear waste.

- [Page 43, first bullet. Nye County interprets "terms and conditions" to the situs county as programmatic or procedural in nature. Negotiating financial arrangements, unless they are entitlements that have been denied, is unrelated to building public trust and confidence.] R

- Page 43, Recommendation #2, first bullet. The call for the repository's predictable performance to exceed by a substantial margin the standards set up by the regulators is to be commended. The Task Force understands, we are sure, how widely at variance this recommendation is relative OCRWM's past performance.

Les Bradshaw
Program Manager
Nye County
Nuclear Waste Project Office

3/26/93

A. The Task Force certainly believes that Nye County should be able to participate fully in any adjudicatory hearing held by the NRC. It does not sufficiently understand the legal constraints on how DOE may make grants to the county to know what would be required to implement this particular suggestion. Therefore, it declines to add the recommendation to its Final Report.

B. The Task Force in its recommendations consistently recognizes the important role local governments can play throughout any deliberations on radioactive waste management issues.

C. The Task Force agrees; see page 24.

D. To improve its clarity the section in question has been substantially revised. See pages 10-12.

E. See response to "D" above.

F. The Task Force agrees with this description of the sociology of the scientific review process. It would expect independent peer review to be sensitive to the issues raised by this comment.

G. Once again, the Task Force consistently recognizes that state and local governments can play critically important roles in the varied processes involved in the management of radioactive waste. Obviously, specific legal authority and financial assistance facilitates their involvement.

H. The Task Force has modified the definition of "public" very much along the lines, although not in the same order, as suggested by this comment. See page 15.

I. The Task Force has modified this language. See page 27.

J. There undoubtedly exists interdependencies between DOE on the one hand and its contractors on the other. Those interdependencies can blur DOE's legal lines of authority. The Task Force has not explored this question sufficiently to know whether this comment raises a serious issue at this time.

K. The Task Force here speaks of "compensating" not "compensation." The verb takes on its standard meaning: to counterbalance or offset; to make up or make amends.

L. The language the Task Force adopted adequately conveys the meaning it desires within the context of generalized design principles.

M. This comment is consistent with the recommendations on pages 57 and 58.

N. The Task Force agrees; see page 56.

O. The Task Force agrees.

P. The Task Force addressed the question of schedules in greater detail in the Final Report. See pages 24-29, 50, and 58.

Q. In order to carry out the recommendation in question, the source term will have to be specified with some precision.

R. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

Snake River Alliance

□ Box 1731 · Boise ID 83701 · 208/344-9161
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□ 310 E. Center · Pocatello ID 83201 · 208/234-4782

March 11, 1993

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
1000 Independence Avenue SW
Washington, DC 20585

Dear Dr. Metlay:

The Snake River Alliance is an Idaho-based 1,200-member citizens group working on issues of radioactive waste, nuclear weapons production, and related subjects. We have focused on the Idaho National Engineering Laboratory since 1979. Underlying all our work is the core understanding that public agencies doing the public's business with the public's money, presumably at the public's behest, must be accountable to the public.

We appreciate the Task Force's analysis of the sources of the striking absence of public trust in the Department of Energy. Citizens simply do not believe the DOE; nor are we confident of its ability to do our business.

But the solution proposed for the DOE's credibility problem begs the Task Force's own analysis. The Task Force's draft Final Report suggests moving all the activities of the Office of Civilian Radioactive Waste Management to Nevada. What would this accomplish? Nevada would get more money. What would this accomplish? Nothing. A

After a good analysis of the DOE's grave problems, [the Task Force seems to have leapt to an unspoken assumption we often face when dealing with the DOE: the problem is not that the DOE is not believable, but instead, that the public is refusing to believe.] B

We are quite confident that any attempt to purchase a public suspension of disbelief would be no more successful in Nevada than it would be in Idaho.

Sincerely,

Beatrice Brailsford
Eastern Idaho Coordinator

Beatrice Brailsford
Eastern Idaho Coordinator
Snake River Alliance
Pocatello, Idaho

3/11/93

A. The language of this recommendation has been modified. See page 55. It needs to be evaluated as part of a larger set of suggestions that will need to be adopted and faithfully implemented.

B. The Task Force disagrees with this characterization. It, in fact, found that the loss of public trust and confidence was due to the public's experience with DOE and not due to the public's unwillingness to believe what the Department had to say. See pages 37-38.

Luther J. Carter, March 9, 1993

Comments on Draft Final Report of the Secretary of Energy's
Advisory Board Task Force on Radioactive Waste Management

This report of the task force on building public trust and confidence is, in the opinion of this reviewer, excellent insofar as it goes. A specific recommendation that I very much favor is the one calling for creation by the Department of Energy of Safety Review Boards on which stakeholders as well as DOE managers would be represented. As the task force suggests, this is a form of public participation that is truly empowering. If stakeholders can be drawn into a genuine two-way relationship with DOE, the decision-making authority vested in such a board could indeed reach to such critical questions as how long a capability for waste retrieval should be maintained. It might even be given some voice in the design of the overall repository system.

But while the report has much to commend it I believe it could be strengthened by going well beyond the question how DOE should conduct its relationship with stakeholders in the carrying out of its mission. Equally important in building trust and confidence, indeed more important, is the question what that mission is and how it is defined and articulated. In defining the "first principles" underlying its thinking, the task force observed that "public trust and confidence is not a one-way street" and that trust must be reciprocal and be reflected in the behavior of both the department and representatives of the public. This in my view is an absolutely key point and much of what I have to say will explore possibilities for bringing about such a spirit of reciprocity and mutual trust. But this exploration cannot be in the abstract and must turn on the content and articulation of the DOE mission.

It should be useful here to point to the sharp contrast between how host states generally view DOE's clean up program at the weapons production sites and how Nevada views the DOE exploration of Yucca Mountain for a spent fuel and high-level waste repository.

Consider first the matter of the defense clean up. Nuclear wastes at the defense sites were generated in a weapons production program which was long opposed by peace activists and which might ultimately have led to raging national controversy. But weapons production has now ceased and dismantlement of weapons has begun. Thus no longer are the production sites centers of a controversial activity, and the DOE program to clean up these sites is backed by a solid national consensus. As the task force points out, the relationship between DOE and stakeholders will not be free of tension and conflict, but their differences will be over priorities and planning details, not over ultimate goals or what in the broad needs to be done. The relationship between DOE and the host states and stakeholders is

improving and there is already the makings of mutual trust and respect.

A totally different situation obtains with respect to the DOE effort in Nevada looking to the building of a repository at Yucca Mountain principally for spent fuel from commercial power reactors. Nevada says "never," and its DOE-funded nuclear waste project office serves principally as a staging mechanism for attacks on the DOE program. The state shows no interest in cooperation with DOE, for in its mind cooperation would in reality turn out to be cooptation. Its posture of intransigent opposition has for the most part been encouraged by the antinuclear groups, by certain of the major environmental groups (including the Sierra Club), and to a degree by the press.¹ The task force has itself pointed out some major distinctions between the clean up of the defense production sites and the Yucca Mountain project. Surely a salient difference is the fact that the spent fuel that would go to this repository is generated by an intensely controversial nuclear enterprise that is still ongoing.

The fearsome nuclear imagery inspired by Hiroshima and Nagasaki, nuclear testing, and events such as Three Mile Island and Chernobyl may hang more or less equally over the defense clean up sites and any prospective "nuclear dump" at Yucca Mountain. But the defense clean up deals with radioactive waste left from activities now shutdown; the Yucca Mountain repository would receive spent fuel from power reactors which for the most part continue to operate--and if proponents of nuclear energy have their way, from reactors yet to be built. Spent fuel would come from afar to a state which has no nuclear reactors and sees itself, correctly, as the place targeted by Congress somewhat in desperation after the political collapse of a national site screening plan. It is argued moreover that to impose this repository on an unwilling state is gratuitous because everyone agrees that spent fuel can safely be stored at the reactor sites for many years, indeed well into the next century. If the Nuclear Waste Policy Act Amendments of 1987, designating Yucca Mountain as sole candidate for a repository, still commands majority support in the Congress it may well be because few senators and congressmen want to reopen an issue as controversial as this one.

1. An example of the latter can be seen in the New York Times magazine lead article of November 18, 1990 treating geologist Jerry Szymanski as a veritable folk hero for his predictions of calamitous seismic and hydrologic change for a Yucca Mountain repository, predictions that have fared poorly under scientific peer review.

So now we come back around to the question of how the relationship between DOE and the state officials and other stakeholders in Nevada is to be put on a "two-way street" in keeping with the first principles of the task force. There is no direct way to accomplish this as long as top state officials are refusing even to attempt entering into a cooperative relationship with DOE with respect to the Yucca Mountain project. No amount of reform of the kind recommended in the task force report will be availing. An approach that may hold some promise is to strengthen the project rationale in such a way as to make the case for the project more compelling and to increase support for it across the country, with particular attention to the numerous local and national groups eager to see the clean up of the defense sites succeed. This could be important inasmuch as Nevada officials cannot remain indifferent to any marked shift of national opinion in which their intransigent opposition is cast in an unsympathetic light.

[One rather obvious way to strengthen the program rationale would be for DOE to point out repeatedly and untiringly how interdependent the Yucca Mountain project and the clean up of the defense sites really are.] A repository at Yucca Mountain would be every bit as important to the success of the clean up as the WIPP repository at Carlsbad, New Mexico, because it would receive all the high-level waste recovered and vitrified from the underground tanks at Savannah River and Hanford and from the calcine bins at Idaho Falls. Although the defense high-level waste would represent only a modest part of the total inventory of a fully loaded Yucca Mountain repository, there would nonetheless be many thousands of canisters of it constituting by far and away the most radiotoxic materials now present at the weapons production sites. Thus failure to make progress toward establishing a permanent repository can only leave the clean up stymied with respect to achieving some of its major objectives.

Another point that deserves to be repeatedly and forcefully made is that proposals for either long continued at-reactor or central monitored retrievable storage of spent fuel will not in the final analysis have or deserve much credence unless there is clear progress toward establishing a permanent repository. The conceptual and political flaw in looking to interim surface storage of spent fuel as an alternative to the Yucca Mountain project is that the interim nature of this expedient is speculative and unconvincing absent promise of permanent geologic disposal at some point in the future. This flaw already has impeded the work of the U.S. Nuclear Waste Negotiator, as was evident last year when Governor Michael Sullivan of Wyoming cited it explicitly in his letter to the Fremont County Commissioners disapproving a proposed study of the county's hosting a MRS facility. Governors of states with nuclear power stations and a continuing build up of spent fuel are likely sooner or later to be expressing similar concerns.

The foregoing talking points for continued work toward establishing a repository should be still more persuasive, I believe, when one considers the potential for redefining the Yucca Mountain project as a research and development endeavor aimed at reducing uncertainty (and public perceptions of uncertainty) in geologic disposal, whether at the Nevada site or elsewhere. There is of course reason enough to be working resolutely toward establishing the first geologic repository just in light of the spent fuel and high-level waste generated by existing reactors and the defense sites. The disposal job that awaits is challenging enough whatever the longer term future of nuclear energy. There should be broad agreement moreover that if use of nuclear power is to expand or even long continue at its present level it should be made as safe as possible. To this end work toward more nearly inherently safe reactors now seems increasingly in vogue; while inherent safety may never be fully achievable, looking to it as a goal is a way of encouraging nuclear engineers to give their creative imagination free reign. In my view an analogy can appropriately be drawn between inherent safety as a goal for reactor design and operation and as a goal for nuclear waste isolation. Furthermore, the Yucca Mountain project could be made a means of testing concepts and design strategies for ensuring that geologic and engineered containment of radioactivity will continue over the period of hazard.

This would mean giving the present project a much more experimental emphasis--the task force, as I read its report, recommends this--and giving a much larger place to exceptionally robust engineered barriers (e.g., very longlived canisters) as part of the overall containment system. Perfecting retrieval systems as a fail-safe against the chance of unexpected performance failures would also deserve careful attention. As the task force knows, such approaches have been explored and recommended by the National Academy of Sciences Board on Radioactive Waste Management and the Nuclear Waste Technical Review Board and by a number of highly qualified individual experts, such as Lawrence Ramspott of the Lawrence Livermore National Laboratory and Eugene Roseboom and William Dudley of the U.S. Geological Survey. The problem of dealing with uncertainty in nuclear waste isolation is generic, so a successful effort to address it at Yucca Mountain might be quite useful in establishing other repositories in the United States and abroad.

The foregoing changes in the definition and articulation of the Yucca Mountain project would, I believe, make for the stronger program rationale that is needed and put the project on a much sturdier political footing nationally. Directly and indirectly, the changes might also cause Nevadans to think somewhat better of the project and perhaps lead state officials to edge toward the "two-way street" the task force sees as essential to a meaningful relationship. But to this end

-5-

something more could be done. Nevadans could be urged by DOE-- and, one might hope, by the White House--to look upon the Yucca Mountain project as part of a new post-Cold War mission for the Nevada Test Site which they are invited to play a significant part in planning and bringing about. Nuclear weapons testing began at the NTS forty years ago and has sustained a sizable payroll; testing, it now appears, is to be phased out over the next few years. Accordingly, there is again a lively interest in alternative uses for the Test Site. I say "again," for only 16 years ago the Nevada Legislature was, by formal resolution, urging that the NTS be used under certain conditions for nuclear waste isolation and solar projects.

That early receptiveness to waste isolation proved shortlived because once the siting of repositories became hotly controversial nationally, Nevada was not going to welcome something fiercely rejected by other states--and ambitious Nevada politicians were soon exploiting the waste issue for their own purposes. But the time may now indeed be propitious to bring Nevada into a wide ranging discussion of how the Test Site shall be used in the future. Nuclear waste isolation presumably would be a major part of the new mission if Yucca Mountain is found suitable but other activities might also be a real possibility.² Given a genuine discussion along these lines DOE, the state and local officials, and other stakeholders would be on their mettle to make their positions believable and attractive. For DOE's part, careful observance of the reforms proposed by the task force might make the difference between Nevada's continued rejection of the Yucca Mountain project and a constructive engagement with the problem of allowing this project to make the most of its potential.

2. U.S. Senator Harry Reid of Nevada, joined by Governor Bob Miller and U.S. Senator Richard Bryan, has been advocating in particular using the Test Site for a demonstration of "solar hydrogen." Arrays of solar collectors at the Test Site would produce the electricity needed to power electrolyzers used to split water into hydrogen and oxygen. Solar hydrogen as a concept for creating a major new source of transportable, storable fuel is described by Joan Ogden and Robert H. Williams in Solar Hydrogen: Moving Beyond Fossil Fuels (Washington, D.C.: World Resources Institute, 1989). Its congressional advocates includes Representative George Brown (D-Calif.), chairman of the House Committee on Science and Technology.

Luther Carter

No affiliation mentioned, but he is the author of one of the best studies of
nuclear waste management
Washington, DC

3/9/93

This comment develops an extended argument about the need to recast the mission of the Department of Energy in the state of Nevada. The Task Force takes exception to the assertion that no amount of reform will lead to relationships of mutual trust so long as state officials refuse to enter into cooperative relationships with DOE. In fact, the state interacts with the Department today in a number of ways: it carries out oversight activities at Yucca Mountain, it comments on draft documents, it often participates in conferences where both technical and institutional issues are addressed, and it even provides informal input at the very earliest stages of decision-making.

While the Task Force feels that expanding those relationships will be very difficult, it does not rule out the possibility, that with a commitment to restructure fundamentally key aspects of Departmental behavior, gradually agreement can be reached on mutual confidence-building measures. In any event, the panel believes that its recommendations will go far to make DOE more worthy of trust, not only in Nevada, but in the dozens of other locations where it carries out radioactive waste management activities.

The Task Force is intrigued by the suggestions that the connection between the Yucca Mountain Project and the defense waste clean-up program be emphasized and that both be linked with new missions for the Nevada Test Site. It cannot make an informed judgment whether that reorientation will have the consequences claimed.

Department of Energy

Washington, DC 20585

May 5, 1993

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Thank you for the opportunity to review the *Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management*, dated December 1992. The issue of strengthening the public's trust and confidence in the Department has and will continue to play a vital role in our waste management efforts. Your advice in this area is a welcome step to help us support this goal.

Our comments on the report are enclosed for your consideration.

Sincerely,

Charles L. O'Sullivan

for Howard J. Eckert, Acting Director
Office of Hanford Programs
Office of Waste Management
Environmental Restoration
and Waste Management

Enclosure

**COMMENTS BY THE OFFICE OF HANFORD PROGRAMS
ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT
on**

Draft Final Report of the SEAB Task Force on Radioactive Waste Management

1. On page 2, paragraph 2, the second sentence begins a sequence that reads, "By default, responsibility falls to each institution to engage the matter (of trust and confidence) as it sees fit...Ironically, those organizations that try genuinely to struggle with the issue expose themselves to the greatest risks. Their established patterns of external support and internal process almost always are disrupted and must be recreated and reconstructed." (emphasis supplied)

COMMENT: This statement is far too general to be characterized with "almost always".

A

2. On page 3, paragraph 4, the third bullet states, "Provide expanded storage facilities."

COMMENT: Expanded doesn't apply in this context.

B

3. On page 4, in discussing Commercial Radioactive Waste Management, the AEC's rule apportioning responsibility for the back-end of the nuclear fuel cycle.

COMMENT: This statement assumes that the back-end of the nuclear fuel cycle is a commonly used terminology and should be clarified.

C

4. On page 13, footnote # 16 at the bottom of the page.

COMMENT: This footnote has been incorrectly numbered. This should be footnote # 17.

5. In the section on the Civilian Radioactive Waste Management Program on page 16, reference is made to the term "bargain" as in political bargain or economic bargain.

COMMENT: The use of the term bargain is not clearly understood. A better term might be "alternative" or "choice".

D

6. In the same section on Civilian Radioactive Waste Management, on page 17, the four external bodies in a position to give technical advice are mentioned.

COMMENT: To be consistent, the applicable regulatory groups for the EM and DP Programs (for example the DNFSB) should be discussed in the following section on Environmental Restoration and Defense Waste Management.

E

7. On page 20, paragraph 3, the third sentence ends with a time reference: "...this year."

COMMENT: This reference should be observed and the appropriate change made in case the Report is not issued with a 1992 date.

8. On page 21, paragraph 2, the last sentence reads, "To the extent that the program does not succeed within its "window of opportunity", many of the pressures it now confronts will only be exacerbated."

COMMENT: This negative conclusion might better be supplied with proper emphasis by appending the following: "The safest means of relating schedule and technological advances is to avoid adopting schedules that are based on the forecast development of new technology. It is very difficult to schedule technological "breakthroughs". Instead, let the new technologies provide windfall improvements to the schedule."

F

9. Under General Finding # 3 on page 24, the use of the acronym NIMBY.

COMMENT: It would make more sense if NIMBY were spelled out at least initially so that it is clear to everyone what NIMBY stands for.

G

10. On page 25, paragraph 1, the second sentence implies that DOE, under certain circumstances, "...can better afford...to reduce trustworthiness..."

COMMENT: The appropriateness of this statement is questionable.

H

11. On page 36, paragraph 2, bullet 1.

COMMENT: Acknowledge the potential value of a Public Oversight Group, organized and supported by the local DOE entity.

I

12. On page 37, item 2, the second bullet reads, "indicate how activities carried out since the last report have been either consistent or inconsistent with those (major Program policy) portions."

COMMENT: Maximum emphasis should be added to this point. It represents the communication failure of a large percentage of public interaction. If they (anyone) can understand an action, they can better appreciate it.

13. On page 37, item 2, the last bullet addresses the "...changes that affect negotiated milestones..." question.

COMMENT: This is another high emphasis item. The political resistance to giving any indication that a negotiated milestone is in jeopardy (until it is already obvious and trust and confidence have already been lost) must be overcome in favor of timely openness.

14. On page 41, item 1 poses measures that "...might be adopted..." to "...promote a new culture within the Department."

COMMENT: The suggestions under item 1 would be very difficult to implement objectively and an effort to apply subjective interpretations may result in a challengeable base that can be used for punitive rather than constructive purposes.

15. On page 41, item 3, the third bullet reads "Increase organizational redundancy on safety critical activities," and on page 42, the first bullet reads "Institute overlapping self-regulatory processes."

COMMENT: Redundancy and overlapping responsibilities do not necessarily lead to greater effectiveness. One effective organization is better than two ineffective organizations.

Howard Eckert
Acting Director
Office of Hanford Programs
Office of Waste Management
Environmental Restoration and Waste Management
US Department of Energy
Washington, DC

5/5/93

- A. The Task Force agrees; see page 3.
- B. The Task Force agrees, see page 5.
- C. The Task Force believes that the audience for this report is familiar with the phrase "back-end of the fuel cycle." It does define it parenthetically.
- D. The Task Force disagrees. Bargain is the word that best describes the compromises reached in enacting the NWPA.
- E. The discussion of the EM program has been substantially expanded. See pages 7-9 and 29-34. Only the regulators of that particular program are considered.
- F. This idea has been incorporated on page 33.
- G. The Task Force agrees; see page 37.
- H. The language used was confusing. Modifications appear on page 38.
- I. The Task Force proposed a variety of mechanisms for increasing public involvement in the Department's decision-making process. One or more might serve the purposes and functions of a Public Oversight Group.

J. The Task Force admits that the recommendations could be twisted so that they are used for punitive rather than constructive purposes. DOE's managers will have to maintain a watchful eye to ensure that such distortions do not occur.

State of New Mexico
ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT
Santa Fe, New Mexico 87505

January 20, 1993

BRUCE KING
GOVERNOR

ANITA LOCKWOOD
CABINET SECRETARY

Dr. Daniel Metlay, Director
Task Force on Radioactive Waste Management
AC-1
1000 Independence Avenue
Washington, DC 20585

Dear Dan:

Please find enclosed my comments on the Draft "Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management". This draft incorporates several welcome adjustments to the previous draft, particularly in terms of implementation.

I feel these comments are timely, and urge you and the Task Force to give them serious consideration. The primary focus of these pages is compliance with your request that I point out to the Task Force where I believe the draft Report paints too flattering a picture of EM.

As I noted in San Diego, I do not feel the EM references in the draft Report are as descriptive of germane circumstances affecting public trust and confidence as the OCRWM references. Basically the draft says EM made some mistakes, heard the call in 1986 and changed their ways providing a viable example to OCRWM.

This analysis omits several critical points. [It also presumes to know that EM has higher levels of public trust and confidence than OCRWM does and is primarily challenged by maintaining those higher levels. **Do you have empirical evidence confirming this underlying assumption?**] If so, the data should be cited. A

Dan, I appreciate your hard work and patience. I feel very strongly about these adjustments to the text, particularly the need for empirical evidence to back your assumption that EM is held in higher stead by the public than is OCRWM. After having requested the Task Force include defense waste in their deliberations, the Secretary is entitled to as clear a view of EM's status as possible.

VILLAGRA BUILDING - 408 Galisteo
Forestry and Resources Conservation Division
P O Box 1948 87504-1948
827-5830

Park and Recreation Division
P O Box 1147 87504-1147
827-7465

2040 South Pacheco
Office of the Secretary
827-5950

Administrative Services
827-5925

Energy Conservation & Management
827-5900

Mining and Minerals
827-5970

LAND OFFICE BUILDING - 310 Old Santa Fe Trail
Oil Conservation Division
P O Box 2088 87504-2088
827-5800

I whole-heartedly support this process and I offer the following recommendation for the Department: *Examine DOE's institutional structure governing interaction with the Congress for approaches which might be extended or extrapolated for use with other stakeholders.*

I'll be happy to provide additional clarification on any of these points should you desire it. I can be reached at 505/827-5950.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Firkins', is written over the typed name and title.

Jim Firkins, Co-Coordinator
New Mexico Radioactive Waste Consultation Task Force

cc: Members of the SEAB Task Force on Radioactive Waste Management

Attachments (2)

GENERAL COMMENTS

Serious systemic problems have interfered with EM and persist today. I submit the following:

[If the DOE "old order" has passed as you wrote (pg. 19, para. 2), why did land withdrawal for WIPP fail in each of the five Congresses subsequent to watershed 1986? Why did Congress finally place WIPP in the hands of the EPA (an action which in itself resonates loudly in terms of EM's perceived trustworthiness in 1992)?]

B

[What you have characterized as *an elaborate structure* (pg. 20, line 1) appears to me to be a series of uncoordinated reactions mandated by settlements from lawsuits and compliance with the law.] These are not circumstances which flowed from a well-managed, coordinated, strategic effort. If this is an elaborate structure, then the lesson to OCRWM should be "act in an egregious manner, get sued and comply with the terms of all agreements".

C

I'm not trying to be snide, but I'm not going to be coy either. I feel the draft is in error and know the final Report can provide better guidance.

[As I view OCRWM and EM I see more similarities than differences in terms of the Report's methodology and First Principles. Many would argue with the characterizations of the two programs provided in the table on pg. 22.] The EM effort is older and more broadly distributed as you have written. There are very few major organizational distinctions between the two.

D

I have attached a completed version of the table which I feel is more descriptive and embraces the notions that:

- 1) there are multiple sites in each program which will benefit from transportation offsite for waste storage and/or disposal;
- 2) relevant environmental legislation is the same for each; and
- 3) budgets are appropriated one period at a time and any discernable trends are only notable in retrospect.

Once again, if you know EM has more trust and confidence, supporting evidence should be cited.

[Speaking to pgs. 18-21, I would look favorably on a description of EM which is analogous to the draft's OCRWM overview (pgs. 15-18). This revised section could benefit from the following:

E

- EPA currently is gearing up to face a challenge which, if it occurs, will be very similar to that which smote NRC (pg. 17, para. 5). Under P.L. 102-579, EPA is given funds and a very short time within which to reissue disposal standards for these materials. EPA is understaffed and has had to engage outside contractors to begin work on the mandated rulemakings. Both EPA and the State of New Mexico have faced allegations similar to

those you've cited concerning OCRWM and NRC that the amount of funding already expended to construct WIPP virtually guarantees licensure under RCRA.

- Courts have ruled against DOE interests in three lawsuits: National Resources Defense Council v. Environmental Protection Agency (1987); State of New Mexico v. Watkins (1991) and Environmental Defense Fund v. Watkins (1991).
- DOE's informal interactions with EM stakeholders have done very little to advance the cause of public trust and confidence. I refer specifically to the following:
 - * DOE's 1992 decision to threaten wholesale layoffs at WIPP if the 102nd Congress didn't pass land withdrawal legislation;
 - * Sec'y Watkins untimely and public suggestion to the Governor of New Mexico in the summer of 1992 that the Governor could circumvent the formal RCRA permitting process and simply grant WIPP a Part B permit and;
 - * DOE's insistence (fall 1992) on pressing the Federal appeals court to award WIPP interim status under RCRA after the enactment of P.L. 102-579 essentially made interim status moot.

Relative to the draft's characterization of OCRWM, EM has much to be humble about.]

[Pages 20 and 21 give me lots of heartburn. The six headings do describe real challenges for EM, but; 1) they are challenges common to most governmental agencies; 2) I don't see their absolute salience to the DOE public trust and confidence issue and; 3) with the possible the exception of the last (Facility Transition), OCRWM has the same problems.] F

[I'm also troubled by the absence of recommended "specific measures and policies" for EM (pgs. 36, 39 and 41). This omission underscores to me the impression that EM is not properly characterized in this draft. I would be inclined instead to list specific recommendations to EM based on testimony already presented to the Task Force, or to delete the OCRWM recommendations entirely and beef up the recommendations to the Department as a whole to include the observations that have been presented to the Task Force in reference to EM.] G
[Incidentally, I feel the "Design Basis" on pg. 36 and the specific measures, pgs. 36-39 are excellent]

If I could apply the Report's methodology, DOE's successes (and there have been some) have almost exclusively flowed from one group of stakeholders; the Congress. While your research indicates some improvement in perceptions of polled policy elites of the Department over the past four years, I fear affected groups have not become supportive of EM since 1986.

SPECIFIC COMMENTS

[In direct response to your request, the following citations left me with the impression that EM is held in higher stead than the civilian program: H

- 1) Pg. 20, line 1.
- 2) Six headings on pgs. 20 and 21.
- 3) Pg. 22, para. 1. last sentence.
- 4) Table on Pg. 22.
- 5) Pg. 24, para. 1, last sentence. (Evidence should be cited)
- 6) Pg. 31, para. 3, second sentence. (OCRWM and the Constitution have distributed power to Nevada, who has also been rather responsive.)
- 7) Pg. 32, para. 2, first sentence.
- 8) Pg. 33, para. 1. (I have never seen a set of these objectives. If you could discuss them in more detail, I'll retract this cite).

Additionally:

Pg. 6, para. 4, line 9; Add: "Transportation from the sites currently storing hazardous mixed wastes to WIPP will affect members of the public in 22 states many of whom who have not had occasion to consider themselves active stakeholders in this process." I

Pg. 15, full para 1, line 3; the intent of the italicized text "or cannot in some other way be compensated for" is unclear and should be clarified. J

Pg. 17, para 5; As a point of reference, the military program faces similar skepticism. EM inherited a legacy from the classified activities of Defense Programs and similarly engendered considerable distrust from public sectors opposed to nuclear weapons when it received these new responsibilities. K

EDITORIAL COMMENTS

Pg. 16, para 5, line 1; change "mined" to "minded". (Rather spectacular pun)

(Table on pg. 22)

SIMILARITIES AND DIFFERENCES IN THE INSTITUTIONAL CONTEXT

<u>CHARACTERISTIC</u>	<u>OCRWM</u>	<u>EM</u>
CORE MISSION		
<u>Distribution of Benefits</u>	<i>Possibility of many winners</i>	<i>Possibility of many winners</i>
<u>Major Public Focus</u>	<i>Site selection</i>	<i>Clean-up</i>
<u>Movement of Waste</u>	<i>Leaving and arriving</i>	<i>Leaving, staying and arriving</i>
<u>Origin of the Waste</u>	<i>Civilian nuclear power plants</i>	<i>Weapons production</i>
<u>Programmatic Activity</u>	<i>Experimental</i>	<i>Experimental</i>
<u>Locus of Activity</u>	<i>Concentrated</i>	<i>Dispersed</i>
<u>Operations</u>	<i>Open-ended</i>	<i>Open-ended</i>
GOVERNING REGIME		
<u>Legislation</u>	<i>Program specific General environmental law < NEPA and RCRA ></i>	<i>Program specific General environmental law</i>
<u>Type of Public Input</u> <u>Legislatively Mandated</u>	<i>"How to do job"</i>	<i>"Should the job be done?" "What job to do" "How to do job"</i>
<u>Type of Power Sharing</u> <u>Mandated</u>	<i>Limited</i>	<i>Limited</i>
<u>Affected Constituencies</u>	<i>Many</i>	<i>Many</i>
<u>Regulatory Standards</u>	<i>Mostly understood</i>	<i>Mostly understood</i>
<u>Dominant Mode of Politics</u>	<i>Closed</i>	<i>Relatively Open</i>

CHARACTERISTIC	OCRWM	EM
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ORGANIZATIONAL CULTURE

<u>Inherited Legacy</u>	<i>Poor</i>	<i>Poor</i>
-------------------------	-------------	-------------

< BUDGET SHOULD BE DELETED IF THIS TABLE SURVIVES IN THE REPORT >

Conclusions based on budget data are only valid after the fact of appropriation.

<u>Response to Regulation</u>	<i>Tries to modify to ease challenge to program</i>	<i>Tries to modify to ease challenge to program</i>
<u>Attitude Toward Earning Public Trust and Confidence</u>	<i>No explicit acknowledgment of low level; approach to building is narrow</i>	<i>Acknowledges low level; approach to building is narrow</i>

Jim Firkins
Co-Coordinator
State of New Mexico
Energy, Minerals, and Natural Resources Department
Santa Fe, New Mexico

1/20/93

General observation: The Task Force found these comments to be especially helpful in revising the Draft Final Report. It had tried to indicate in that document that it saw in the EM program greater possibilities to strengthen public trust and confidence than it saw in the civilian waste program. That distinction was not well enough presented so the Draft could be read as too "pro-EM." Modifications have been made that hopefully clarify the Task Force's original intent. Of prime importance is the separate discussion of the Waste Isolation Pilot Plant.

A. The surveys conducted by the Task Force do not show higher levels of trust and confidence for EM than for OCRWM. They do show that the former has increased its level of trust among significantly more stakeholders (50% to 38%) than the latter. The Task Force feels that *changes* in trust level are as significant as the absolute level itself. See page 17.

B. By "old order" the Task Force means an almost single-minded focus on the national security components of DOE's mission. Just because that order has passed does not mean Congress will pass all the legislation the Department requests. That is especially true when the legislators from states primarily affected by proposed laws cannot agree among themselves what constitutes the best approach.

C. It is undeniable that EM has created an elaborate structure of plans, procedures, and technical analyses. The Task Force believes it is an open question how effectively that structure will operate and whether it will succeed in increasing trust and confidence in that program. See page 31 and 47-48.

D. The Task Force recognized that substantial changes in Table 2 on page 35 were required once defense complex clean-up and on-site waste management were considered separately from WIPP. Although the panel did not fully agree with the suggested changes, it did incorporate a number of them.

E. The Task Force substantially revised its discussion of the EM program. It devoted considerably more attention to WIPP and the problems it has encountered. It believes it has made changes that respond to the spirit, if not the specific details, of these comments. See pages 6-8 and 28-34.

F. The Task Force believes that this discussion is critical to its conclusion that EM may only have a short time to demonstrate a capacity to solve problems and merit public trust and confidence before the relatively favorable institutional environment in which it now operates becomes more hostile. The six issues suggest why that change might come about. The comment that these issues present problems for OCRWM as well suggests the consequences of such a transformation.

G. The Task Force feels that the civilian radioactive waste management program is faced with unique challenges to strengthen public trust and confidence. That warrants additional attention and advice. If the foreshadowed changes in EM's institutional environment do occur, then additional recommendations for that program could be derived from those now advanced for the civilian program.

H. See responses to "D" through "F" above.

I. The Task Force agrees; see footnote 33 on page 14.

J. The Task Force takes the phrase "or cannot in some other way be compensated for" to mean that a deficit in satisfying one of the conditions might be made for by satisfying others more completely.

K. The Task Force agrees; see pages 7-8 and 29-34.

7041 Rogers Street
Las Vegas, NV 89118
9 March 1993

Daniel Metlay, Task Force Director
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Washington, DC 20585

Dear Dr. Metlay:

This is in response to your request for comments on the Draft Final Report on public trust and confidence. I am writing both as a member of the public and as a contractor employee on OCRWM's Yucca Mountain Project (YMP). Emblematic of OCRWM's fundamental malaise is the fear of reprisal that motivates me to mail this only from my private residence. No doubt you are aware of a number of "whistle blower"-type letters regarding the CRWMS, whose charges I will not repeat here. I do wish to add my whole-hearted endorsement of their messages, however, and to urge you **not** to soften the original criticisms found in your December 1992 Draft Working Paper. To do so would be a betrayal not only of the American public, but of those such as myself that have been victimized by the pathological dynamics now gripping the YMP.

The enclosed Commentary illustrates the perniciousness of the YMP's sickness. It is a perfidy of the American spirit that a collection of motivated and highly competent systems engineers such as originally comprised the Management and Operating Contractor could be reduced, through systematic attack and manipulation, to many of the same destructive attitudes that currently characterize OCRWM. The corporation itself can be only partially faulted, as it was a simple matter of survival to either adapt or be destroyed. Those such as myself, who refused to corrupt our performance standards, have been shuttled to low-responsibility positions and prevented from contributing our areas of unique expertise to Project activities. Those of lesser capabilities have been promoted to the premier positions, as not threatening to the customer and therefore preserving the contract.

As pointed out by the NWTRB, DOE's effort to develop a permanent repository "is being undermined by faulty planning, arbitrary deadlines, questionable scientific assumptions and bad public relations." [Knowing this, you will be engaging in bad faith not to restore your former recommendation that DOE (or **higher authority**) contract out a study of the implications of removing OCRWM's functions from DOE, and that results of this study be provided to Congress by January 1996.] There can be no doubt that incompetent persons are currently running the YMP; unlike other typical bureaucracies, however, the consequences of this mismanagement are measured in the ruination of human lives.

A

[It is inconceivable to me that the same Task Force which could cite DOE's "inability to hire talented professionals" and admit that "many stakeholders accept as conventional wisdom" that the civilian radioactive waste management program should be removed from the Department could publish the bland Implementation and Conclusion sections now appearing in the current version of the report.] Out of loyalty to the American people, I entreat you to exercise your sense of professional ethics, even as I, at great personal cost and with far less potential payoff, have done. 3

Further documentation can be provided if requested.

Sincerely,

A handwritten signature in cursive script that reads "Hollister Hartman".

Hollister A. Hartman, Ph.D.

DRAFT WORKING PAPER

for

DISCUSSION by the SEAB TASK FORCE

on

RADIOACTIVE WASTE MANAGEMENT

December 10-11, 1992

in

San Diego, California

THIS DRAFT WORKING PAPER DOES NOT NECESSARILY REPRESENT
THE VIEWS OF THE TASK FORCE

DOE

An analysis of alternative management approaches to the Yucca Mountain Project

INTRODUCTION

On any project there are always four generic types of activities in progress: 1) Work that is needed and is being done; 2) work that is needed but is left undone; 3) work that is unneeded but is still being done; and 4) work that is unneeded and is left undone. The proportion of activities falling into each category could be used as a diagnostic for how effectively the project is accomplishing its mission. Intuitively, one would recognize categories 1) and 4) as being most desirable. But which is worse, doing unneeded work or not doing needed work? Three criteria are proposed to answer this question: the degree to which each type of activity a) accomplishes the project's Scope of Work, b) avoids opposition, and c) minimizes cost. One could imagine a project which achieves all of its scientific objectives yet is railroaded by citizen opposition; or gains citizen acceptance but bankrupts its budget. Thus we wish to satisfy all three criteria in some optimal balance. The following describes how the Yucca Mountain Project approached this, results obtained, and discusses their significance.

METHOD

The approach used was to rate each category of activity as a "plus" or a "minus" against each criterion; assign criterion weights of 1, 2, or 3; and add up the weighted ratings to give a final overall score for each category. In most cases the plus/minus ratings were obvious: A match between need and action was positive for "Accomplish mission" (and vice versa); inaction was positive for "Minimize cost" (and vice versa). The more complicated scheme for "Avoid Opposition" is explained below.

Derivation of criterion weights

Assigning weights of 1, 2, or 3 requires only that the least important (weight = 1) and most important (weight = 3) criterion be identified. This was done by asking, "If I had a choice of three scenarios, each of which was best on only one criterion and worst on the other two, which would I pick?" The scenario picked first would correspond to the most important criterion, and the last to the least. The following scenarios were ranked as follows.

First: Gets the job done, but excites opposition and is expensive (Accomplish mission)

Next: Accepted w/out opposition, but fails to do the job and is expensive (Avoid opposition)

Last: Thrifty, but fails to do the job and excites opposition (Minimize cost)

The rationale was that getting the job done is an absolute priority. Then between the remaining two scenarios, I would rather spend money ("there's lots more where that came from") and placate the public; rather than save money and anger the public, leaving a legacy of ill will for future management to overcome. This results in weighting Accomplish Mission most, Avoid Opposition next, and Minimize Cost least.

Derivation of rating alternatives on avoiding opposition

Two sources of opposition to Yucca Mountain activities were postulated: 1) disagreement with its fundamental mission; and 2) contempt for alleged mismanagement and corruption. It

is fairly straightforward to assume that Project management alternatives that do things which need doing (actively forwarding Project interests) and don't do things which don't need doing (passively forwarding Project interests) would be least preferred by those who disagree with YMP's fundamental mission. Additionally, the former (active) option would be preferred less than the latter (passive) approach.

Conversely, contempt for alleged mismanagement and corruption would be greatest for the other two options (doing unneeded things, and not doing needed things). Distinguishing which of the two would be perceived with greater contempt is less straightforward than before. To do so, the alternatives were rated according to the following scheme.

	<u>Eventual Quality</u>	<u>Total Cost</u>	<u>Schedule Delay</u>	<u>TOTAL</u>
Needed, undone	-	0	-	-2
Unneeded, done	0	-	0	-1

The rationale for these ratings was that while not doing needed things may save more money than doing unneeded things, the latter might assist future efforts in unexpected ways. Finally, summing the two basic sources of YMP opposition yields the greatest opposition for doing needed things and not doing needed things. This allows the following table to be compiled.

RESULTS

<u>CRITERION: ALTERNATIVES</u>	<u>Accomplish Mission</u>	<u>Avoid Opposition</u>	<u>Minimize Cost</u>	<u>WEIGHTED SCORE</u>
Needed, being done	+	-	-	0
Needed, undone	-	-	+	-4
Unneeded, being done	-	+	-	-2
Unneeded, undone	+	+	+	+6
~~~~~				
WEIGHT:	3	2	1	

DISCUSSION

The main question is, which general bias, "doing things" or "not doing things", is best for the YMP? This is addressed as an uncertainty lottery from the above table of scores, i.e., "would you rather have -1 for sure (averaging the negligible difference between 0 and -2 for "doing things" alternatives) or take a chance on getting either -4 or +6?" The apparent selection by current management is the former, risk-averse option. While this is least desirable from a cost standpoint, few bureaucrats lose jobs for wasteful spending. The project's profile is one of high and escalating costs with little or no clear progress to justify them. On the other hand, a tendency to "do things" does enjoy the side benefit of creating an impression of productivity on the part of management, while avoiding the political pitfall of leaving needed things undone. It is a strategy that might be employed by a project manager uncertain or unable to determine what is important, and therefore hedges his bets by doing "everything".

In order to maximize the YMP's ultimate viability, however, a manager must be of sufficient talent to recognize, and confidence to cease, unneeded activities. Congress is deeply concerned about cost escalation and the lack of results, or clear prospect of results. The NWTRB expressed its concern that the program's "effort to rush to meet overly demanding schedules could affect the quality of the technical and scientific work." In proceeding to build and operate the entire repository for rapid full-scale disposal, the program is not designed to meet the objectives of timely disposal capability, system flexibility or external confidence. In summary, the current strategy is not well suited to meeting either the program's objectives or the concerns of its stakeholders. The results of this analysis support the need for a new DOE program strategy for disposal of SNF and defense HLW.

25 January 1993

To: Jean Younker

From: Holly Hartman

cc: Dale Foust

RE: SEAB Report on Public Trust and Confidence

I've just received the final report from the SEAB Task Force on Radioactive Waste Management (strengthening public trust and confidence). *Changes in emphasis* between this draft and last month's draft should be of interest to the M&O. A summary of them follows.

1. A Forward was added, which acknowledged the unprecedented positive changes initiated by ex-Secretary Watkins. Attention was called to the idea that if DOE leaders ignore the Task Forces's recommendations and/or implement them only half-heartedly or superficially, they risk further eroding public trust and confidence (PTAC).
2. The Task Force increased their emphasis on the three main factors they consider essential to PTAC:
  - Empowering stakeholders to participate substantively
  - Working reliably and responsibly toward agreed upon goals
  - Forming genuine empathy for stakeholder values

This included adding the prerequisite that "All parties take into serious account the implications of their actions for sustaining the relationship."

3. The order of two General Findings was reversed from last month's draft:
  - Increasing in importance: "If DOE is to restore public trust and confidence, it will have to take steps that might be considered unnecessary for an organization that has maintained PTAC over long periods of time."
  - Decreasing in importance: "The lack of PTAC is not only being recognized by stakeholders as an obstacle to programmatic progress, but it also is being used as a reason for opposing initiatives that are important to programmatic progress."
4. Regarding its Recommendations, the Task Force replaced the sentence, "It does strongly believe that in most instances the benefits of adopting them far outweigh the disadvantages" with the following advice:
  - Acknowledge candidly when a choice weakens PTAC of a particular public segment
  - Avoid consistently weakening the PTAC of any particular public segment
  - Find ways to compensate segments whose PTAC has been weakened

5. The following Recommendations were added:

- Find and use information channels actually used by stakeholders
- Establish and meet reasonable technical and schedule milestones dictated by intrinsic scientific requirements
- Compare predicted and actual impacts of policy decisions on PTAC; publish results
- Reward the discovery of error
- Develop mechanisms to learn from Field Office innovations which increased PTAC
- Establish incentives and measures for quality work
- Revise schedules rather than decrease quality
- Work with affected parties to establish quality measures and schedules
- Support R&D in alternative approaches to disposing of radioactive waste

6. A former Recommendation to "Require full-time residence for the OCRWM Director, all employees, contractor personnel, and National Laboratory scientists" was changed to "Expand the local presence of key decision-makers so as to ensure greater public access to them".

7. A former Recommendation to "Re-assess on an annual basis and modify if necessary the protections provided to agency 'whistle blowers'" was deleted.

8. The discussion of whether the CRWMS should be removed from DOE was deleted. This included a sentence that, "Perhaps the most proffered rationale over the years [against reorganization] was simply that things could be worse." Instead, the following two "Findings with Respect to Organization" were added:

- Any successful attempt to strengthen PTAC will have to include contractors
- DOE lacks the institutional capacity to design, implement, and evaluate measures to strengthen PTAC.

9. Bland "Implementation" and "Conclusion" sections were substituted for the Task Force's former proposals that: a) DOE contract out a study of the implications of removing OCRWM's functions from DOE; and b) Results of the study be provided to Congress by January 1996.

10. A final disclaimer was added, that unless all of the Task Force's recommendations are implemented, the results cannot be guaranteed; and that PTAC of some public segments will never be attained because they oppose on principle what DOE has been charged to do.

COMMENTARY ON THE GENERAL MALAISE OF THE CRWMS PROGRAM

22 January 1993

The M&O has been told to both a) keep the customer happy and b) make the Project work. As we have seen over the past couple of years, the two imperatives are mutually incompatible, i.e., a zero or one choice. Left with two conflicting ideas, and zero management direction, employees have responded with two distinct strategies. The first strategy is to satisfy goal (a). This is done mainly by accepting "go-fer" work responsibilities and suppressing any sense of initiative or effort at productivity. By not making waves, short-term objectives are met; and the employees exploiting this strategy will not be blamed for long-term lack of progress on goal (b). The other strategy, in use by a definite minority of the population, is to strive for goal (b). Unlike "goal a" adherents, who cannot be identified as failing to further goal b, goal b adherents tangibly impede achievement of goal a. Although eventually only succeeding in goal b will save the M&O and/or the Project, and therefore such efforts should be accorded the highest praise and priority, these employees instead are ostracized and punished. Evidence of this is indicated by my own experience.

TRW sought me out because I have demonstrated a massive capability to get things done, when things desperately need doing. Apparently when this need doesn't exist, then having a "doer" on board is more of a liability than an asset. Undoubtedly there are other parts of TRW that could benefit from super-productivity, but the current corporate upheaval makes the farsightedness necessary to accept the additional attention needed to manage a thoroughbred unlikely. In this case the term thoroughbred is used in the sense of a performer which, with proper handling and by virtue of its extreme training and background (which pose special handling challenges), delivers superior return on investment. In the hands of the proper trainer and rider at the racetrack, fantastic profits can be realized; but one would not expect the same horse to flourish in the traces of a plow.

RE: Dixon/Grassmeier/Robison gang-up and Simmons/Gil/Jones gang-up:

TRW is incapable of a strong defense against such base tactics because its highest priority is to keep the customer happy, not to get the job done. This situation precludes acting honorably because the customer's highest priority is to maintain turf and avoid change. TRW applauded my efforts at change and getting the job done, so apparently they are no better at judging what will provoke the customer (or they wish to produce scapegoats). If the Project were a person, it would be diagnosed as psychotic, i.e., "unable to distinguish reality, and unaware of this inability". The situation is no-win because if TRW doesn't try to get the job done, then external authorities will become dissatisfied; and if TRW does, then the customer will become dissatisfied and eventually infect external authorities with this attitude. A partial solution would be the physical separation of M&O and DOE offices; arguments that this didn't work for T&MSS due to the need for continual meetings are spurious. Our mandate, unlike that of T&MSS, is self direction, not just acting as go-fers at the whim of our DOE masters.

The underlying malady is a widespread abdication of leadership responsibility to make tough decisions. Whatever happened to doing what it takes to get the job done? The corporate culture has degenerated into a social club - the only way to get ahead is to not get on the wrong side of anyone, or risk being branded as "unable to get along with people" - apparently the new TRW criterion for excellence. This inevitably leads to intentional oversensitivity to imagined slights and contrived conflicts, twisted by those who would benefit so that only the victim is made to look bad, i.e., "constantly involved in conflict". Could it be that some of those victims are guilty, not of inability to manage, lead, or otherwise get the job done; but simply of less skill at defending themselves from office back-stabbing? Doing so forces a diversion of energies to petty infighting and a mentality of "every man for himself" (if one wishes to survive), instead of the company. Ultimately, however, this can only hurt all of us, as companies who have seen the light and take steps to correct the situation will outstrip us competitively on the marketplace.

a:complain.let

Dr. Hollister Hartman
TRW Managing and Operating Contractor
(Her comments do not necessarily represent the views of TRW.)
Las Vegas, Nevada

3/9/93

A. The Task Force engaged in an intense conversation on this issue at its meeting in San Diego last December. It does not wish to change its decision to delete the recommendation in question from the Final Report.

B. The Task Force has substantially revised its discussion on implementing recommendations. See pages 61-64.

7041 Rogers Street
Las Vegas, NV 89118
3 May 1993

Dr. Daniel Metlay
Designated Federal Officer
1000 Independence Avenue, SW
Washington, DC 20585

Dear Dr. Metlay,

Following our brief conversation at the High-level Radioactive Waste Management Conference last week, you requested that I resubmit my comments regarding the SEAB Task Force on Public Trust and Confidence report. My original comments are enclosed, as are additional arguments advocating reinstatement of the Task Force's initial recommendation (see attached title page reference) that an independent review of OCRWM operations be provided to Congress. A

I also am forwarding a copy of this package to Todd LaPorte at Berkeley to assure myself that if indeed, as you say, the Task Force's consensus is not to recommend removing DOE as overseers of the CRWMS Program, the additional factors presented here were considered. It is my hope that either or both you and Dr. LaPorte will see fit to circulate these materials among Task Force members to reconfirm their sense of the issue.

Figure 1 illustrates the critical negative role played by the mere fact of DOE's organizational position on the Yucca Mountain Project. As is shown, three factors continue to stall the YMP: Omnipresent misapprehensions about the nature of nuclear hazards; the public's distrust of assurances about their own health/safety as well as that of their descendants; and finally, their lack of vested interest in the nuclear industry. The latter two can be directly traced back to Federal insistence that DOE oversee day-to-day YMP operations.

Public distrust stems both from the DOE's admittedly abysmal track record, and from ongoing management problems. These problems result in a variety of interrelated ills:

- Cost and schedule overruns typical of any poorly-run project, nuclear or otherwise
- Inability to attract/keep professionals talented enough to disassociate themselves from a "loser" project, resulting in a negative feedback cycle of self-fulfilling prophecies
- Fuel for stakeholder beliefs that the future is likely to recapitulate past incompetence
- Ineffective handling of sociologically grounded risk factors.

Current DOE management refuses to acknowledge that they are mishandling interactions with the public. If Nevada should decide to negotiate for benefits, this probably will be claimed as evidence for the effectiveness of DOE's outreach program. The fact remains, however, that after wasting seven years and millions of dollars the YMP under DOE still stands as a textbook example of how not to do business. Not one DOE representative (Gertz, Robison, nor Reilly) was present at the numerous HLW Conference presentations about public

participation. The DOE Technical & Management Support contractor talk, although labelled "two-way communication", was a sham simply detailing how recipients of the standard sales pitch were polled for ideas on how to improve audio/visual materials.

The latest from the DOE Project Office is an ill-conceived directive to technical study supervisors, to devise "public participation opportunities". Those technical managers to whom I have spoken have no idea how to respond to the directive, nor why it was issued. Such vagueness on the part of DOE management bespeaks of two possibilities, both negative: Either the DOE project manager really doesn't have the slightest idea of why he is being harangued from Washington to involve the public, or his implementing vagueness is meant to intentionally undermine the directive.

The answer, of course, is simply to remove DOE from day-to-day management of the YMP. Without DOE's destructive, turf-driven influence, talented contractor and national laboratory professionals would be free to get on with the job. There usually are quite good reasons for why a given belief attains the status of "conventional wisdom". I therefore would strongly urge that before dismissing the conventional wisdom "held by many stakeholders" that the CRWMS program should be removed from DOE, the SEAB Task Force take another hard look at the facts. Walking a mile or two in our shoes wouldn't hurt, either.

The above discourse may be dismissed as overblown, but my track record over the past ten years has been unbroken. Every time I have recognized and called attention to Department of Defense or Department of Energy deficiencies, and been ignored. I have been accorded the dubious distinction of later being able to say "I told you so". I would rather be heeded now, however, than have to extend my 100% success rate. I await your disposition of the case presented here.

Sincerely,

A handwritten signature in cursive script, reading "Hollister Hartman".

Dr. Hollister Hartman
Senior Systems Staff, M&O/TRW

cc: Dr. T. LaPorte
Professor, Political Science
University of California
Berkeley, CA 94720

Dr. Hollister Hartman
TRW Managing and Operating Contractor
(Her comments do not necessary represent the views of TRW.)
Las Vegas, Nevada

5/3/93

In an earlier comment, the suggestion was made that a recommendation appearing in a staff working paper, but deleted from the Draft Final Report, be reinstated in the Final Report. The recommendation in question called for a study of whether the OCRWM program should remain within DOE. Upon completion, that study would be submitted to the Secretary and Congress for their consideration.

In this comment, some intriguing and innovative analyses are presented in support of the suggestion for reinstatement. Those analyses are undergirded with assumptions both empirical and methodological that are not necessarily universally accepted. But even if they were, the conclusions reached about managerial effectiveness leave completely unanswered whether matters would be better off if the repository program was taken out of DOE. Consequently, the Task Force declines to reconsider its decision not to adopt the recommendation contained in the staff working paper.

December 23, 1992

Dr. Daniel S. Metlay
Director of Civilian Radioactive Waste
Management Task Force
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Room 7-B198
Washington, DC 20585

Dear Dr. Metlay:

Esmeralda County has followed the progress of the Task Force with interest, including testimony at your meetings in Amargosa Valley last summer and in San Diego on December 11. We are very supportive of the Task Force's efforts to rebuild trust and confidence in the nuclear waste program in DOE's management role.

One of the problems with interactions between stakeholders and federal agencies is that these agencies often don't really listen to the concerns of stakeholders. We feel you have done exceptionally well in this regard and have included many of the suggestions proposed by the counties for improving trust in the DOE program. We remain somewhat skeptical about the extent to which the current Secretary, or the next one, will actually implement (and if necessary, enforce) your recommendations as the policy of the Department. We will be watching with interest to see what happens to this report.

We are especially gratified to see the Task Force acknowledgement of the damage to trust that occurred when the "bargains" incorporated in the Nuclear Waste Policy Act of 1982 began to unravel (p.17). Nothing undermined trust in the integrity of the siting process more than the passage of the NWPA amendments of 1987, which singled out Nevada as the only site for consideration and let off all other first and second repository sites on political grounds. The ensuing opposition from many Nevada citizens is not surprising, and recent efforts by Congress - encouraged by the Department - to overcome state opposition by proposing to remove its environmental permitting authority, and by passing an act which could substantially weaken the EPA standard for Yucca Mountain, have not helped to maintain our citizen's trust.

Despite these developments, Esmeralda County has yet to take a position on the repository. We fully support your recommendation on page 41 to try and recreate a sense of equity in the siting process by revisiting the issues of multiple sites and multiple repositories. We also agree that the primary driving force behind the program should be the need to solve a serious national problem rather than to promote the expansion of the nuclear power option. Solving this problem in a manner that increases trust may require consideration of the full range of options, including multiple sites, monitored retrievable storage, or on-site storage, while continuing to seek appropriate technological solutions to the disposal problem over the longer term.

We also support your recommendations on page 37 to empower communities and citizens groups. Our experience with the waste program is largely shaped by the year-to-year uncertainties about whether resources will be available to evaluate transportation and other impacts of a repository and to keep abreast of developments in the program and inform our citizens. We strongly endorse your proposal to create a trust fund or other mechanism that would ensure a regular flow of funds to affected counties for oversight programs. The Task Force proposal to create Safety Review Boards with real power to make decisions about the repository would also help to increase confidence in the Department's management of a proposed repository.

[We take exception to the idea on page 41 that the "situs county" should be given special treatment in any agreements reached on Yucca Mountain.] The ten affected counties will all be impacted to some degree by the siting of a repository, and any "offers" made to the state or the situs county should recognize the legitimate interests of all affected parties. The state and the counties have been working together through the State and Local Government Planning Group to coordinate oversight activities with regard to the repository. Singling out one county for special treatment would not encourage trust in the process. A

[One additional programmatic action that DOE could take to enhance trust among Esmeralda County residents would be to identify transportation routes as early as possible and to provide early access to emergency response training resources. This single act would go far towards inspiring confidence among our citizens.] B

In closing, I want to sincerely thank you for listening to the many voices of stakeholders and the public and reflecting those concerns in your report. We appreciate your efforts.

Sincerely,

Juanita Hayes

Juanita Hayes
Program Director
Esmeralda County
Nuclear Waste Repository Oversight Program
Goldfield, Nevada

3/4/93

A. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

B. The Task Force does not know when it will be possible to identify routes. Absent that knowledge, a recommendation to do so as "early as possible" would have little substantive meaning. However, see footnote 33 on page 14.

NUCLEAR WASTE REPOSITORY OVERSIGHT PROGRAM

ESMERALDA COUNTY, NEVADA

JUANITA D. HAYES
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March 4, 1993

Dr. Daniel S. Metlay
Director of Civilian Radioactive Waste
Management Task Force
Secretary of Energy Advisory Board
1000 Independence Avenue, SW
Room 7-B198
Washington, D.C. 20585

Dear Dr. Metlay:

Esmeralda County has followed the progress of the Task Force with interest, including presentation of testimony at your meetings in Amargosa Valley last summer and in San Diego on December 11, 1992. We are very supportive of the Task Force's efforts to rebuild trust and confidence in the nuclear waste program in DOE's management role.

One of the problems with interactions between stakeholders and federal agencies is that these agencies often don't really listen to the concerns of stakeholders. We feel you have done exceptionally well in this regard and have included many of the suggestions proposed by the counties for improving trust in the DOE program. We remain somewhat skeptical about the extent to which the Secretary will actually implement (and if necessary, enforce) your recommendations as the policy of the Department. We will be watching with interest to see what happens to this report.

Esmeralda County has yet to take a position on the repository. Our primary concerns are protecting the health and safety of our residents and oversight of DOE's site characterization activities. We firmly believe that without increased public trust and confidence, DOE as an organization will continue to be less than effective.

In additions to our attached comments, one additional programmatic action that DOE could take to enhance trust among Esmeralda County residents would be to identify transportation routes as early as possible and to provide early access to emergency response training resources. This single act would go far towards inspiring confidence among our citizens.

On behalf of the Esmeralda County Commission, the Esmeralda County Repository Oversight Program Citizen's Advisory Council and myself, I want to sincerely thank you and the other Task Force members for listening to the many voices of stakeholders and the public and reflecting those concerns in your report. We appreciate your efforts.

Sincerely,

Juanita D. Hayes
Program Director

Encl:

ESMERALDA COUNTY COMMENTS ON SEAB FINAL REPORT:

Page 5, Paragraph 2 and Page 18, Paragraph 1:

As pointed out in the Final Report, the new EPA Standards will apply only to the potential repository at Yucca Mountain. This is another example of DOE undermining public trust and confidence. It is gratifying to see the concerns of many stakeholders reflected in these remarks.

Page 6, Paragraph 1:

["...to reduce to socially acceptable levels (underlining added)... The question arises as to who will determine what the "socially acceptable levels" will be. DOE's ideas are usually vastly divergent from the views of stakeholders and the general public.] A

Page 7, Paragraph 1:

["...how much uncertainty can be tolerated..." Once again, DOE's ideas tend to prevail and stakeholders' social judgments do not seem to be weighted with equal importance.] B

Page 8, Paragraph 3:

..."and that no segment finds itself permanently a 'loser' in policy controversies." It should be noted that Nevada has consistently been a "loser" in policy controversies concerning Yucca Mountain. As long as Nevadans feel that DOE has adopted high handed methods in pursuing site characterization at Yucca Mountain, there will never be an increased level of public trust and confidence. DOE's attempt to preempt Nevada's permitting authority and the new provision in the 1992 Energy Policy Act concerning EPA standards succeeded in reducing rather than strengthening public trust and confidence throughout the State. In the view of many Nevadans, Yucca Mountain is a "done deal" and DOE's actions have convinced many that there is no cause for trust and confidence. There is widespread belief that the scientific studies will be skewed to support licensing. Whether or not this is indeed accurate, DOE's actions don't encourage public trust and confidence.

Pages 15 and 16:

The tracing of the Civilian Radioactive Waste Management Program through the years and the way that the "bargains" incorporated in the Nuclear Waste Policy Act began to unravel is an excellent illustration of the erosion of public trust and confidence. Nothing undermined trust in the integrity of the siting process more than the passage of the NWPA amendment of 1987 which singled out Nevada as the only site for consideration and let off all other first and second repository sites on political grounds.

Page 17, Paragraph 2:

["The host-state, Nevada and the situs County Nye, also have special rights under the NWPA as amended to review and comment on site characterization activities." Esmeralda County takes exception to this statement. In addition to the State of Nevada and Nye County, there are eight additional Nevada counties and one county in California who have been granted "affected" status. All ten counties have the right to review and comment on site characterization activities and do so on a regular basis. It is important to realize that each of these counties have real concerns and potential impacts to their populations. C

General Findings (Pages 23-27):

We generally agree with your findings and especially support the argument that the lack of public trust and confidence stems from various groups' past experience with the Department. Nevadans have always supported the facility at the Nevada Test Site and felt proud to be contributing to the Nation's defense. DOE's efforts in Nevada since 1987 have eroded trust and confidence. Nevadans generally felt that they were being unfairly singled out to house the proposed repository and DOE's efforts to convince Nevadans has been met with skepticism and increased distrust.

While there is some increased confidence toward individuals within DOE, the Department as a whole still fares badly. There are still substantial numbers of hard ball players within the DOE ranks and they continue to discount the need for openness and commitment to stakeholders and the general public. Whether the Department is willing to actively work toward strengthening trust and confidence through major attitude adjustment remains to be seen.

Findings With Respect To Organization (Pages 27-29):

We strongly support the following statement: "Regardless of structure, it will be the behavior of the organizations that either creates or inhibits public trust and confidence." Is DOE willing to cut across all levels to change its behavior as an organization? Specific steps need to be taken to guarantee that the entire Department recognizes the need for public trust and confidence and that procedures are developed to ensure its success.

Findings With Respect to OCRWM (Pages 29-31):

Predecisional public input has not taken place in spite of the rhetoric of the Draft Mission Plan Amendment. The Director's Forum was attended by several stakeholders from Nevada. The thrust of their concern was the lack of public input and involvement in decision making in regard to the Early Site Suitability Evaluation. The document was issued in the form of a final contractor report rather than as a draft DOE program document. There was no opportunity for development of the report or review and comment by stakeholders and the general public. This example clearly contradicts the following statement from the Draft Mission Plan Amendment:

"The program must be conducted such that public confidence is warranted, with opportunities and means provided for meaningful participation by affected governments and interested parties."

Once again, DOE actions speak louder than words.

Recommendations (Pages 34-43):

Esmeralda County endorses the recommendation on Page 39 regarding trust funds, etc., to ensure provision of adequate resources. The ten counties affected by the proposed repository at Yucca Mountain have had to struggle constantly to obtain adequate funding for oversight programs. While DOE received \$375 million for FY 93, the affected counties received \$6 million to be split ten ways. Our experience with the waste program is largely shaped by the year-to-year uncertainties about whether resources will be available to evaluate transportation and other potential impacts of a repository and to keep abreast of developments in the program and inform our citizens.

Esmeralda County also supports the idea of Safety Review Boards with the power to make decisions about the repository. This would help increase confidence in the Department's management of a proposed repository.

Furthermore, favoring local industries and requiring vendors of hardware to manufacture as near as possible to the proposed repository would serve to increase public trust and confidence and show Nevadans that they could reap some of the benefits since they potentially would be carrying the load for the Nation's high-level radioactive waste.

We fully support your recommendation on Page 43 to try and recreate a sense of equity in the siting process by revisiting the issues of multiple sites and multiple repositories. We also agree that the primary driving force behind the program should be the need to solve a serious national problem rather than to promote the expansion of the nuclear power option. Solving this problem in a manner that increases trust may require consideration of the full range of options, including multiple sites, monitored retrievable storage, or on-site storage while continuing to seek appropriate technological solutions to the disposal problem over the longer term.

We take exception to the idea on Page 43 that the "situs county" should be given special treatment in any agreements reached on Yucca Mountain. The ten affected counties will all be impacted to some degree by the siting of a repository, and any offers made to the State or situs county should recognize the legitimate interests of all affected parties. The State of Nevada and the counties have been working together through the State and Local Government Planning Group to coordinate oversight activities with regard to the repository. Singling out one county for special treatment would not encourage trust in the process.

D

Juanita Hayes
Program Director
Esmeralda County
Nuclear Waste Repository Oversight Program
Goldfield, Nevada

3/4/93

- A. These terms have been clarified and discussed in greater detail. See footnote 21 and page 8.
- B. See response to "A" above.
- C. The Task Force agrees; see revised language on page 27.
- D. The relevant language has been revised; see page 55.

Abigail C. Johnson

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617 Terrace Street, Carson City, Nevada 89703 (702) 882-0296 FAX (702) 883-0226

March 10, 1993

Dr. Daniel Metlay
Designated Federal Officer
Secretary of Energy Advisory Board, AC-1
1000 Independence Ave., SW
Washington, DC 20585

Dear Dr. Metlay,

On behalf of the Eureka County, Nevada Board of Commissioners, I am submitting the following comments on the Draft Task Force Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. Eureka County is an "affected unit of local government" under the Nuclear Waste Policy Act of 1982 as amended. I am a consultant to the county on nuclear waste, specializing in public education.

It is commendable that this task force was formed to delve into the public trust and confidence issue, one of the central problems facing the Department of Energy (DOE) in the management of nuclear waste. The trust and confidence research that was done is thorough and clearly indicates that all sectors of the public, to a lesser or greater degree, distrust the DOE. Moreover, that lack of trust does fundamentally hinder the DOE's ability to carry out its missions.

The Findings section of the report is also quite strong, and should not be watered down in the final report. Although not all of the suggestions of the Task Force are useful or practical, overall the Findings section addresses some of the bedrock problems that DOE has regarding the public.

[We are disappointed that the Recommendations section does not propose solutions to the fundamental problems. Although the symptoms have been thoroughly studied and diagnosis has been made, it appears from the recommendations that there is no cure. The major flaw in this report is that no innovative, courageous solutions regarding fundamental structural reform are recommended. If the trust and confidence problem is not fixable, then this report should state that, and make recommendations regarding the future management of a high level waste repository.]

A

We have several specific comments in the "Interactions with External Parties" section. (Sections underlined for emphasis).

Page 35, paragraph 1

["...agency leaders should strive to give all groups of citizens...a sense of involvement and fairness in negotiating the terms of their immediate relationship"

Comment: This is misleading because it sounds as if the agency leaders are being encouraged to convey that sense of involvement without actually involving them. Also the word "negotiate" has several meanings, especially in Nevada, and should be avoided. Instead it should read, "...agency leaders should involve all groups of citizens and their representatives in developing the terms of their immediate relationship." }

B

Page 37, #5

["To make the Department's scientific work even more credible..."

Comments: This presupposes that the Department's scientific work is already credible, when it may not be. }

C

Page 37, #5, last bullet

["Clarify...the reasons why advice from technical overseers...is not accepted."

Comment: The credibility of the DOE would improve dramatically if they followed the advice of technical overseers, rather than finding rationales not to accept their advice. Expand the description of "technical overseers" to include the State of Nevada, local affected governments, and other oversight groups. }

D

Page 38, top line

["Scrupulously comply with all State regulations that are administered even-handedly."

Comment: This should read "Comply with all State and local regulations". }

E

Pages 37 and 38

["Safety Review Boards" are mentioned.

Comment: This is an interesting idea, worthy of additional discussion in the report. This idea should be the lead recommendation for page 37, #6, rather than a bullet. }

F

Eureka County appreciates the opportunity to comment on the draft document. We look forward to receiving a copy of the final report, and hope that the final document will be strengthened to include strong recommendations on fundamental structural reform of DOE.

Sincerely,

Abigail C. Johnson
Consultant to Eureka County

Abigail Johnson
Consultant to Eureka Country
Carson City, Nevada

3/10/93

A. The Task Force feels it has presented a set of recommendations, whose adoption would, at the very least, make the Department of Energy more worthy of public trust and confidence. For the reasons laid out on pages 41-42, it does not believe that "fundamental structural reforms" are necessarily the answer to the challenges DOE faces in this area. Rather the panel calls for fundamental changes in behavior. Although the Task Force realizes that progress in this area will be difficult, it does not regard the problems as inherently "unfixable."

B. The Task Force agrees; see pages 50-51.

C. Although the Task Force was not charged with evaluating the credibility of DOE scientific studies, it is well aware of what both the NAS and the NWTRB have had to say about them. While both bodies often disagree with particular choices and strategies and while there may be legitimate differences of scientific opinion, the Task Force is not aware of any document from either technical overseer that says or even suggests DOE's science is not credible, ie, not believable. The one exception to this general rule might be the WIPP Panel's June 1992 letter. (See page 34.) Thus the Task Force believes that there is ample justification for the language it used.

D. While the Task Force feels that the views of technical overseers are entitled to a certain deference, it is not prepared to recommend that DOE always accept their advice. It takes this stance because it does not believe that any human institution has a perpetual monopoly on knowledge or wisdom.

E. This recommendation has been revised. See page 52.

F. Although the Task Force discussed Safety Review Boards in great detail at its meeting in San Diego, it did not reach agreement on how they might best operate.

Board of County Commissioners Lincoln County, Nevada

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January 20, 1993

Secretary of Energy Advisory Board
Task Force on Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585
Attn: Dr. Todd La Porte, Chairman

Re: Submission of Comments to Draft Working Paper Regarding Public
Trust and Confidence

Dear Dr. La Porte:

Lincoln County, Nevada, is pleased to submit the attached comments to the draft working paper concerning public trust and confidence recently completed by the Task Force on Radioactive Waste Management. Despite the Task Force's Violation of one of its own recommendations by not formally inviting written comments from stakeholders to the draft working paper, Lincoln County is providing the attached unsolicited comments as input to preparation of the final report to the full Secretary of Energy Advisory Board. In keeping with another of the Task Force's recommendations, Lincoln County would appreciate the courtesy of written response to the attached comments. In the event that staffing limitations characterize the Task Force and make such written responses impractical, the County would appreciate the opportunity for its representatives to discuss Task Force responses to the attached comments.

Your consideration of these comments is appreciated. Please contact Mr. Jason Pitts, Coordinator of the Lincoln County Nuclear Waste Project Office (702) 962-5497 regarding arrangements to discuss Task Force responses to the attached comments.

Sincerely,

Floyd Lamb
Chairman

cc: Mr. Jason Pitts
Mrs. Judy Foremaster, City of Caliente
Mr. Mike L. Baughman, Intertech Services Corporation
Members, Nevada State and Local Government Planning Group

**COMMENTS TO DRAFT REPORT OF THE
SECRETARY OF ENERGY ADVISORY BOARD
TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT**

**Submitted By:
Board of Lincoln County Commissioners
Caliente City Council
Joint City/County Impact Alleviation Committee
Lincoln County, Nevada**

INTRODUCTION

As one of ten units of local government which have been designated by the Secretary of Energy as "affected", Lincoln County is keenly interested in efforts by the Department of Energy to earn the trust and confidence of Nevadans. Pursuant to the County's rights of participation as described within the Nuclear Waste Policy Act, as amended, Lincoln County has reviewed the draft document entitled Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. The following comments reflect the observations of the County, the City of Caliente, and their Joint City/County Impact Alleviation Committee. The comments are offered in hopes that they may serve to inform the Task Force with regard to salient issues important to public acceptance of socially meritorious yet locally unwanted land uses, such as the repository proposed for Yucca Mountain.

General Comments - It is important for the County to note that on several occasions, the Task Force itself has violated what should be considered basic tenets of efforts to build confidence. For example, on numerous occasions, the Task Force has deferred public input until late in its meeting agenda, thereby all but eliminating the possibility for public comments to be effectively considered in meeting deliberations. If the public is to have any confidence in the decisions of advisory or policy/decision-making bodies, stakeholders and other interested parties must have the opportunity to be heard prior to any decisions being made. Decision-making prior to public input casts a dark cloud upon the public involvement process itself. A

While the focus of the Task Force was heavily upon the DOE's civilian radioactive waste management program, only one Board meeting was held in Nevada. Such a deficiency in attention to the host region suggests a serious lack of sensitivity to important issues and opinions of local stakeholders.

Very little time and opportunity was given to interested parties to review and provide comments to the Draft Report prior to its consideration by the Task Force. It now appears

that the Draft Report will be presented to the full advisory board without ample consideration of stakeholder comments to the document. Interested parties are left to presume that little if any attention will be given to comments submitted to the Task Force in response to the document. Failure to adequately consider the concerns and interests of stakeholders can lead to serious erosion of trust and confidence in the activities of the Task Force.

Lincoln County is concerned that the actions of the Task Force imply an absence of sensitivity to important foundational principals for earning public trust and confidence. As a consequence the County finds it difficult to place a great deal of confidence in the validity of Task Force recommendations to DOE. If the DOE operates its high-level waste program in a manner consistent with actions of the Task Force, public trust and confidence will remain an elusive goal for the Department. If DOE desires to know what it will take to earn the trust and confidence of stakeholders, serious consideration must be given to receiving and considering public input on this issue. The Task Force's draft report should be considered by the DOE only within the context of what affected parties think about it.

Notwithstanding these concerns, the Task Force and its staff are to be commended for their efforts to bring into focus the elusive and not well understood issue of public trust and confidence, particularly as it relates to the siting of this Nation's first geologic repository for spent nuclear fuel and high-level radioactive wastes. Hopefully, the efforts of the Task Force will produce benefits through the enhancement of public participation in the repository program.

Specific Comments -

Page 2 , 1st paragraph [Unlike many other federal agencies, the Department of Energy both inherited and has perpetuated a legacy of environmental mismanagement which has produced documented cases of hazardous exposures to humans. Further, the DOE has dealt in the arena of "hidden hazards", those low-probability/high-consequence activities which breed a peculiar reaction of dread and mistrust within significant segments of the population. An understanding of these important distinctions between DOE and most other federal agencies is important to development of recommendations to earn back lost public trust and confidence. In short, DOE is not like "most other federal agencies".]

Page 2, 2nd paragraph - The text here implies a prevailing assumption that DOE has maintained significant levels of public trust and confidence and has only to figure out how to "sustain" its credibility. Although not presented at this point in the draft report, [there appears to be a great deal of evidence to suggest that the Department does not enjoy significant levels of public trust and confidence. One can not sustain what one does not have. Beyond sustenance, DOE must be concerned about earning significant measures of public trust and confidence. This important perspective appears to be missing from the Task Force's report.]

Page 5, Figure - The downward slope of the dashed line labeled ideal infers that the Nuclear Waste Policy Act (NWPA) had the capability to produce an "ideal" repository siting conclusion. As the Act was amended in 1987, it clearly did not contain that combination of provisions which could produce an ideal siting outcome. Had the NWPA been carried out without amendment, it is also not clear that an "ideal" siting outcome would have resulted. [The term "ideal" infers that the slope of the dashed line and related timeframe, could have been considered ideal. What evidence is there to suggest that a line of a flatter slope would not have been more ideal in terms of producing a preferable siting outcome? Perhaps a more sensitive and accurate label for the dashed line in the figure might be "anticipated".]

D

Pages 2 through 8, PERSPECTIVE - [This section does not address the fact that DOE and its predecessor agencies failed to communicate (apparently in some cases deliberately) actual risks to public health and safety associated with historical weapons production and testing programs.] As a consequence, many persons may have been unnecessarily exposed to unacceptable levels of toxic radiation. This former breach of the public trust may be causally related to depressed levels of public acceptance for Department actions of today. It is not enough to recognize that DOE had environmental problems. What is important is that in many cases, the agency knew it was violating safe exposure limits yet apparently withheld this information from affected parties. As a consequence, any resistance on the part of the DOE today to release programmatic documents is viewed as a potential cover-up.

E

Page 8, 2nd paragraph - [It is not clear how the figure on this page applies to radioactive waste management. the supposition that DOE may need to resort to a trial and error approach is not consistent with the performance assessment based ex-ante licensing requirements which are imposed by the Nuclear Waste Policy Act, as amended.] The licensing process pursuant to Nuclear Regulatory Commission regulations does not provide for "trial and error". As a result, such an approach does not reflect a realistic alternative strategy for DOE consideration.

F

Page 14, 1st paragraph and figure - [The text here fails to note that education/research sector trust in DOE has eroded over the past four years. Hypothetically, educators and researchers are not stakeholders, but are independent "third-parties". It should be viewed as significant then that the nonaligned interests have experienced and observed a continuing erosion of public trust and confidence in the Department.] It is important to note that all other stakeholders other than environmentalists and public interests either are beneficiaries of DOE's waste management programs or receive significant levels of federal funding (ie. state and local government). The potential influence of enabling independent oversight through the provision of significant federal funding should not be overlooked.

G

Page 15, First Principles - Although intuitively obvious, the second principal suggests a relationship between the public and DOE which may contribute to erosion of public trust.

H

Federal government entities and their representatives exist for the sole benefit and are singularly responsible to the public. Government exists to serve the needs of the public. The public does not exist to serve government, nor is there any fiduciary responsibility in this regard. When governments view the public as charges rather than employer, erosion of public confidence is a clearly predictable outcome. It is not the responsibility of the government to hold the public accountable for its actions. Rather it is the public, through the use of various federal agencies, which is vested with the responsibility for management of its actions. The DOE is an extension of the public, created by the public, for the sole benefit of the public. Employees of DOE are also members of the public. Casting these principles in a DOE vs. the public light, may contribute to rather than resolve gaps in public confidence. A recasting of these principles might consider whether we are prepared to trust ourselves to empower a federal agency to act on our behalf and when the agency fails to perform, trust ourselves to make necessary corrections. In this regard the public has the responsibility to participate in the policy-making arena to craft the appropriate role for government.

Page 17, 4th full paragraph - [The second sentence suggests that DOE has remained committed to only the economic or industry benefiting component of the "four bargains". Is not a push to resolve the Nation's radioactive waste problem also potentially associated with a commitment to the ethical bargain?] Most, if not all residents of the United States presently enjoy the benefits of the electrical energy base provided by nuclear power. At a minimum, products manufactured with the use of nuclear energy are consumed and used daily by American citizens. A strong ethical basis remains for the resolution of the radioactive waste management dilemma. I

Page 18, 1st partial paragraph - [The last sentence of this paragraph fails to recognize that in addition to the State of Nevada and Nye County, the Nevada counties of Lincoln, Clark, Esmeralda, Mineral, Churchill, Lander, Eureka, and White Pine, and Inyo County in California, each enjoy rights of participation and oversight pursuant to the NWPA, as amended.] Between these nine counties, Nye County and the State of Nevada, the differences in entitled authorities and rights under the Act are limited. The State of Nevada has sole authority to veto the selection of Yucca Mountain as a repository site. Both the State of Nevada and Nye County are entitled to have "on-site representation" at Yucca Mountain. All other rights for oversight and participation pursuant to the NWPA, as amended, have been extended to the balance of "affected units of local government". J

Page 25, Finding #3 - [As has been the case in other published studies, the Task Force report has causally linked past problems at DOE sites to present low levels of public trust and confidence in the agency. Yet, nowhere has any firm empirical evidence been offered to support such a relationship. For many who claim to not trust DOE, they are too young to have had any direct experience with historical DOE programs. In fact, surveys conducted by the State of Nevada (and provided to the Task Force) indicate that those living downwind of the Nevada Test Site and others who have had direct experience with radioactive exposure are in fact more trusting of DOE than those without such experience. K

Like many other authors, the Task Force has made an intuitive assumption with regard to why the public mistrusts DOE. Without any compelling evidence, readers of the report are left with no firm basis for attributing current levels of mistrust.

As equally plausible, is the potential for frequent and largely negative media coverage of DOE activities to have resulted in an erosion of public trust and confidence. Lincoln County has previously provided the Task Force with extensive testimony and documentation descriptive of the character of media coverage of the Yucca Mountain project in southern Nevada. The County is disheartened to see in reviewing this report that the Task Force has apparently decided to ignore such testimony and evidence.

Because DOE programs involve complex technology, it is not at all unreasonable to expect that news accounts represent virtually all of the information many persons possess with regard to agency activities. When one considers cognitive processes and the role of the availability heuristic, the potentially significant role of media as an influencing variable in shaping public attitudes becomes evident. In the DOE trust arena, what is uncertain is the extent to which knowledge which is not experience based is translated into convictions and behavioral actions. Without more insight into these issues, recommendations of the Task Force may significantly miss the mark.

Page 26, 1st partial paragraph - [While the public's reaction can agreeably not be purely attributed to NIMBY-ism, a strong element of this syndrome must be associated with opposition in Nevada to the repository program.] One cannot attribute opposition at the State level solely to mistrust of DOE when Nevada's leaders oppose DOE efforts to study Yucca Mountain in one breath, then follow with a strong argument that DOE funding to maintain the weapons testing program at the Nevada Test Site must be continued. If one cannot trust the DOE to manage radioactive waste, how can the agency be trusted to safely conduct tests of nuclear bombs? Call it Not-In-My-Backyard, Not-In-Anyones-Backyard, or Not-In-My-Term-Of-Office, but the Task Force must recognize such opposition for what it is. L

Page 30, Finding #3 - The conclusion that DOE has not implemented many creative initiatives for involving affected parties in predecisional participation is quite accurate. DOE must be made aware that each and every discretionary action is a potential opportunity for public participation. While interested parties may not choose to participate in every decision, it is better for them to have had the opportunity than to have been precluded from a decision process whose outcome was unsatisfactory.

Page 30, Finding #4 - [Because of the oversight responsibility that the State of Nevada and affected units of local government have under the NWPAA, as amended, it is unlikely that such entities would appropriately be involved in programmatic decision-making.] This can be considered especially true of the State of Nevada, whose fervent opposition to even the characterization of Yucca Mountain would seemingly prevent any motivation for improving upon DOE's execution of its fiduciary responsibilities pursuant to the NWPAA. Lincoln M

County and other affected units of local government might on the other hand be concerned that site characterization studies go forward to finally determine whether or not Yucca Mountain is a safe location for disposal of radioactive waste. In this vein the counties might be willing to advise DOE as to best practices for conducting studies so as to address issues of particular local concern.

Page 35, Design Premise, 4th bullet - [While assurance of negotiated benefits is important, the nature of the congressional appropriations process all but precludes the ability of DOE to offer such guarantees.] DOE cannot commit itself to assuring the availability of negotiated benefits.

N

Page 37, Recommendation #4, 3rd, 4th, and 5th bullets - [The report might highlight the potential for application of these recommendations in the aforementioned Director's Forums.]

O

Page 37, Recommendation #5 - [The phrase, "To make the Department's scientific work even more credible, it should", suggests an unnecessary bias which may erode credibility of the Task Force's own findings and recommendations. The Task Force was not charged with evaluating the credibility of DOE scientific studies, nor did the Task Force consider any evidence pertaining to this matter.] As a consequence, the Task Force is being presumptuous when it infers that the Department's scientific work is credible. The making of such inferences might best be left to the National Academy of Science and the Nuclear Waste Technical Review Board.

P

Page 38, Specific Measures ... #1 - Here, the Task Force appears (to the credit of situs county representatives) to have been lobbied to ensure an equitable distribution of program presence and benefits to the repository situs jurisdiction. In so doing, the Task Force has seriously overlooked the broader allocation of risks and benefits which must be considered for the repository as a system. DOE will not be enabled to dispose of waste at Yucca Mountain without first transporting said waste through numerous nonsitus jurisdictions. [While the situs county will receive employment and income related benefits, adjacent counties may bear incremental risks of exposure through a variety of pathways. The insensitivity demonstrated by the Task Force to these critical issues of distributional equity are unfortunately consistent with that of the Department itself. Recommendation #1 is a classic example of the blind leading the blind.]

Q

Page 38, Recommendation #3, 1st bullet - [What Safety Review Board? Does such a board presently exist?]

R

Page 41, Recommendation #1, 4th bullet - [Because the situs County has little or no jurisdiction or decision authority over the Yucca Mountain project, it is unclear what the Department might expect to gain from bargaining with such a jurisdiction. If DOE were to merely seek to obtain moral support or a cooperative relationship, similar terms and conditions should be negotiated with other jurisdictions which will host various facets of the

repository system.] The Task Force must recognize that while there may technically be only one situs county (pursuant to the NWPAA), several counties will serve as hosts for various components of the repository system in Nevada.

S

Page 41, Recommendation #3, 1st bullet - [Given the extreme opposition to repository siting which has evolved in Nevada, and the likelihood that similar opposition will surface in any other locale considered as a site, this recommendation is a cruel deception of the potential that consideration of multiple sites might somehow make situs jurisdictions feel better about the process.]

T

Page 42, Recommendation #3, 2nd bullet - [A more appropriate recommendation would suggest that the current repository program be limited exclusively to waste from existing commercial nuclear power plants, and that the waste stream from a new generation of nuclear power plants would require a separate disposal strategy.] As long as the current repository program is seen as perpetuating the construction and operation of nuclear power plants, there will be a significant element of opposition to DOE's waste management program.

U

Page 44, 6th bullet - [Owing to the Task Force's previous recognition of the unique standing of the situs county, here might have been an appropriate place to include Nye County as a contributor of recommendations for members of the panel proposed by this recommendation.]

V

Page 44, 7th bullet - [The significance of deferring until 1996 any decision about whether or not to reorganize the OCRWM is not immediately obvious? Does the Task Force believe that the potential exists for DOE to have made significant progress with the public and consequently its chances for siting during the next three years? Some explanation for the timeframes suggested by the Task Force would appear appropriate.]

W

Floyd Lamb
Chairman
Lincoln County
Board of County Commissioners
Pioche, Nevada

Submitted on behalf of the Caliente City Council and the Joint City/County Impact Alleviation Committee as well

1/20/93

A. This comment raises some important concerns that cannot lightly be dismissed or defended. In many respects, it points out the importance attached to the *form of activity* independent of its substantive impact. The Task Force did not fully appreciate the significance of that distinction for meriting the trust of an important stakeholder group.

1. While it is true that public comment was often scheduled for late in the meeting, its impact on the panel's deliberations was probably less than implied by the comment. In the first place, the Task Force "deliberated," as opposed to listening and reacting to presentations, only twice. Once was at its meeting in Richland, Washington. Opportunities were presented for public comment prior to that deliberation. At its meeting in San Diego, public comments were also received before the Task Force concluded its "deliberations". In particular, the Task Force has made no decisions, that is, has not finalized its report, until all parties have had an extended opportunity to present their views.

2. It is true that the Task Force only spent two days meeting in Nevada. It did hold sessions both in the community located closest to Yucca Mountain as well as in the most populous city. In addition, Task Force staff spent two weeks in the state over the course of the panel's work. Finally, the group heard from representatives of the state and local governments at virtually all of its meetings. It believes that the total level of input it received from Nevada matches well with the attention it gave to the civilian waste management program.

3. Insufficient time was available between the release of the working paper in early December and the meeting held to consider it. The Task Force regrets this. In the future, it shall attempt to distribute material to interested parties at least two weeks prior to a meeting. It is, however, important to note that the purpose of presenting the Draft Report to the full Secretary of Energy Advisory Board was to receive additional feedback, not to obtain its approval or to finalize the document.

B. The Task Force agrees; language has been changed on page 2. Although the Task Force did not specifically consider the issue of "dread" it did address other characteristics of radioactive waste management that raise distinctive obstacles to strengthening public trust and confidence. See pages 8-10, 53, and 57.

C. The Task Force agrees; see the discussion on pages 15-18.

D. The Task Force agrees; see the revised graph on page 24.

E. Some reference is made to the Department's failure to communicate the risks associated with weapons production and testing on page 37. In addition, the importance the Task Force attaches to this issue is reflected in the specific recommendations it advances on page 54.

F. By "trial and error," the Task Force was referring to the process for characterizing a potential repository site. In evoking that image, it was trying to convey idea that the civilian program is in an exploratory phase that cannot be programmed fully in advance. This view, it should be noted, is consistent with the National Academy Report, *Re-Thinking High-Level Radioactive Waste Disposal*.

G. The Task Force agrees; see page 17.

H. The Task Force disagrees; a relationship of trust creates obligations for both parties.

I. Agree; see page 26. But more importantly see the revised discussion of the four bargains on pages 23-26.

J. The Task Force agrees; see revised language on page 27.

K. The Task Force arrived at this finding based on presentations by several dozen state and local government officials and representatives of a wide range of non-governmental organizations. They explicitly linked their lack of trust in the Department's radioactive waste management activities to a series of ill-conceived actions taken by DOE and its predecessor agencies. The panel is prepared to take them at their word. It is quite possible that members of the general public believe that the Department is not worthy of trust because of the role of the media including the phenomenon of "social amplification of risk." (See page 38.) The Task Force does not regard these two explanation for the origin of distrust as necessarily contradictory.

L. The Task Force does not deny that NIMBY-ism can be a factor in causing declined trust in the Department of Energy's radioactive waste management activities. It just stated that distrust cannot be dismissed "merely" a result of the not-in-my-back-yard syndrome. The panel does believe, however, that it is less likely to manifest itself when a relationship of trust can be established.

M. The Task Force tried to make clear that the implementation of the specific measures must be worked out jointly with the affected parties. If some choose not to involve themselves for reasons they find compelling, that does not prevent others from engaging in them. To restore trust, the Department will need to offer a wide variety of opportunities for genuine involvement. Affected parties retain the option of selecting only those that they believe are appropriate.

N. This is an excellent example of how other actors in DOE's political environment can affect the level of trust and confidence accorded the Department. That is why the panel makes a distinction between DOE being considered trustworthy and it being worthy of trust.

O. There are many possible "test-beds" that can be found where the Task Force's recommendations could be tried. Given the fact that the Director's Forum is in limbo, the panel chose not to single it out.

P. Although the Task Force was not charged with evaluating the credibility of DOE scientific studies, it is well aware of what both the NAS and the NWTRB have had to say about them. While both bodies often disagree with particular choices and strategies and while there may be legitimate differences of scientific opinion, the Task Force is not aware of any document from either technical overseer that says or even suggests DOE's science is not credible, ie, not believable. The one exception to this general rule might be the WIPP Panel's June 1992 letter. (See page 34.) Thus the Task Force believes that there is ample justification for the language it used.

Q. The Task Force feels that the local community bears the brunt of residual risk from a repository and therefore should reap commensurate benefits. This does preclude other efforts aimed at securing equity in the geographic distribution of risk. Also footnote 57 should be consulted in this regard.

R. They do not exist; the Task Force recommends their creation.

S. The Task Force's philosophy is one of inclusion not exclusion. See revisions made on page 61. See also the positive reference made to the conclusion of a protocol agreement between DOE and Lincoln County on page 52.

T. The logic underlying that recommendation is two-fold. First, there are trust and confidence reasons for having a second repository, both as a fallback in case Yucca Mountain proves to be unsuitable and as evidence that institutional momentum can be stopped if necessary. The attractiveness of a second repository is increased due to the possibility it will be needed to dispose of the projected inventory of waste. As the Task Force notes on page 25, multiple sites by no means guarantees lack of opposition to siting a repository.

U. While the Task Force does not necessarily disagree with this comment, the absence of any concrete interest in "new generations of nuclear power plants" renders it rather moot.

V. The Task Force takes full responsibility for its work.

W. This comment is not relevant to the Draft Final Report.

Comments on "Earning Trust and Confidence: Requisites for Managing Radioactive Wastes". Final report (draft) of the Secretary of energy advisory board, Task force on radioactive waste management, December 1992.

1. Trust in RWM or DoE?

It seems as the report – although it explicitly addresses itself to RWM (see its title) – focusses on DoE: how can DoE and its agencies (esp. OCWR and EM) earn trust from the public? Question needs to be raised concerning to what extent the public trust on RWM is depending on DoE and to what extent is it dependent on other actors and institutions?

My opinion is, that not only nuclear agencies, but also nuclear reactor owners could be the target for public mistrust. Quite important is also to stress the trust/mistrust on nuclear power and RWM as technical system (cf. Giddens 1991)

2. Trust concerning policy or site-specific proposals?

Most often conflicts occur when a policy gets spatial dimension and a specific area is affected (cf. Blowers et al 1991, Kemp et al 1986). Referring to opinion polls (cf. p.12-13) is relevant in discussing peoples attitude to general policy, but faced with the spatial outcomes of a policy (i.e. proposed as site for RWD) the local populations reaction will not be guided by the attitudes found by the opinions polls.

[Thus, important is to consider if the trust concerns the general RWM-policy or a site-specific proposal for RW-disposal. In the end (e.g. p. 39). It focusses on trust-gaining concerning site-specific proposals. May the report in a more explicit way discuss these two different objects (general policy – proposed site) and discuss the relations between them.]

3. The social dimension of risk

Like Beck (1986) the report seem to oscillate between a definition of risk as 'real' (a phenomenon not related to human being's perception) and as social (constructed by human being – cf. "reasonable assurance" (DoE, p.5) and "to reduce socially acceptable levels of risks" (EM, p.6))

[This oscillation may be theoretically grounded, but I miss a discussion on the risk-concept and the relation between these two dimension of the concept. As it now is this ambiguous use of the concept is confusing. And this distinction is crucial for which role the public should have.]

4. The participation

[The aim of public participation seems to be first and foremost to create trust (e.g. p.8, 9, 14), not so much to affect the RWM-policy as such. At the same time, the report states that "DoE must trust in the public..." (p. 14). What is the implication of "trust in the public"? A discussion is welcomed here concerning to what degree public participation should be able (and be allowed) to make a change in the policy. To what extent implies a "trust in the public", a possibility to affect the RWM-policy already chosen? If not the public have this possibility, why should they be motivated to participate? Why should they choose to channelise their resources to the formal process if it they do not perceive it as a way to affect the policy? A discussion on not only the formal/procedural dimension of participation but also substantial (potential effects on policy) is welcomed. If not, the public may perceive the invitation to participation as a cooptation.]

[At the same time, the tension between the public and the science needs to be discussed. What are the proper roles of the public, the politics and the science in this multidimensional issue?]

This leads to a general question of the science in relation to RWM. Which role should science take? For the natural science it is more clear, but for social science it is not. Should the science contribute to the state's (DoE's) effort to make itself credible and increase its public support? This report is an illustrative example of how social science is not only a spectator, but also a participant in policy-making. Therefore, I would like to have a discussion on the role of social science in RWM-policy.

I also lack a discussion on the constructive role mistrust and critical opinion. In short, critical opposition:

- i) may be necessary to gain trust (cf. p. 38 in this report, Blower et al 1991),
- ii) may also provide with relevant knowledge which the scientific and planning perspectives not will discover (cf. Douglas 1986, Kemp 1991),
- iii) may hindrance the implementation of RWM

Concerning the local perspective and knowledge (see ii) above), if using economic massive economical incentives to make a siting possible (cf. p.39) there is a risk that relevant local knowledge (which a opposition may provide with) will not be brought to the light.

DETAILED COMMENTS

- very interesting comparison between OCWR and EM. However, in the discussion on findings concerning OCWR and EM (pp. 27-34) this institutional/structural differences seem not to be paid enough attention to. F

- There is - and probably will not be - any consensus between different groups (and individuals) perception and cognitive understanding of risks (cf. p.29, 35: "winning trust of one segment of the public often involves losing the trust of some other"). Thus they face different decisional situation (cf. the discussion of different value trade-offs on p.7). This implicates that the conditions that promote institutional trustworthiness (p. 14) is to be seen as ideals (to strive to reach) rather than conditions.

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Written 2 March 1993 by Rolf Lidskog, University of Uppsala and University of Örebro

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Rolf Lidskog
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3/2/93

A. Data either collected by the Task Force or reviewed by it indicate that neither the Nuclear Regulatory Commission nor the nuclear industry enjoy significantly more trust than the Department of Energy. Consequently, the panel feels that neither can be depended on to bolster public trust and confidence in DOE's radioactive waste management activities. If the situation were otherwise, the Task Force's recommendations would have been substantially different.

B. For the civilian program, siting is the overwhelming public focus and thus the distinction between general policy and proposed site is not especially meaningful. That is not the case with respect to the environmental restoration and defense waste management program. There the lack of trust is mostly associated with general policy, in part because siting issues have not yet become ripe.

C. The Task Force notes the concern about oscillating between a conception of risk that is "real" and one that is socially constructed. In general, its discussion focuses on "real" risks upon which regulatory judgments are made. The panel fully recognizes that perceived risks, which are socially constructed at least in part, can influence the trust and confidence judgments of the public.

D. The Task Force believes that public participation is an essential ingredient in any strategy for strengthening trust and confidence. But it also feels that participation, per se, will soon turn into a hollow exercise if Departmental policies are not adjusted as a result of the input received. This perspective is reflected in its emphasis on partnerships and empowerment.

E. Although there were many members of the Task Force that would have eagerly considered these important and intriguing questions, they and their colleagues felt that the Draft Report was not the vehicle for doing so.

F. Revisions have been made to discuss in greater detail the implications of those institutional differences. See pages 34-36.

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December 18, 1992

Dr. Daniel P. Metlay
Secretary of Energy Advisory Board
AC-1
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

I would like to take this opportunity to make several comments and suggestions concerning the discussion draft of the Secretary of Energy Advisory Board Task Force on Radioactive Waste report. While we are not submitting detailed comments at this time, certain aspects of the draft require some revision even before the public draft is published for comment.

Let me begin by stating that, for the most part, I think the Task Force has done an excellent job describing the trust and confidence problem and examining how the problem is manifested in the DOE Environmental Restoration and Waste Management (EM) program and the Office of Civilian Radioactive Waste (OCRWM). The report is most insightful in its comparison of the differential approaches affecting trust and confidence taken the EM and OCRWM programs.

Forced Siting and its Impact on Trust and Confidence

Throughout the report, it is emphasized that the key to restoring trust and confidence is the involvement of states, communities and the public in program decision-making by making the process more open and more scientifically based and by empowering stakeholders in meaningful ways. In the case of DOE/EM programs, this approach appears to be bearing some fruit. However, in the case of the OCRWM repository program (and other initiatives such as the MRS siting effort), little positive change can be seen.

Perhaps the single most damaging flaw in the draft report is its failure to address directly the implications of a forced siting approach, such as the one now being pursued for the first high-level radioactive waste repository, on not only trust and

confidence in the program, but also on the ultimate success or failure of current national waste disposal policy.] The fact is that DOE's credibility with respect to the civilian radioactive waste program is not only tied to its past history of mishandling defense waste activities nor even its prior failures involving spent fuel disposal and storage. DOE's credibility and the level of trust state, communities and individuals have in the Agency are also intimately linked to the way the State of Nevada has been treated with respect to Yucca Mountain and the ongoing attempts to force the repository on an unwilling state.

I would submit that trust and confidence cannot be restored as long as the federal government is engaged in attempting to subdue one state and force it into an arrangement it adamantly opposes. The discussions and findings of the draft report seem to support this contention. However, the recommendations, especially those that address OCRWM, seem to imply that by being more attentive to the State of Nevada and by attempting to be more open and forthcoming, trust and credibility will somehow be restored. The report needs to acknowledge explicitly that the very fact Yucca Mountain remains the only site under consideration and the nation continues to pursue a forced siting solution to the problem of high level waste disposal is the major reason why trust and credibility are unlikely to be restored any time soon.

Simply put, Yucca Mountain and all it implies poisons the well not only for improved trust and confidence for DOE in Nevada, but it also has a significant impact on other DOE siting efforts. The Nuclear Waste Negotiator's attempts to find a MRS site are an example of this spin-off effect. A number of potential host states and communities have demurred from pursuing the MRS because of fears that those states/communities would ultimately be treated like Nevada if they were to let DOE get a foot in the door. This type of reaction is quite understandable and will continue to contaminate future federal-states interactions.

A Comment of a the Recommendations for OCRWM

While it is not my intent at this time to provide specific comments on all of the recommendations contained in the report, there are two points to be made, one general and one fairly specific.

First, [there seems to be something of a disconnect between the findings of the report and the recommendations. The findings describe a situation where the current program is in gridlock; where OCRWM has failed to act in ways that promote trust and confidence; and where almost everything about the program indicates that restoring trust will likely be impossible. However, in the recommendations section, a number of proposed actions are laid out that seem to imply that if these initiative are taken, the program can be salvaged. This is simply not the case.] While the

recommendations contained in the draft would have utility in the context of a new facility siting effort, they would do almost nothing to "fix" the current flawed program, which is burdened by the history and abuses of Yucca Mountain.

Second is [a comment directed specifically to the first recommendation under "Specific Measures and Policies that Might be Adopted by OCRWM" on page 41 of the draft report. The recommendation states that DOE should seek some form of "bargain" with the State of Nevada and that same terms and conditions should be offered to the situs county, "whether or not the State enters into a relationship" with DOE. This suggests that DOE can circumvent the State and deal only with one of its political subdivisions. Such action would, I submit, have exactly the opposite effect to promoting increased trust and confidence in the program.] It would be confirmation that nothing has changed and DOE is continuing to divide and conquer in pursuit of its forced siting policy. In fact, the recommendation seems to be in direct conflict with other findings and recommendations concerning the need to empower States and communities and reduce the level of conflict in the process. C

The Task Force report should make quite clear that DOE must learn to deal effectively and honestly with states before there is any hope of being able to site nuclear waste facilities. The first step in doing that is to admit that the current approach (with Yucca Mountain as its most visible manifestation) was and is a mistake and begin the search for new solutions from a position of honesty and openness.

I hope these comments are helpful to you in preparing a revision of the draft report for formal review. The Task Force has a unique opportunity to assist DOE and the new administration in breaking away from hardened positions which are leading only to more failures and to formulate new, forward-thinking approaches, based on the lessons learned from the past, that will produce workable solutions to the nuclear waste management problem.

Sincerely,

Robert R. Loux
Executive Director

RRL/cs

Robert Loux
Executive Director
Agency for Nuclear Projects
Nuclear Waste Project Office
Carson City, Nevada

12/18/92

A. The Task Force was presented with two "impossibility" conjectures. The claim that public trust and confidence can never be restored as long as "the federal government is attempting to subdue one state and force it into an arrangement it adamantly opposes" is one of them. (The other was that the panel's recommendations could never be implemented because the state of Nevada was intractable.)

In its discussion of the civilian radioactive active waste management program (pages 23-29) and elsewhere, the Task Force recognized the extremely negative impact of the 1987 NWPA Amendments on the state of Nevada and on the MRS program. It does not however, accept either "impossibility" conjecture. But, even if the assertion advanced here were correct, the importance of demonstrating that the Department is worthy of trust is not diminished.

B. The Task Force sought not to underestimate the difficulties that DOE will encounter if it seeks to strengthen public trust and confidence. One of those is convincing the state of Nevada that there are areas where interests overlap so that mutual confidence-building measures might be agreed to.

C. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

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March 8, 1993

Dr. Daniel P. Metlay, Executive Director
Secretary of Energy Advisory Board
AC-1
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Last December, I provided you with comments on the discussion draft of the "Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management." We have completed our review of the more recent version of the report released in January for public comment and find that it is substantially unchanged from the discussion draft. The comments we provided in December continue to be pertinent to the new draft. I have enclosed a copy of my letter to you of December 18, 1993 and ask that you consider the comments contained therein as comments on the current draft of the Task Force's report.

As I noted in the earlier comments, the Task Force report does a very good job describing the problem of lack of trust and confidence and how it has been reflected in the DOE's Environmental Restoration and Waste Management program and Civilian Radioactive Waste program. It is refreshing to see a frank, thoughtful and often insightful evaluation of DOE programs emerge from a DOE-sponsored study.

[Despite this effort at critical self-evaluation, the final draft of the Report continues to miss what may well be the central issue affecting trust and confidence in the civilian HLW program. That is the issue of forced facility siting.] Like a cancer in the corpus of the nuclear waste management and disposal effort, the continuing single-minded determination by DOE to proceed with the Yucca Mountain repository in the face of technical concerns and strong and consistent State of Nevada opposition eats away at the credibility of any proposals that may be made for improving trust and confidence in the federal waste program. A

As long as the State of Nevada remains the target of a forced siting process, with Yucca Mountain as its focus and symbol, none of the recommendations for improving trust and confidence contained in the Task Force report are likely to have much credibility. On the one hand, the DOE cannot expect to develop increased trust and confidence in the integrity of its program when, on the other hand, DOE continues to be engaged in the antithesis of that approach at Yucca Mountain.

Thank you for the opportunity to comment of the draft of the Task Force's report.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, stylized flourish at the end.

Robert R. Loux
Executive Director

RRL/cs
Enclosure

Robert Loux
Executive Director
Agency for Nuclear Projects
Nuclear Waste Project Office
Carson City, Nevada

3/8/93

A. The Task Force was presented with two "impossibility" conjectures. The claim that public trust and confidence can never be restored as long as "the federal government is attempting to subdue one state and force it into an arrangement it adamantly opposes" is one of them. (The other was that the panel's recommendations could never be implemented because the state of Nevada was intractable.)

In its discussion of the civilian radioactive active waste management program (pages 23-29) and elsewhere, the Task Force recognized the extremely negative impact of the 1987 NWPA Amendments on the state of Nevada and on the MRS program. It does not accept either "impossibility" conjecture. But, even if the assertion advanced here were correct, the importance of demonstrating that the Department is worthy of trust is not diminished.

PLANNING DEPARTMENT

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December 22, 1992

Dr. Daniel S. Metlay
Secretary of Energy Advisory Board
1000 Independence Ave., SW, Room 7-B 198
Washington, DC 20585

Dear Dr. Metlay

Thank you for the opportunity to comment on the Task Force's draft report. We are very pleased to see how responsive the Task Force has been to the concerns expressed by affected parties over the past eighteen months. In general, Inyo County endorses the findings and recommendations in the report and encourages DOE to adopt them.

At the December 11 meeting, we submitted partial comments on the report, and would like to supplement these with the following additional thoughts. First, in reviewing your definition of trust on p. 12, we felt that there was too much emphasis on the dependency of one partner on another. Trust must be based on a relationship among equals, often not acting in partnership but holding distinctly different views. It is possible for members of the public to have trust in an agency, even when they disagree with that agency's mission or goals, if they have confidence that the agency is:

- (1) committed to the safety and welfare of the public
- (2) honest and straightforward in dealing with the public
- (3) competent in carrying out its responsibilities
- (4) predictable and consistent in its policies

In short, people's trust is based on their ability to count on an agency's public responsibility, fidelity, competency and predictability.

Our second point is that [trust in DOE's scientific work (p. 37) will be increased not only by bending over backwards to address and resolve plausible scientific arguments (like the Szymanski effect) but also make a candid acknowledgment that we do not know all that there is to know about siting nuclear waste repositories over 10,000 years.] There are many uncertainties, not least of which is how to predict future human behaviors and technological capabilities over the life of the repository. It would be better for DOE to stop appearing totally assured about every outcome, to cease relying on expert judgments about events so far in the geo-hydrological and human future as to defy imagination, and to admit openly that we are embarking on the first-of-a-kind, experimental, uncertain, albeit necessary undertaking. It would be more conducive to trust if the DOE "culture" was characterized by a little more modesty about our current predictive capabilities, combined with a demonstration that some of the best minds in the nation are seeking solutions that are technically correct and publicly acceptable.

B

Third, we agree with your recommendations on p. 41 that a repository should be designed "where predictable performance substantially exceeds the standards set by regulators." [It is also important for the public to perceive DOE as being willing to submit to the standards being developed by the regulators, rather than petitioning Congress to grant relief from requirements that are seen as too stringent (i.e. National Energy Policy Act of 1992, Section 801(a)(1)).]

C

Finally, [we urge the Task Force to be cautious in recommending that OCRWM "demonstrate its commitment to taking into account the interests of the citizens of Nevada" by offering terms and conditions (what is meant by this?) to Nye County, even if the State of Nevada is unwilling to accept them.] Such action would be divisive, possibly illegal, and would fail to take account of other affected counties' legitimate interests. We in California would expect to be given the opportunity to participate in any agreements with the State of Nevada or its subordinate jurisdictions.

D

We believe this report to be a positive and well intentioned effort by the Department to address the issues of trust and confidence. Thank you once again for the opportunity to provide comments at this stage in the development of the Task Force's recommendations.

Sincerely,

Brad Mettam
Yucca Mountain Project Coordinator
BM/jc

Brad Mettam
Yucca Mountain Project Coordinator
Inyo County
Planning Department
Independence, California

12/22/93

A. Task Force agrees; see pages 14 and 20-21.

B. The Task Force believes that a credible scientific process is the best way of identifying precisely what the uncertainties and complexities are, and just as importantly, whether there are design options available to buffer the uncertainty and to simplified the complexities.

C. The Task Force takes the position that any regulated entity, including the Department of Energy, has a right, if not a responsibility, to petition its regulator for changes in rules and standards with which it disagrees. If the Department wishes to strengthen public trust and confidence, however, those petitions should be public and should be resolved in an open forum. The same principle holds true for petitions to Congress. Sometimes even the regulators do not get it right.

D. The Task Force believes that local governments also represent a specific constituency. As such they can enter into agreements with DOE to protect it. The language has been modified to clarify this point (page 55).

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March 18, 1993

Dr. Daniel Metlay
Secretary of Energy Advisory Board, AC-1
1000 Independence Ave., SW
Washington, DC 20585

COMMENTS ON DRAFT FINAL REPORT OF THE SECRETARY OF ENERGY ADVISORY BOARD TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT

Dear Dr. Metlay:

Thank you for the opportunity to comment on the above referenced document. Inyo County has watched the work being done by the Department of Energy at Yucca Mountain since the preliminary studies were conducted in the early 1980's. In 1988, after the Nuclear Waste Policy Act was amended, Inyo County requested designation as an affected unit of local government, based on having an underground aquifer in common with Yucca Mountain. The DOE denied the request, and the County successfully appealed in the Ninth Circuit Court. Inyo County has actively participated as a jurisdiction with oversight authority since its designation as an affected unit of local government on May 29, 1991.

Inyo County is in a unique position to comment on the issue of trust and confidence. Following our request for affected county status, and especially after our appeal was filed in court, the County found it difficult to acquire public documents from the DOE. Assessments published by the DOE often ignored impacts that might occur just fourteen miles away from the Yucca Mountain site, across the state line in California. U.S. Geological Survey researchers informed Inyo County that they were being limited to Nevada for data collection. In frustration, the County began referring to the mythical "stateline fault" that restricted all potential impacts to the Nevada side of the border. Such a history of interaction has affected Inyo County's level of trust in DOE's management of the program.

The Task Force has been faced with a difficult charge: to examine and honestly report on the ability of the Department of Energy to engender trust and confidence -- from within. In its own dealings, the Task Force has seen how difficult it is to build trust & confidence, and how easy it is to damage. The report accurately reflects the views of the Task Force and the public comments offered at its meetings, however, in the implementation of the process, the Task Force has failed to carry out some of its own recommendations to the DOE. Witness, for example, the uproar over re-locating the first Las Vegas meeting to Oakland; the last minute availability of documents for review at the San Diego meeting; and the publication of a formal draft for public comment without incorporating the public comments on the Discussion Draft. These are minor failings in the overall undertaking, but they reflect the extreme delicacy of the process of recreating trust in an agency and the ease with which it can be undermined.

Inyo County had the opportunity to comment on an earlier draft of this document at the Task Force meeting in San Diego. We request that our written comments of December 22 be considered a part of our formal comments. In addition, we submit the following comments on the report:

COMMENTS

1. [The First Principles described on page 14 contain a flaw, partly exacerbated by the use of the terms "public" and "stakeholders" synonymously. There may indeed need to be reciprocity of trust between some stakeholders and the DOE, but the public -- those individuals representing no one but themselves -- has no requirement to prove themselves "worthy" of trust. All levels of government, from the local county supervisor to the President and Congress of the United States, serve at the pleasure of this "public".] 4
2. (The first paragraph on page 17 discusses the entities that, through law and tradition, are in a position to give independent advice on the technical aspects of the program. However it is not just the situs county, but each *affected unit of local government*, that has both the right and the obligation to provide the Secretary of Energy with advice and comments.) F
3. The discussion on page 30 of OCRWM's "constricted view of what is required to restore" public trust and confidence makes the point that "the overwhelming focus remains on communicating better with interested parties". [We suggest that there is a pervasive belief that "education" (i.e. a one-way downloading of information) is all that is needed to enhance public trust and confidence. This view has been often expressed by the DOE: in the *Draft Mission Plan Amendments*; as the theme of last year's DOE sponsored International High-level Radioactive Waste Conference; and even by Admiral Watkins in his endorsement of the Task Force report on January 8, 1993. The DOE will not regain public trust until it understands that it is the DOE's actions, not its public relations, that will most influence people's views

of the Department's trustworthiness. The Department must accept that education, by itself, is not the answer -- that it is not a lack of understanding that has eroded the public's trust and confidence in the DOE, but perhaps the opposite. }

4. **Finding #3** (page 30), concerning the consistency of OCRWM's approach to building public trust and confidence, {should note that the Mission Plan Amendments have never been finalized, and that the initial Director's Forum was convened in an attempt to vet the *Early Site Suitability Evaluation Report*, a document that was developed without public interaction and that has never been formally accepted by OCRWM. } This may have contributed to the dissatisfaction with that Forum. C
5. {**Specific Measure #5** (page 38) suggests that expansion of the Department's peer review network to include experts from other countries. In choosing peer reviewers, the Department would be well served to allow input from stakeholders in the development of selection criteria. } A classic example is the *Early Site Suitability Evaluation Report*, where the transportation expert was unaware of (and did not consider) the impact of risk perceptions on the high-level waste transportation system. D E
6. {Concerning the third bullet under **Design Basis** (page 40), I remain convinced that "rewarding" honest self-assessment sends the wrong institutional signal. } Even after long discussion with Tom Isaacs, I still believe that a reward is for extraordinary conduct -- not for doing what should be considered the norm. This is what is wrong with the "whistle blower" approach in the current laws. Rewarding (and protecting) someone who sees something wrong and reports it condones by implication those who see something wrong and do nothing. The "institutional personality" of an organization is defined by just such subtle signals. F

Thank you for the opportunity to comment on this report. I would welcome discussion of any of these comments, and I look forward to the final version of this document.

Sincerely,

Brad Mettam

Brad Mettam
Yucca Mountain Project Coordinator
Inyo County
Planning Department
Independence, California

3/18/93

- A. The Task Force disagrees; a relationship of trust creates obligations for both parties.
- B. The Task Force agrees; see revised language on page 27.
- C. At the full Secretary of Energy Advisory Board meeting in January 1993, former Secretary Watkins commented about the importance of education in strengthening public trust and confidence. Although the Task Force appreciates his views, it does not believe that education is likely to make a substantial difference especially in the short run. The critical factor remains how the Department of Energy conducts its business.
- D. Additional observations about the Director's Forum are contained in footnote 67 on page 44.
- E. The Task Force agrees; see page 56.
- F. The Task Force agrees that honest self-assessment should become a norm of DOE's organizational culture. Providing rewards for it is not in conflict with that objective. In fact, rewarding it has the effect of legitimating it and, thus, making it easier to become accepted as an organizational norm. A parallel here is rewarding high quality, objective scientific and technical work.

Loring E. Mills
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410/643-1244

May 25, 1993

Dr. Daniel Metlay
Task Force Director
Secretary of Energy Advisory Board
Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

Subject: Draft Final Report Of The Secretary Of Energy Advisory Board
Task Force On Radioactive Waste Management

Dear Dr. Metlay:

Enclosed are comments on the above Report. No attempt was made to be all inclusive and the comments touch on only a few of the items of the Report.

Basically, the Report is a significant contribution toward achieving improvements in the public trust and confidence for the DOE waste management program. However, there is considerable doubt that the desired culture change called for with the extensive recommendations can or will be achieved within the existing governance and management structure. The needed changes are so profound that a major shake up is required for the system to permit them to be implemented.

As we have discussed, there are a number of improvements that appear appropriate as the Draft Report is finalized. Hopefully, some of these comments will assist in that task.

Sincerely,

Loring E. Mills

General Comments
by Loring E. Mills

On Draft Final Report Of The
Secretary Of Energy Advisory Board
Task Force On Radioactive Waste Management
December, 1992

The importance of seeking improvement in public trust and confidence (PT&C) cannot be overstated. The Draft Final Report does provide insight, findings and several recommendations that should assist in achieving improvements in PT&C. The overall Department of Energy (DOE), and specifically the radioactive waste management programs fall within the Federal Government structure, which appears by definition to possess a low level of PT&C with most publics. Congress also has a very low PT&C. The goal should be to seek and implement continual improvement in PT&C, not to expect full achievement—which probable is not possible within the inherent constraints of the established legal governance structure. However, for the OCRWM program to achieve reasonable PT&C, it needs to be given the proper autonomy that entails established authority and responsibility with full accountability for its actions. Being buried within a much larger governance structure with many external programmatic constraints makes the task essentially undoable.

Basically, most publics do not expect nor demand that PT&C be achieved within any one specific political segment of the Federal Government, whether Congress or DOE. While there is considerable PT&C, and envy around the world, for the overall democratic structure of the United States, including the inherent checks and balances, there is very little PT&C for individual segments. Never-the-less, with the apparent low PT&C for the DOE, it is very important to seek improvements.

The Draft Final Report (Report) does provide a major contribution toward improvements in PT&C. However, the very general recommendations in the Report should be modified to provide more specific, tangible and measurable recommendations. All within DOE can voice support for the general recommendations, but no one will be able to effectively measure the results.]

Perhaps the most telling observation is provided in the first paragraph of "The Meaning of Public Trust & Confidence" on page 10. Whatever measure is used, it will be viewed differently by various factions and stakeholders. How could one know when PT&C is achieved? Certainly, winning a particular election by a simple majority does not assure continued PT&C. And, the same person performing similar actions may achieve PT&C one year and not the next. Nor is it possible to achieve PT&C equally among publics that have hard and fast opposing positions by finding some middle ground that no one likes. Thus, PT&C may be measured by the degree of acceptability in plans, promises and actions. As pointed out on page 10, "honesty and believability", "acting in the public's best interest", "keeping commitments", and "technical competence" are the predominate factors that determine PT&C. These factors are measurable for the most part and should be kept in mind when drafting the recommendations.]

Missing from the Report, is any real discussion on the inherent legal constraints under which the DOE is required to operate, the constraints on the OCRM within DOE and the overall Federal governance structure that controls the permissible actions within DOE and OCRM. While these constraints must not be used as an excuse for not achieving PT&C, they must be recognized to determine whether the recommendations can be legally and practically implemented. The governance structure is mentioned briefly in five sentences on page 1. The management structure is not mentioned at all. Significant more discussion is needed on both the governance and management structure to define those areas where the recommendations can be effective. Also, specific case references would be helpful in describing organizations and programs that have achieved a reasonable level of PT&C. Without specific examples and discussion of both successful and unsuccessful programs, the recommendations appear to be hollow "do good" things. One important factor of measuring PT&C, "keeping commitments", such as reasonable schedules, does not seem to be taken into account with most of the recommendations. In fact, many of the general recommendations appear to fly in the face of this important factor. Establishing reasonable and doable interim commitments, including schedules, and fulfilling these commitments appears missing from the recommendations and are vital to achieve PT&C.

B

C

D

Another general comment about the recommendations is the overemphasis on process and involvement, while being silent on commitments, goals, actions and results. A great process that leads off in a general direction may be nice, but to achieve a lasting PT&C, action, progress and results are vital.

E

The Findings appear reasonable for the most part. However, the one on page 27 that summarily dispenses with the organizational structure is unsupportable; number 1 - "There is no persuasive evidence...".

This finding appears to be in stark contrast with other findings where substantial culture changes are needed. Clearly, the other findings and recommendations tie directly to and vividly point out the weakness of the present organization and management structure. While many incremental improvements are suggested, the overriding governance constraints forced upon the OCRM task, as a small item within the overall DOE program, is obvious and overwhelming. Others have reviewed and recommended a different governance structure for the OCRM task and reasonable PT&C will not and can not be achieved for the civilian waste management task under the present governance structure. To implement the recommendations and achieve reasonable PT&C, a different governance structure, with strong management capability, that is open and responsible to the public is essential. The basic information gathered for and the discussions in this Report certainly supports such a need.

Specific Comments on the Recommendations:

Pg 37 - 2nd bullet under 1 - "Release any DOE-generated material..."

Since the amount of material generated by the OCRWM program is very large and it goes through many, many stages of preparation, review and finalization, it appears impractical to implement this recommendation. At some step in the process of material preparation, all of it should be made accessible to those who take the effort to seek and search some limited use area. Some control is necessary to minimize attribution until finalized. However, the word "release" in the recommendation implies some form of active dissemination. With several thousand persons collecting, analyzing and generating material by and for DOE, reasonable control and access must be defined before a "release any" principle could be implemented.

F

Pg 38 - 1st bullet under 4 - "Develop initiatives to ensure..."

Having a broad range of stakeholders involved in the decision making process is noble but uncontrollable. Decision makers are hired to manage the program and making decisions is a difficult task. Clearly, a decision means a choice between options and all publics will not be satisfied with any specific decision. Obtaining stakeholder input as guidance for making decisions is important. Having stakeholders actually involved in the process throughout all phases is a means to prevent decisions from being made. Clarification is needed on this recommendation to make it workable.

G

Pg 38 - 1st bullet under 5 - "Expand to the maximum extent possible..."

There is no practical limit for such an open ended recommendation—how do you define maximum? Also, how does a person become qualified to be an expert to participate in a legitimate peer review step? One of the major shortfalls of the present process, that clearly adversely impacts PT&C on the program, is that non-qualified persons assume and are granted peer review access, and become very vocal to emphasis their hidden agenda while in fact they are not a real expert on the area being reviewed. A screening test is essential to identify qualified persons that are allowed to serve as legitimate peer reviewers.

H

Pg 39 - 2nd bullet under 1 - "Require full-time local residence..."

This is admirable and should be practiced to a much greater extent than present. However, it appears impractical to have all DOE persons working on the program to reside in Nevada, much less the NRC reviewers and technical experts working in various expert centers around the country. Some qualification appears needed for this recommendation.

I

Pg 39 - 1st bullet under 2 - "Make good faith efforts..."

A time schedule is one element of any reasonable commitment. Thus, a delay in a schedule is not achieving a commitment. Reasonable and achievable commitments are essential, including time periods, and meeting the commitments within the planned time periods is required to achieve PT&C.

J

page 4

Pg 40 - 2nd bullet under 3 - "Permit State, local and tribal authorities..."

These, as well as all other, stakeholders should have an opportunity to be heard before decisions are finalized. The implication of this recommendation is that the specific stakeholders mentioned somehow have a superior position to others or to program management on this item. In fact, if the State of Nevada had "a voice in determining the rate" and movement of waste to Nevada, none would ever move. A reasonably balanced decision, with recognition of need, must be permitted. K

Pg 41 - 2nd bullet under 3 - "Increase organizational redundancy..."

Controlled redundancy is needed to assure that critical activities important to safety are performed properly. The existing program redundancy appears to be excessive and abusive. Increasing such redundancy is unlikely to achieve greater safety or improve PT&C. Proper, reasonable and effective redundancy should be defined and implemented-- not arbitrarily increased. L

Pg 42 - 3rd bullet under 3 - "Institute overlapping..."

This is inappropriate and can be very detrimental to good practices of responsibility and authority. There is already excessive overlap and redundancy. Such an action would result in evermore conflict and forever adversely impact PT&C. M

Pg 43 - 4th bullet under 2 - "Leave no room for a mistaken impression..."

This is patently incorrect. The program of a repository for waste disposal is not experimental—it is for real and must be done with care. The scientific study to determine whether Yucca Mountain is a satisfactory site for a long-term geologic repository is of an exploratory nature, but it is not experimental. Any suggestion that the Congressional mandate approach of deep underground geologic disposal as the appropriate means to dispose of high-level radioactive waste is only an experiment is a disingenuous desire of those publics who seek not to have a direction for this important national challenge. Finding a satisfactory site and building a repository is an important national task to be performed, not an experiment. N

Pg 43 - 1st bullet under 3 - "Support research and development in alternative technological approaches..."

Perhaps some additional limited national resources (not OCRWM program funds) should be allocated for alternative approaches to supplement the decades of prior consideration of alternatives. But, alternative studies can go on forever and proceeding down such a path implies that geologic disposal is not appropriate. Even the most avid anti-nuclear publics support deep geologic disposal—they are simply disenchanted with the process as implemented. Thus, the program focus must continue to be down the path of geologic disposal to achieve any sort of overall PT&C.

* * * * *

Loring Mills

No affiliation mentioned, but he was a vice president at the Edison Electric Institute

(His comments do not represent the views of the Edison Electric Institute.)

Stevensville, Maryland

5/25/93

In addition to suggestions about a number of specific areas where the draft might be improved, this comment develops a broader criticism that the Task Force will address at the start: does the fact that DOE is "buried within a much larger governance structure with many external programmatic constraints" make the task of strengthening public trust and confidence "essentially undoable"?

The logic of this argument appears to be the following. OCRWM is a small part of DOE, which in turn is a small part of the Executive Branch. Consequently, the program often discovers that the ingredients needed to get the job done, such as qualified personnel, adequate budgets, and strong management structures, are not available either because they are hard to come by in government generally or because other priorities, such as DOE's interest in protecting the Superconducting Super Collider or Congress' interest in lowering the deficit, take precedence. Because performance falters, trust and confidence wanes. By changing the governance structure, performance improvements can be secured, and trust and confidence will then grow.

Several questions immediately arise. What specific changes in governance structure should the Task Force recommend? Creating an independent federal agency? A quasi-governmental corporation? A private, utility-owned and operated consortium? Beyond the question of organization form, what authorities would be exercised? Should the new OCRWM be able to renounce the contracts signed with utilities on the grounds that schedule pressures interfere with sound scientific studies? Should it be able to start its own site selection process on the grounds that Yucca Mountain is irretrievably tainted by crass politics? Should it be required to build a repository only at a site provided by a volunteer host state? Surely the answers will make a difference.

The Task Force raises these questions because it believes significant changes in the governance structure will only come about through an intensely political process in which each stakeholder tries to secure for itself something like the original terms of the salient NWPA bargain while requiring others to accept the terms that exist today. In short, the Task Force predicts that if any restructuring takes place -- a big "if" as the difficulties encountered just trying to take the Nuclear Waste Fund off budget indicate -- it will end looking very much like the institutional environment OCRWM now faces. Put another way, OCRWM's governance structure did not arise randomly;

it is a reflection of specific political interests and values that will not disappear once the political battles begin. Like technical "fixes," organizational ones may be quite elusive.

This discussion leads naturally to the criticism of the Task Force's finding that there is no persuasive evidence that a change in organizational structure by itself will affect the level of public trust and confidence. (Page 41.) The Task Force has modified and expanded its discussion of the basis for that finding. But a direct response to the comment is also called for.

Other findings and recommendations were alluded to that reached "overwhelming and obvious" conclusions diametrically opposed to those of the Task Force. While the group has great respect for the individuals involved, their prescriptions were largely based on informed opinion -- but on opinion nevertheless. Indeed, the major methodological device employed by the Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities was a straw poll. Organizational structure may make a difference, but because solid empirical evidence is lacking, the Task Force cannot presume so in providing its advice to the Secretary.

The Task Force turns now to the detailed comments and criticisms of its draft.

A. The Task Force disagrees with this comment. While proper implementation will require ways of measuring results, the recommendations are specific enough to serve as a point of departure. While the panel is pleased to know that "all within DOE" can voice support for the general recommendations," it has heard little enthusiasm for those suggestions that genuinely empower large number of stakeholders.

B. The Task Force has modified and expanded its discussion of the current governance structure. See pages 23-29 and 34-36 in particular.

C. The Task Force and its staff conducted a number of case studies. The general lessons learned from them were extracted and incorporated into the analysis contained in the Draft Report and Final Report.

D. That Task Force has substantially revised its discussion of commitments and schedules. See pages 25, 26, 28, and 51.

E. The Task Force agrees that it places considerable importance on the processes that DOE uses to interact with a range of stakeholders. But it also places considerable importance on outputs such as quality scientific and technical work as well as the ability to meet commitments.

F. Modifications have been made to this recommendation. See page 54.

G. The following situation has arisen when stakeholders were not involved in all phases of the decision-making process. Schedules have slipped by roughly two years for every year that has passed; cost estimates for characterizing Yucca Mountain have increased dramatically; the civilian program is viewed as untrustworthy by virtually all that do business with it. The Task Force believes that broad stakeholder involvement is not likely to make matters much worse.

H. Determining who is a "real expert" is not simple, as the Supreme Court recently discovered. The intent of the recommendation, which has been modified (see page 56-57) from the draft, is that DOE should broaden the set of reviewers it uses and provide stakeholders with opportunities to guide the selection.

I. The Task Force agrees; see page 55.

J. See the response to "C" above.

K. Unlike the present situation, the Task Force believes that no stakeholder occupies an intrinsically "superior position." In particular, the panel is not prepared to recommend that any stakeholder be given either a formal or a de facto veto over programmatic choices.

L. Language has been modified. See page 58.

M. The Task Force disagrees. There is a consensus among those who study organizations from which a high degree of reliability is demanded that overlapping self-regulatory processes are quite important. This is especially the case when novel activities are being undertaken.

N. Changes have been made to the recommendation. See page 69.

THE RURAL ALLIANCE FOR MILITARY ACCOUNTABILITY

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March 10, 1993

Dr. Daniel Metlay
Designated Federal Officer
Secretary of Energy Advisory Board, AC-1
1000 Independence Ave., SW
Washington, DC 20585

Dear Dr. Metlay,

On behalf of the Rural Alliance for Military Accountability, I am submitting the following comments on the Draft Task Force Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. RAMA is an informal working alliance of rural organizations and individuals in the United States who are adversely affected by the U. S. military, including the Department of Energy.

It is remarkable that this task force was formed to study the public trust and confidence issue, one of the many problems facing the Department of Energy (DOE) in the management of nuclear waste. The report's most striking finding is that no one - not even nuclear industry representatives - trusts the DOE. We certainly agree with that conclusion.

In the "Interactions with External Parties" section, we have several comments.

[The idea of "safety review boards" has merit and should be discussed in detail rather than mentioned in passing. The selection, composition and powers of such boards would be crucial in determining whether they could be part of the solution or just exacerbate the problem.]

A

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[There is also mention of working with citizens groups. The task force should consider, acknowledge and recommend that unlike most other sectors mentions, citizens groups are not funded to participate. Funding could increase the perception that they are being manipulated by the DOE; however, without funding, full participation may not be possible.] B

[Another troubling comment concerns the infrequent mention of Indian tribes. On page 37, 6, no mention is made of empowering Indian tribes although under current scenarios they could be front runners to cope with clean-up and MRS waste.] C

[On page 40, #1, bullet 2, what does this mean? What is "appropriate conduct" for forced siting?] Under #2, the language of bullet # 4 most assuredly does leave room for the impression that activities at Yucca Mountain are other than in the experimental mode.] D/E
~~phase of the program.~~

[The major flaw in this report is that no innovative, courageous solutions regarding fundamental structural reform are recommended. If the trust and confidence problem is not fixable, then this report should state that, and make recommendations regarding the future management of a high level waste repository.] F

RAMA appreciates the opportunity to comment on the draft document. We look forward to receiving a copy of the final report, and hope that the final document will be strengthened to include strong recommendations on fundamental structural reform of DOE.

Sincerely,

Maria Painter
Executive Director

Marla Painter
Executive Director
The Rural Alliance for Military Accountability
Carson City, Nevada

3/10/93

A. Although the Task Force discussed Safety Review Boards in great detail at its meeting in San Diego, it did not reach agreement on how they might best operate.

B. Public funding of citizen groups has been debated since at least the mid-1970s. The advantages and disadvantages of doing so are fairly well understood. The Task Force recognizes that financial assistance can facilitate the involvement of groups in the various processes it has recommended. It also realizes that it would likely take an act of Congress to authorize the Department to expend those funds. Historically the legislature has been quite reluctant to do so.

C. Changes have been made throughout this document, not only to the recommendation cited in the comment, to recognize the important role played by Indian tribes.

D. Revisions have been made to clarify the intent of this suggestion. See page 55.

E. The Task Force believes that the only defensible position the Department can take with respect to Yucca Mountain is to conduct exploratory studies to make a judgment on whether the data will support an application for a license to construct a repository at the site. See the revision made on pages 59-60.

F. The Task Force feels it has presented a set of recommendations, whose adoption would, at the very least, make the Department of Energy more worthy of public trust and confidence. For the reasons laid out on pages 41-42, it does not believe that "fundamental structural reforms" are necessarily the answer to the challenges DOE faces in this area. Rather the panel calls for fundamental changes in behavior. Although the Task Force realizes that progress in this area will be difficult, it does not regard the problems as inherently "unfixable."

10 Feb 1993

To Prof Todd R LaPorte, Dept of Political Science, U C Berkeley
Fax (510) 642-9515

From Dick Sclove, The Loka Institute, P O Box 355, Amherst, MA 01004-0355
Tel (413) 253-2828 (w), (413) 256-8727 (h)
e-mail resclove@amherst.edu

Dear Todd.

Thanks for sending me a copy of your "trust and confidence" draft report to the Dept. of Energy. I enjoyed reading it and I think it's a fine document. I have no serious criticism or recommendations. But since you asked, here are a few minor comments.

1 [P 4 implicitly distinguishes sharply between "technical" and "non-technical" bases for accepting a disposal location or method. I know, of course, what you mean, but I also think that lay publics who become involved on this issue will instinctively--and with some reason--find the very distinction a bit patronizing and mistrust generating. In effect, to uphold the distinction tends to sound like one is saying: (a) there are the hard, real (i.e., "technical") bases on which experts with objective knowledge can distinguish good locations from bad ones; and (b) there are also various irrational public fears and political realities ("non-technical" factors) which intrude and keep those fine experts from getting on with the business of picking the sites they themselves know make best technical sense. I'm sure your task force and DOE folks would sincerely object that you mean nothing of the kind by the distinction. Yet I would recommend not using it at all, or--if it is unavoidable--at least explicitly defining it in a way that it cannot carry such patronizing connotations.

A

2 [Similarly, I fear that the very terms that are central to the report--"public trust and confidence"--may inadvertently harbor some similar connotations. The term--and the concepts and practices that go with it--are still not far enough removed from the discredited idea of "public acceptance." My guess is that those publics most mistrustful of DOE don't want to hear about what DOE can do to win their renewed trust. Rather, they want to know what DOE is going to do to empower them to be full partners in finding acceptable solutions. (Now of course, many of the report's recommendations make that same point, but I fear that doing so under the rubric of "public confidence building" can backfire. It still sounds too much like paternalistic P.R.)

B

3 Are there any precedents or analogs in U.S. history or abroad in dealing with comparably scary and complex public concerns from which one can learn? E.g., the old Canadian MacKenzie Valley Pipeline Inquiry is one model of a non-cooptive participatory decision-making process that worked, so, maybe, is the current Community Health Decisions movement (described by Bruce Jennings in the Hastings Center Report in 1988 and 1990). Your report does briefly (p. 45) draw the analogy of U.S. business concern with "quality." It's a good analogy insofar as defining "quality" is about as hard as defining an acceptable standard for "solving" the radwaste problem, and there were related problems of overcoming consumer mistrust. But there are also significant differences. More analogies--if they are out there to be found--would be good. (One less optimistic analogy that occurred to me is U.S. business attempts to incorporate notions of "participative management" or quality circles, which have generally done little to persuade organized labor that this is not just authority production speed-up, or union-busting by other names.)

4 [D]o you study how much of environmental or lay public opposition to DOE performance on radwaste results from an authentic concern that the well-being of distant generations is not really being adequately taken into account? If so, I'd wonder about Christopher Stone-style proxy representation of future generations within decision-making processes as one means for assuaging some such concern

C

5 [D]o you also consider how much of environmental or other lay public concern about radwaste is part of a broader opposition to nuclear power generally, such that people who are genuinely concerned about radwaste may also see it as a strategic opening for opposing expansion of the entire nuclear or plutonium economy? E.g., I wonder, hypothetically, if there were a formal moratorium on licensing any new civilian nuclear plants, if it might be easier to get some participants to focus more seriously on "OK, we really do have radwaste here that we have to do something responsible with. Let's get on with it, because leaving it moldering at ground level is doing nobody any good."

D

6 [T]he report says lots of good things about continuing to transform DOE's culture. How about saying outright that some of the recalcitrant Old Guard who are doubtless non-reeducable absolutely need to be put out to pasture or at least transferred somewhere where they can do no further harm?

E

7 Technically speaking, I've wondered for two decades now (I have a letter mentioning the issue in the Oct. 1977 issue of Scientific American) whether the move to a permanent geologic repository isn't premature. Has enough thought been given to retrievable, interim storage deep underground, which would buy time for working on permanent disposal at a more leisurely, responsible (and therefore, yes, "trust-building") pace?

Again, these are all small issues. The report is very good (indeed, I'd appreciate seeing Parts 2 & 3 when they become available)

Best

Dick

P.S. We've moved around the corner to a new house, our new home street address is 20 McClellan St. Amherst MA 01002

Dick Sclove
Loka Institute
Amherst, Massachusetts

2/10/93

A. The Task Force does not wish to convey the impression that the "technical filter" is somehow more important than the "non-technical" in the site selection process. Rather this metaphor was adopted as a means of suggesting that there are a variety of appropriate ways to choose sites but that they all require the proper balancing of technical and institutional variables in a way that is not biased or arbitrary. See the revised language on pages 5-6.

B. The Task Force does not use the term "public acceptance" except to divorce explicitly from it the idea of public trust and confidence. See footnote 27 on page 12.

C. The Task Force has no data that speak to the question of how much importance various segments of the public attach to the well-being of future generations. At its meetings, very few of the representatives of stakeholders addressed this concern in anything more than a passing fashion.

D. Undoubtedly opposition to the expanded use of the nuclear power option motivates some segments of the public to oppose the development and deployment of a radioactive waste management system. (Opposition to nuclear weapons has a similar effect.) Although the Task Force has often heard representatives of stakeholders say that they could never trust an organization that promotes nuclear power or manufactures nuclear weapons, it believes that even profound disagreement on goals does not preclude the establishment of trust. Furthermore, from a tactical point of view, the panel feels that strengthening trustworthiness in managing nuclear wastes is an issue that is best addressed on its own.

E. In any large organization there are always likely to be individuals who have not adjusted well to change or whose behavior is no longer appropriate to the agency's contemporary mission. By introducing and structuring new incentives (see pages 53 and 58-59) within DOE, the Task Force hopes the number of such individuals will be low.

March 1, 1993
Comment on Draft Final Report of the Secretary of Energy Advisory
Board Task Force on Radioactive Waste Management —
Dear Dr. Mettrey,

I have just finished reading your report and am
impressed with the frankness in which it discloses
the problem. I always find such reports tedious and
long and not really direct. As a member of the public,
I am interested in seeing the waste problem & their
you have to see clearly why the program does
not have public trust and confidence and why
you want to go in this until the whole energy
program is changed.
To expect the public to even believe that
radioactive waste is safe more than just isn't
going to happen. People already are very
knowledgeable about effects of radiation. They
have heard of Hiroshima and Nagasaki, Chernobyl
and "Three Mile Island". They have seen "On the Beach"
and "China Syndrome". They have been through the
Cold War nuclear arms and threat of nuclear war.
They know about the Yankee, Shippingport and the
Spill and contamination all over the country.
Nuclear weapons and nuclear plants have been
stepped in saving — guns and forces and
designs so far. The public knows too much
about nuclear waste — you can't "write" that
health design and cost of clean-up and
determining as becoming clear. The problem
isn't keep getting worse. Yet, nobody talks
about ending the creation of more and more
nuclear waste. The DOE and NRC don't seem
to understand that the public is promoting
conservation and renewables. We are not doing as
well as we should be, and better than them or their
plant etc.

A

Kids or their grand children. Do you? [The only way you will really gain public trust and confidence would be to say you are going to phase out nuclear power, phase out nuclear weapons, and set an example for the rest of the world that these two things were created by us and that it was a mistake and that now we want to admit it and stop it.]

To say "Oh sorry, I was wrong" is one of the hardest things to do. Yet, once said, solving the problem always becomes easier and trust and confidence are enhanced. If DOE was to say we are going to eliminate as much creation of radioactive waste as possible in the future, and do the best to store what we have created already because we have to do something with it (it's already there) — then I for one would listen. But for the past two years, the more I've read on this issue, the less I trust the system.

I didn't even know we had any nuclear plants nearby till a few years ago when I heard they wanted to put dry casks near one of my favorite state parks on the shore of Lake Michigan. Then I found they wanted to also put such casks on an island in the Mississippi. Nuclear plants on our nation's waterways is dangerous enough, now I find that spent fuel has been piling up at these plants ever since the plants opened for business.

This was not the original plan the public was given. The plan changed and now we have ponds filled to stress levels — assemblies full of crud aging with time. Now we are told once again, there is no place for it to be removed to — no MRS, no repository, so

Page 3

they want to pile it in the plant's backyard. When do we say "no more" — "enough of this"? The plan wasn't followed — the fuel was never removed from the pools — we want no more of this. People are opposing dry cask all over the country at plant sites because they have no confidence they will ever be removed. Why should they? The spent fuel never has been removed before, and there is no plan for it to go. Yet, new reactors are proposed to create more waste. This makes no sense to us.

Yet, the opposition of dry cask does not mean the public advocates an MKS or a repository either. The "dump it in Nevada" idea doesn't have a lot of advocates because the public realizes, as more waste continues to be created, the next thing will be a 2nd and 3rd etc. repository and we may hear "Dump it in Wisconsin" or "dump it in Minnesota" — or put an MKS in Arizona or New Mexico. The minute you try to remove it from the sites of origin — weapons or commercial plants — people holler. They don't want it transported through their communities, and don't want it stored or disposed there either. They know it is dangerous.

If you were to say, "look, we are closing these places. We are going to stop creating the stuff. We have to solve the problem of what we already created though"

I think people would listen. My own personal solution is to close the plants and get the fuel in a safer above ground site in each state of creation than along a waterway. Then fence it in, keep it constantly monitored in the safest casks created and

Change them every 20 years as necessary. This will be a movement in each state that made the "Fusion" bargain to use nuclear power. Why should any state that has never used nuclear power have to stay in the ground and bore it? Safety on production for the future certainly doesn't guarantee Trust and Confidence.]

First really concerned ourselves then state could easily be the most "Nuclear".

I think the fact that the world is wasting and waiting for us to sit the lot underground and waiting is significant. We are once again the leader here so we were in creating the bomb and then hoping to find peaceful uses for nuclear energy. All we did was open Pandora's Box — a problem we knew that — so did a lot of other countries. At this time there in the weapons labo start talking responsibility for what they create. We don't just have to keep pouring money down the nuclear drain, do the end it may not be the bomb that do us in — but the addition to waste instead. This is a world situation — not just any labo at a nuclear plant in Illinois or a repository in Nevada. And time is running out. All these plans for a repository in an MRS will never be accepted by the public and it's time that is accepted as reality. The waste has not left the plants and it won't till they close. It's time to do that now. That is the only way to gain public trust and confidence. We are concerned about what we are paying as repository and for money to build out the nuclear industry.

time after time, we are concerned about cancer that all our parents are getting. Anybody you talk to has somebody in the family who has had or has cancer. Don't you have one or more in your family? Why? Do we really know? Why has the radiation rate to the public been cut to $\frac{1}{5}$ in 1973 of what it was? Why hasn't this been changed ever before? Because the BEK report realizes the dangers that weren't realized before. Why do we wear shields at the dentist to get our X-rays? Why are we checking for radon in our homes? We now know that a cumulative dose from bomb testing, X-rays, natural background radiation + radon, plane flights, nuclear plants and waste storage, contaminated weapons sites, etc. that each of us gets in our life is having an effect.

It's time to "just say no" to any additions by creating more waste and exposing people and workers and the environment to it.

A break here — I wrote this last night and this morning I realize I'm tedious too — but I do think what I've already said reflects what the public feels. Now I'll try to be more precise and go over your report:

Report Page 4 The graph and projection data tell it all about a repository. I don't think one will ever be sited and it shouldn't be. The public will not accept one, especially knowing a 2nd, 3rd, etc. will also be needed.

Page 5 — \$6 billion to evaluate the site — that builds public confidence in keeping the nuclear program going?

last paragraph — reference to "yesterday's" understanding about biological effects of radioactive materials and "yesterday's" sensibilities about the toxicity of

the environment. The public has learned to see the need to look far in the future in this waste plan — to project ourselves forward and look back to today as the future's "yesterday". [This phrase repeated over and over by the DOE and NRC in documents — "reasonable assurance" — doesn't assure us that we won't look back and see a repository as another big mistake.] The potential for contamination when this stuff is buried and out of sight is too great. It should be kept above ground, in sight, and constantly monitored and safeguarded.

Page 6 "EM program takes \$1 out of every \$4 appropriated to DOE" — "3200 waste sites" — with the economic and health care crises today in our country, there is no way this program can regain public confidence until the plants are closed.

Page 9 "Whether a disposal facility is performing as anticipated may be hard to ascertain." Very true — impossible in fact to predict "forever". We have the future of our great grandchildren in our hands here. Are we going to stay on the path we've taken and produce more and more nuclear waste, or take a new road?

p12 — view of industries — their power is overwhelming in creating waste and contaminating weapons and plant sites, but now they want DOE to "fix" their problem and yell that they want the waste "taken away" from the plants and the mess at weapons sites cleaned up — like a kid that spills his cereal and expects mom to take care of it. It's time the industry — the big corporations have some ethics and concern for the public and the environment. This salesman attitude about how "cheap", "clean" and "safe" nuclear power is — doesn't go over with the public. We ain't

unaware of radioactive waste. To point the finger of pollution at fossil fuels is full page advertising meant and cover up the waste problem nuclear has created is no longer possible.

page 16 "generation benefiting from nuclear power should have the responsibility to solve the problem of wastes left behind". Very true — that's why when we see Nevada saying "put it in dry cask at the plants to give us more time" and then the plants say "dry cask will be temporary" — we of the public know that the spent fuel will stay at the plant sites just as it always has since they opened. Waste tends to stay at its point of origin. Each state should take care of what it created. Once each state realizes that they have to keep it forever, they will consider stopping more creation. They might as well accept that now.

page 17 "The level of confidence accorded NRC does not appear to be appreciably higher than that of DOE". True! The NRC licenses casks and says they have nothing to do with the standardizing and integration of the whole program. They say that is DOE's job. We of the public see that the DOE and NRC need to work together. If the NRC gives a certificate of compliance to casks such as the VSC-24 to be used at our Pt. Beach Plant in Wisconsin and at Palisades Plant in Michigan — for storage only — why should we of the public trust that it will fit in with a future transport system? The DOE now finally says it will work on a "unified" cask for storage, transport, and disposal — but there is no place to transport it to and no place to dispose it at. We have the cart before the horse. They said before

that a card for design could be designed with the
sit requirements, i.e. determine. Design power,
which has not demonstrated at being in working
on a card design to fit the requirements, "temp"
system now. They propose a "fixed" card with
plant site, to an MRS, and to the assembly. A
lot of the success of the whole waste program
depends on the design of this first conference.
Best without knowing the first criteria, & the recommendations
holding off on developing the card. On the other hand,
the plant, like one in 10 is certain, are going to get
card that probably won't fit in the system, will
can see that if there is a lack of understanding, then
and integration as their new is, card, worker
experience and the public health and cost will
be added because of additional in the system.
A card at the plant, an oversight for design, a card
at an MRS, a first oversight to meet concerns
in the assembly - is this really a "universal"
card or 4 separate at great cost and waste?
Also to say a third (inner) card for use inside the
overpacks throughout the system is going to depend
on timing. If you don't start card at the
plant for over 20-40 years, will they be allowed
on the card without opening the well and checking
the contents to see what has happened to the
MRS and go inside? Card has only been shot
for a while ago. We don't know what will
be going on inside those cards. How long will they
sit at empty nuclear plants before they go in the
MRS? That is the question. The studies for some
on spent fuel in an inert atmosphere after 40
40 years prediction. Not the card. are still not

[page 9]

to be "all right" stored at the plants for up to 140 years. The criteria for 20 year check on these new casks are not clear.

Right now the NRC has given Consumers power an exemption to build the new designed, never physically tested VSC-24 cask for Palisades. The code does not allow fabrication before NRC

approval. Yet the 1st time a cask is added to the new generic ruling, the NRC breaks the code. They have bowed to industry pressure and these casks sit there on the pad ready for loading

before a certificate has been given. The public looks at this situation as an example of the whole waste system. Industry directs the waste program and the public is ignored. Who is going to make them discard these already built casks if the design has faults? This is wrong. We in the midwest at Prairie Island in Minnesota, Palisades

in Michigan, and Pt. Beach in WI is contain have great faith in a safe energy program of conservation and renewables. The Union of Concerned Scientists has a huge report on midwest renewables. We see dry cask storage as a symptom of the whole waste system, all it does it allow more waste to be created. It does nothing to solve the problem of disposal.

Q18 — "may confirm the fears of those who believe that DOE will circumvent the regulatory process if necessary to get a repository at Yucca Mt."

A/ course this is true and we in WI contain see this type of heavy-handed siting as a prediction of what can happen if a 2nd repository were to be sited in our state. More than one repository will be needed in the future. Where?

p 30 — "EM programs — \$200 billion in 25-30 years" — and we have problems in health care, education, etc., etc. — this total unbalance in priorities is very clear to the public — when decommissioning of plants costs become a reality — another big surprise is in store!

* "It is widely acknowledged that the data from which we derive exposure and contamination standards is sufficiently uncertain that they might not be an adequate reflection of environmental and health risks!" (You are so right in stating this — Considering the radiation dose acceptable is now 5 times less than what was previously allowed tells us a lot. We know now more about the dangers to the public than we did previously. If radiation is bad for public health, why allow any addition to what they are already exposed to? We need an answer to this question. When do we see "dancing with a 900-pound gorilla" for what it really is? The tanks at Hanford loom out there as the best example. We can't just put this stuff in a container and hope for "reasonable assurance" that it won't be a problem in the future.

p 29 On this page you really state the issue when you say "the ethical, technical, political, and economic barriers discussed above have proven to be contradictory and almost inconcilable." and then — "Facing a core mission may increase pressure to temporize and to postpone finding a solution until later generations. And so it goes". You say here "and so it goes" as a rather defeating and depressing end to the paragraph.

You are so right, "And so it goes" as if it just keeps
 prisoning itself to the explosion point by its
 own inertia. Can we stop it? Will we? Do we
 have the courage to see the waste problem for what
 it is — unsolvable. We created the weapons plants,
 the bombs, and the energy plants. We set the example
 for the world. Isn't it time to say we made a
 big mistake. Do scientists ever realize what they
 do in such creations. Just because the technology
 exists for things, doesn't mean we have to do them.
 It's time we look at how our civilization depends
 on the defense industry and suffers from the products
 and waste it creates. A safe energy policy of
 conservation and renewables — wind, sun, geothermal
 co-generation etc. is out there, yet we provide
 enormous funding for research and development
 in this safe future and pour billions into bailing
 out the nuclear industry. Where is there basis for
 public trust and confidence in such a program?

p31 — "Public comments were requested in each case!"
 "The comments received had little effect." "The
 underlying structure of the choice was rarely
 changed." — Is that going to be also true of
 this report? There is an honest undertone in the
 report of the people who put it together — almost
 one of despair. As if to say, well, they asked us
 to do this, and we did, but we don't really
 expect anything to result from it. They will
 just do as they have and say they did their
 best to evaluate how to gain public trust and
 confidence, but it just didn't work. Will there
 really be any effort to change — any effort
 to evaluate the whole program and what
 causes it?

31- #5 You state here that decisions have been

made on the basis of their impact on the

economic health of the nuclear industry

the ear in giving an NRC license, and passing

of a repository — but not on public trust

and confidence. That is true. The impact on

the nuclear industry, even last, the public lost

of trust at all. This is wrong. We don't suddenly

the government, the banks, the supermarket etc. —

why do we have to pay no repository and

no money for nuclear energy and waste?

"You state they may find themselves" they used

by insufficient resources, shipping, scheduling, and

tricky optimization, projection of technological

advice, because many build to find solutions

an experimentally and experimentally co-provide."

You use the word "may" in both these references. I

think the word "are" is more realistic, like

"are" now in that position as far as nuclear

waste.]

p 42

"Return the old century of error" How would

there be done? People are afraid to report problems

in that they will lose their job. How would you

set up independent observers? Who check on the

NRC? On state public service commission, say if

the NRC appoints a cost, then it's OK. Why is it

up to government groups to establish their

decisions? Shouldn't a state look over an NRC

decision carefully before it accepts it? The state

has to pay if problems arise.]

p 42

"Been reviewed and otherwise" — this is good

"Make cut in public" — good also

"Support research and development in

alternative technologies (1977-1978) p 2

p 43

disposal of radioactive waste!" — good again. Here we are now with all our eggs in one basket — if Yucca-mt. is not feasible, there is no alternative plan. As I have said, my plan is to phase out nuclear plants and do what has always in reality been done — leave the waste in each state that allowed its creation for them to put in the safest above ground container they each decide on, fenced in, guarded, and constantly monitored forever as a monument to the mistake they each made in hoping some other state would take care of their garbage for them.

p 43 "On the opportunity provided by a recently mandated report to Congress to revisit the dual issues of multiple sites and multiple repositories." The waste has always been left at the site of creation so far, what makes you think this will change? To keep this up, only allows more waste creation which nobody wants or knows what to do with — in any other state — or country for that matter.

p 43 "The need to solve a serious national problem." "Explore ways of responding to concerns of nuclear utilities" — why does the public have to support them in creating more waste when they have created this problem draining \$1 out of every \$4 in our energy funds? This makes no sense economically or for public health and safety.

p 45 You express here your concern as a group to "a bureaucracy that is resistant to change". That is the crux of the problem. "And it goes" — it's time for a major change now. Can we do it?

p45 you refer to a request for "quality" among American firms. Not only "quality," but "ethics" needs to be considered. The "I'll get mine and do what I want for my self my company, my family, my state — whatever, and let the rest of them take care of the waste, the environment, the future generations," has got to stop. Our country is losing that basis of living by the "golden rule" we were all taught as kids. "Do unto others as you would have them do unto you." Sounds preachy, right? But if we try to put ourselves in the other person's shoes, it always helps solve problems. It's time that the heads of the defense and nuclear energy corporations realize that what they do has an effect on their children and grandchildren as well as ours. The public isn't something they don't belong to. They have got to get out of their small viewpoint and back off and look at the whole situation our country and world is in. We are all parts of a closely connected whole and we can no longer think of self as in isolation. It just doesn't work that way.

Now, this is a mother's view. I've looked very carefully at the whole radioactive waste program for the past several years and read extensively on the issue. I'm no technical expert, but I am a very interested member of the public. To gain my trust and confidence, please send me your final report and a review of the comments you receive. Once again I appreciate the fact that your report was requested.

(15)

I am encouraged by your frankness in
addressing the problem. I am hopeful that
you will really listen to public comments.
This problem will only be solved if we
all work together to solve it.

I'm sorry if I wrote too much, but it
all just poured out and I feel better for
even being allowed to express it all.

Thank you for taking the time to read
it and for your concern.

Sincerely,

Fawn Shillinglaw

(mother of two fine sons who
are concerned about the
environment and wife of
a husband who likes to
fish in unpolluted streams)

Fawn Shillinglaw

1952 Palisades Dr.

(Appleton, WI

54915

Fawn Shillinglaw
Affiliation not mentioned
Appleton, Wisconsin

3/1/93

The Task Force appreciates the effort made in providing these comments. They articulate important concerns and viewpoints, and the panel takes them quite seriously. It will, however, limit its responses to suggestions for improving the content and logic of the Draft Report.

A. Undoubtedly opposition to the expanded use of the nuclear power option motivates some segments of the public to oppose the development and deployment of a radioactive waste management system. (Opposition to nuclear weapons has a similar effect.) Although the Task Force has often heard representatives of stakeholders say that they could never trust an organization that promotes nuclear power or manufactures nuclear weapons, it believes that even profound disagreement on goals does not preclude the establishment of trust. Furthermore, from a tactical point of view, the panel feels that strengthening trustworthiness in managing nuclear wastes is an issue that is best addressed on its own.

B. The Task Force agrees that it is often difficult to evoke public trust and confidence when safety can only be demonstrated by a rather abstract and complex set of long-term safety predictions. It, therefore, attaches considerable importance to the Department maintaining a highly credible scientific capability (see pages 20 and 58). It believes that DOE should pay special attention to the public trust and confidence implications of its repository design, development, and certification activities (see page 61).

C. The phrase "reasonable assurance" has a particular legal connotation. The Task Force has made some recommendations that it believes will minimize the likelihood that current and near-term choices will prove to be mistaken. See, for example, pages 58 and 61.

D. The Task Force used the word "may" because it was not confident that it could accurately anticipate how future events will unfold.

E. How rewards would be provided for discovering error is likely to vary considerably across the range of waste management activities the Department conducts. The Task Force understands that such rewards have been used effectively in many organizations from which a degree of reliability is demanded.

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March 5, 1993

Dr. Daniel P. Metlay
Secretary of Energy Advisory Board
AC-1
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Dr. Metlay:

Enclosed are my comments on the "Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management."

I did this by making comments in pen and ink on the draft report.

Sincerely,

for Judy Treichel
Executive Director

FC/br

In an attempt to expedite the program, legislation was enacted in 1987 that instructs the Department to characterize a site at Yucca Mountain in Nevada to determine its suitability for a repository. OCRWM has developed in a "bottom-up" fashion a nine volume, 6000 page blueprint for investigating that site. Extensive surface testing began last July, and subsurface exploration is likely to commence in the spring. According to its current estimates, OCRWM will need to spend more than \$6 billion over the next eight to nine years to complete its scientific evaluation of the site. *see page 5. \$6.5 bill*

If, based on the Department's recommendation, the President believes that site is suitable, and if the State of Nevada does not object or if its objections are overridden by Congress, DOE will then apply to the Nuclear Regulatory Commission (NRC) to construct a repository. That license will only be granted if there is "reasonable assurance" that the engineered and geologic barriers that comprise the repository system will meet or exceed the radionuclide release requirements set by the Environmental Protection Agency (EPA). The EPA standards, however, have been in a state of flux since 1987 when key elements were overturned in court.⁵ A provision of the 1992 Energy Policy Act compels EPA to repromulgate promptly new standards consistent with the findings and guidance of a Congressionally-mandated National Academy of Sciences' study.⁶

(I have no doubt that this is what they'll be looking for when you want to say) - the radiation. That's the

ENVIRONMENTAL RESTORATION AND DEFENSE WASTE MANAGEMENT

At the height of World War II, new towns sprang up virtually overnight in obscure locations such as Oak Ridge, Tennessee, Richland, Washington, and Los Alamos, New Mexico. Each made a unique and historic contribution to the design and development of the weapons dropped on Hiroshima and Nagasaki. From that small nucleus of communities blossomed a large and widely-scattered complex dedicated to manufacturing and maintaining the country's nuclear arsenal. Events of the past few years reinforce the general impression of how well those who manned and ran the complex actually performed the tasks assigned by a nation confronted with an external threat.

But the exigencies of war -- both hot and cold -- compounded by yesterday's understanding about the biological effects of radioactive material and yesterday's sensibility about the fragility of the environment meant success came with a stiff price. By-products from the production reactors sit in tanks and storage pools, their final disposition uncertain. And it is an inescapable fact that the weapons complex is profoundly polluted by myriad varieties of hazardous waste, mixed waste, and radioactive waste. Established in 1989 as part of Secretary Watkins' Ten-

⁵ *Natural Resources Defense Council v. U.S. EPA*, 824 F.2d 1258 (1st Cir. 1987).

⁶ Energy Policy Act of 1992, Section 801(a)(1). The Act also instructed the EPA to apply those new standards only to a potential repository at Yucca Mountain. The possibility therefore exists that the Department's repository for transuranic wastes in New Mexico will have to meet a different protective level. *There should be*

more said about the EPA standards. And as done in previous releases

this exceeds the level of det. is beyond appropriate here

ing initiatives was left. Words and acronyms such as Lyons Kansas, RSSF, AFR still resonate in the minds of those who have followed the program's fortunes over the years.

In 1982, Congress acted to reconcile, at least for the moment, a series of unresolved issues and to place a greater stamp of authority on the program's efforts. The resulting legislation, the Nuclear Waste Policy Act (NWP), can be understood as a blend of the intellectual framework advanced by President Jimmy Carter's Interagency Review Group and the Office of Technology Assessment along with measures that recognized and provided remedies for the widespread lack of trust in DOE.

That amalgam translated into four bargains. The "ethical bargain" committed the country to pursuing geologic disposal aggressively in the belief that the uncertainties associated with the technology could be managed and that the generation benefiting from nuclear power should have the responsibility to "solve" the problem of the wastes left behind. The "economic bargain" gave the industry a fixed schedule for opening a disposal facility and, more importantly, a fixed date for the government to accept title to the waste -- something that was seen as a prerequisite for the industry's future growth -- in return for a pass-through from rate payers to cover their full share of the costs of repository development and operation.

The "technical bargain" provided that a conservative program philosophy would be followed by investigating multiple sites in differing geologic environments. Yet for the first repository, only a small handful of locations could be considered. The "political bargain" called for a second repository, which was likely to be situated outside the region of the first. It also offered the host state and affected tribes the right to participate in a wide range of program decisions, oversight authority, and disapproval over the final choice of site. But that objection could be overridden by a vote of both chambers of Congress.

Although concerns were raised at the time about potential conflicts among the bargains, the prevailing atmosphere upon passage was one of guarded optimism. Very few observers, however, would likely have predicted that, less than a decade later, the technical and political bargains would have collapsed altogether and that the ethical and economic ones are seriously threatened.

What largely remains from the NWP is DOE's almost single-minded dedication to construct a repository as expeditiously as possible. That dedication reflects a commitment to implementing the NWP and to preserving its economic bargain. It aligns the program's activities with the most visible and comprehensible indicator of success -- meeting schedule milestones. And it is also a natural and expected consequence of being responsive to the views and the priorities of legislators and constituencies who are the most salient to the agency's policy-makers. Indeed one might well argue that to behave otherwise would be to breach the confidence of one vital sector of the "public," -- electric utilities and Public Utility Commissioners -- who can neither understand nor accept the Department's inability to maintain a schedule or to control costs. DOE's position is all the more understandable given the uncertain returns from behaving differently. But this determined pursuit of a repository has had ramifications in three

Handwritten notes:
 Given the
 political
 and economic
 bargains, it
 is not surprising
 that the
 technical bargain
 would be
 the first to
 fail in a
 significant
 way. This
 is a goal that
 the political
 bargain
 was designed
 to achieve.
 For a discussion
 of the relationship
 between trust
 and policy
 agreement,
 see pp. 15-16.

18

there are
currently
no site
specific
regulation.

There was (and
is) a big "dis-
tinction" between
"old money" and
"new money."

Lactuca

al
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r-
e

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w

12

²² The difference in the approach taken by Congress, at the strong urging of the Department, to licensing defense TRU-waste repository and the approach taken to licensing a civilian high-level waste repository is a striking example of this imperative.

4. IF DOE IS TO RESTORE PUBLIC TRUST AND CONFIDENCE, IT WILL HAVE TO TAKE STEPS THAT MIGHT BE CONSIDERED UNNECESSARY FOR AN ORGANIZATION THAT HAS MAINTAINED PUBLIC TRUST AND CONFIDENCE OVER LONG PERIODS OF TIME.

Organizations that have earned public trust and confidence have greater policy-making flexibility than those that have not. Because that consideration had previously been well integrated into the former organization's choices, it can better afford, on occasion, to adopt measures that will reduce trustworthiness in the future. The Department of Energy does not have that luxury. For the agency is precariously balanced on a steep slope that corresponds to the trajectory needed to build trust and confidence. It requires substantial efforts to make even a modicum of progress; one slip leads to an accelerated decline.

This means that Departmental leaders will have to make choices that consistently and unambiguously demonstrate an interest in strengthening trustworthiness. Those choices may not appear "cost-effective" in a conventional sense. Moreover, they may disrupt some internal routines as well as some long-standing external relationships. But it is the strong view of the Task Force that DOE stands little chance of strengthening public trust and confidence unless it recognizes that its decision-making behavior will have to fundamentally change.

It will have to show considerable competence to get the job done - after making the right decisions

5. THE LEGACY OF DISTRUST CREATED BY THE DEPARTMENT'S HISTORY AND CULTURE WILL CONTINUE FOR A LONG TIME TO COLOR PUBLIC REACTION TO ITS RADIOACTIVE WASTE MANAGEMENT EFFORTS. ONLY A SUSTAINED COMMITMENT BY SUCCESSIVE SECRETARIES OF ENERGY CAN OVERCOME IT.

The term "legacy" is used deliberately; distrust, like the albatross, passes to each new organizational leader and his or her administration. The only open question is whether the burden, passed in turn to the next leader, shall become heavier or lighter. Whereas distrust lingers and adheres, trust is always provisional and transitory. After DOE had done a poor job in explaining the consequences of a very small tritium leak, one senior manager at the Savannah River facility observed, "Decades of responsible interaction have gone by the board; the loss of trust is irreparable." Put starkly, the Department has little slack to draw upon; it cannot count on receiving the benefit of the doubt. These circumstances suggest not only that trust will not be earned overnight but also that policy-makers will have to continually keep its production "high on their screens."

Since the idea it may be growing.

The data here is quite conflictive

*see discussion on p. 62-63
In fact, it seems to be a practical thing to try through the introduction of a gain to C? like you can make it more really work in the end*

The Task Force agrees

to advocate that they be *consistently and widely accepted throughout the relevant programs*. For it is critical that the Department take advantage of the positive lessons it has learned.

INTERACTIONS WITH EXTERNAL PARTIES

DESIGN BASIS

When agencies are the initiators of programs that could be seen as levying more potentially harmful effects than benefits on citizens and communities, agency leaders should strive to give all groups of citizens and their representatives a sense of involvement and fairness in negotiating the terms of their immediate relationship. In general, the agency should commit itself to:

- Early and continuous involvement of State and/or local advisory groups as well as national advisory bodies on which a broad range of stakeholders (including, but not limited to the nuclear industry, electric utilities, public utility commissions, potential host states, communities, and tribes, environmental and public interest groups) are represented. That involvement would be characterized by frequent contact, complete candor, rapid and full response to questions, and assistance in increasing the technical and oversight skills of the community.

- Active, periodic presence of very high level agency leaders making them visible and accessible to citizens and their representatives.

- Unmistakable agency and program residential presence in the locality that contributes its energies to community affairs and pays through appropriate mechanisms its fair share of the tax burden.

- Assuring the availability of negotiated benefits for the community along with the resources that might be needed to detect and respond to unexpected costs.

- Consistent and respectful efforts to reach out to state and community leaders and to the general public for the purpose of informing, consulting, and collaborating with them about the technical and operational aspects of Departmental activities.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS THE DEPARTMENT

1. To provide information fully and rapidly, the Department should

- Rely on the "pre-decisional" Freedom of Information Act exemption only under exceptional circumstances, which are candidly explained.

The citizens must agree with the necessity of the activity because they see the goals to be achieved. Getting the community to agree isn't the deal. It's without a full player. The Task Force across the community should be a full player. views on the end policy agreement found on 78. 15-11

What are the precedents for negotiated benefits? Is any community going to come in and say "I want payoffs or bribes. The affected area is going to be used to create an economic impact. I want negotiated compensation."

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS THE DEPARTMENT

1. *To build on the efforts already in place to promote a "new culture" within the Department, it should*

- Undertake an assessment to determine to what degree the current incentive structure actually rewards those whose behavior is consistent with the objectives of the emerging culture.
- Develop measures by which improvements or decrements can be objectively charted.
- Consider the deployment of "trust and confidence" tiger teams that would regularly evaluate how different units performed.
- Disseminate on a systematic basis experientially-derived "best practices" for building, sustaining, or recovering public trust and confidence.

2. *To ensure that the public trust and confidence implications of critical Departmental activities have been properly identified and weighed, the Secretary should*

- Order that any analysis of policy options presented to him or to Program Secretarial Officers include an explicit assessment of the impact on trust and confidence for various segments of the public.

- Support efforts to increase the objectivity of those assessments over time.

- Require a sound explanation for the recommendation of an option that is likely to substantially weaken the trust and confidence of any significant segment of the public.

Why would there not be plans that involved T & C? Because it may not be possible always to maximize the production of public trust and confidence.

- Publish that explanation along with a plan for mitigating the causes of lower trust and confidence.

- Review the predicted effects for degree of consistency with actual public reactions. Publicize such reviews both for internal managerial purposes and public understanding.

See pg. 13.

3. *To ensure that organizational dysfunctions are not responsible for decreased institutional trustworthiness, the Department should*

- Devolve greater authority and responsibility to the Field Offices to manage issues that have significant trust and confidence implications at the local level.
- Enhance the connections between policy, program decisions, and budget.
- Increase organizational redundancy on safety critical activities.

- Offer the same terms and conditions to the *sinus* County, Nye, whether or not the State enters into a relationship.
2. *To acknowledge by deeds that the "first-of-a-kind" nature of its activities requires special attention to public trust and confidence, OCRWM should*
- Aim to design a repository system whose predictable performance exceeds by a substantial margin the standards set up by the regulators.
  - Adopt a technical strategy that takes into account ways of making performance claims persuasive to broad segments of the public. This might involve the use of multiple, redundant barriers including robust engineered barriers.
  - Devise a process for characterizing and developing potential repository sites that is sequential, incremental, and specifically designed to learn from and respond to new information.
  - Leave no room for a mistaken impression to arise that the program is in anything other than an experimental mode. *Make it research - not the building of the repository.*
  - Foster a culture that will resolve uncertainties in a manner that places the highest priority on protecting health, safety, and the environment.
3. *To acknowledge the symbolic and real barriers to trust and confidence that arose when the bargains contained in the NWPA either collapsed or have moved to the verge of collapse, OCRWM should*
- Support research and development in alternative technological approaches to disposing of radioactive waste.
  - Use the opportunity provided by a recently mandated report to Congress to revisit the dual issues of multiple sites and multiple repositories.³⁵
  - Emphasize that the primary driving force behind this program is the need to solve a serious national problem. *What is the problem?*
  - Explore ways of responding to concerns of nuclear utilities that derive from the difficulties the Department has encountered in constructing either central storage facilities or a geologic repository on a timely basis.

*The Task Force
has revised
this recommen-
dation.
See PG. 6*

*The concerns of people
worldwide are more important.*

³⁵ Energy Policy Act of 1992, Section 803.

Putting Words To Work

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January 30, 1993

Dan Metlay, Director
SEAB Task Force on Radioactive Waste Management
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Dear Dr. Metlay:

Your report on public trust and confidence is heroic in its scope and thoughtfulness. I hope it will be widely and closely read. However, your draft politely skirts a managerial issue that goes to the heart of OCRWM's problems with its stakeholders.

As a former contractor to OCRWM, I know first-hand that it has many talented and dedicated managers—people I felt lucky to work for. If these good people have not run the kind of open program you advocate, it must be for a good reason. I believe that reason is their fear of losing control of the program they are accountable for, and that the root of their fear is the insecurity they feel because they are not in command of their decisionmaking process. This insecurity breeds the defensive, close-to-the-vest mentality that in turn breeds behaviors that erode trust.

[These behaviors appear dysfunctional when viewed against the goal of earning trust; but they are highly functional when viewed against the goal of maintaining the only control OCRWM's managers enjoy: an illusory control that does not bear close scrutiny. Management by improvisation is a high-wire act that would make anyone nervous.]

A

I believe OCRWM's managers are not in command of their decisionmaking for three closely related reasons: 1) they have been a kind of stepchild of the Department, operating without the full support and understanding of their own management, in a volatile political climate; 2) they have not done the difficult work of explicitly articulating decision-management plans that could provide a compass for their own efforts and for the efforts of stakeholders; and 3) in one crucial respect, they tend to misconceive their own roles.

The new Administration may or may not remedy the stepchild problem; I want to address the problems of decision management and role definition, because they're problems OCRWM can start to remedy, right now.

OCRWM abounds in plans, so let me stress that this problem turns on a crucial distinction: the difference between, on the one hand, detailed charts of milestones and activities, convergence diagrams, strategy papers, and action plans; and, on the other, a clearly defined decision-management plan arrived at through a healthy consultative process. The rationale for the latter is simple: 1) managers get their work done by way of making decisions, and must therefore *manage* the work of making decisions, 2) stakeholder involvement is vital to that work, and 3) the more widely that plans for managing decisions are understood, the healthier the working environment for all parties.

Given the uncertainties plaguing OCRWM's program, its decision-management plans could not be very elaborate; and they should be flexible, allowing managers plenty of room to exercise judgment. But in consultation with stakeholders, OCRWM could articulate its decision path to, or toward, a few key program goals. At the least, it could define the process by which it intends to articulate a path.

Obvious candidate areas—closely related—are: By what process is OCRWM going to determine 1) whether/how to attempt to site an MRS? 2) in the absence of an MRS, what responsibility the Federal government should assume for utilities' storage problems? 3) in the case of an MRS, what equipment and facilities should be developed to transport/store/dispose of spent fuel? Other candidate areas: What is the decision path to 1) the determination of Yucca Mountain's suitability (and how, along the way, are decisions being made to allocate resources among myriad site-characterization activities?) 2) permanent disposal of defense-waste? And, long-overdue for scrutiny: What is the most sensible way of generating and using cost estimates for a program built on such shifting, fragile, and cost-sensitive assumptions?

To the extent possible, for each area a decision-management plan would indicate:

- What key decisions managers must make (both technical and institutional), and why each is significant.
- How key decisions will be sequenced/how they are interrelated.
- By whom each decision will be made, and by what target date each is needed.
- What significant uncertainties surround each decision, and what levels of certainty it's reasonable to aim for, given constraints of time and money.

- What information is needed to reduce uncertainties and support decisions, and from what sources it will be sought.
- At what points managers will seek stakeholder involvement in the continuing work of formulating issues and making decisions.
- What forms this involvement will take (lunch? workshops? rulemaking?)
- How each decision will be memorialized, so that a paper trail documents the reasoning that supports it, and stakeholders can learn how their views were considered.

Presented in a form that was easy to understand, these plans would be working documents consulted frequently by both managers and stakeholders.

Why wouldn't an agency want to develop such plans? In fact, don't OCRWM's managers already know these things? Can't they just write them down on some pieces of paper we can all look at? Unfortunately, developing decision-management plans for a complex, dynamic program is not easy; and even if much of the groundwork were laid, it would be argued that committing to a series of stakeholder interactions in the face of significant uncertainties would foreclose managers' options.

But hard as it may be to develop such plans, managing a program absent them is even harder—*particularly* for a program in flux. Management by improvisation, which appears to permit managers to keep their options open, sacrifices not just trust, but efficiency: instead of being focused constructively, the human energies within the community of managers and stakeholders—a tremendous resource that should be harnessed in problem-solving—are dissipated or turned to unproductive conflict.

For OCRWM, the case for at least modest decision-management planning comes down to some simple realities:

- The very process of planning is a valuable tool all parties can use to think about the future ("planning as learning"), and thereby help create the future, improve that future, legitimate that future. It can also help all parties better understand each others' views, and thereby plan their own participation more effectively.
- Skillful managers can help all parties understand that OCRWM's plans are necessarily provisional; as much to be worked *against* as from. They can be clear about what rough level of confidence a particular plan enjoys, and they can unapologetically modify their plans whenever they have a good reason to.

- What's risky is *not* integrating stakeholders into planning and decisionmaking. If an issue is making you uncomfortable (fee adequacy?), it's a sign that you need to go find some stakeholders to talk it over with, soon. That won't necessarily make controversy go away; indeed, it may make it more explicit. But not until issues are explicitly articulated is there any hope of their being fully understood and addressed.

This last point goes to the problem of role-definition. To function effectively, OCRWM's managers need the security of knowing exactly what it is that they are accountable for. You make the crucial but narrow point on page 43 of your report that OCRWM must make clear that its repository program is in an experimental mode. But the point is much, much larger.

What OCRWM's managers are accountable for, finally, is not implementing the law exactly as it was written; legislators aren't god-like enough to write perfect laws that will remain perfect in a changing world. (Section 301[a][3] of the original Nuclear Waste Policy Act clearly acknowledges this, charging the Secretary to recommend legislation to resolve problems that he discovers are impeding implementation.)

Rather, managers are accountable for taking an imperfect law, marshalling all possible resources, making the most diligent efforts to implement the law as written, and thus using that law as a tool for discovery. What managers must discover is the nature of the realities inherent in their fundamental mission, and how best to deal with them.

If OCRWM's managers viewed their role in this light, perhaps they could relax enough to perceive stakeholders as the indispensable partners they are. Together, then, through sometimes contentious but much more productive dialogue, all parties could determine: 1) to what extent the law as written is implementable, and 2) to the extent that it's not, how it can be strengthened. When implementation is approached not defensively, but in a spirit of discovery, getting to "no" becomes as important as getting to "yes," because that "no" can help us better understand what we need to do to get to "yes." Decision-management planning helps define that path through "no" to "yes."

I'm not saying that such planning is a magic bullet. I am saying that, without even the rudiments of it, OCRWM's task, hard under the best of circumstances, is made much harder. I'm therefore curious to know how you evaluated the managerial dimensions of the trust-and-confidence problem.

Did you ask to see OCRWM's plans for managing its key decisions, and in particular, stakeholder involvement in those decisions?

If you asked, and were given any documents in return, may I have a copy?

(Ironically, former-Secretary Watkins' unilateral decision to essentially abandon voluntary siting for an MRS is an instance of the very syndrome he crusaded against. With whom did he consult? Evidently not at all with the quite-astonished Nuclear Waste Negotiator, with whom his Department had been slow-dancing for so long. Perhaps you should mention this cautionary tale, too.)

I'd be glad to talk with you about this subject, which I hope you'll address in your final report. Your "Implementation" section (page 44) looks like the right place for it to me.

Yours truly,

A handwritten signature in black ink that reads "Christine Van Lenten". The script is cursive and fluid, with the first name "Christine" and last name "Van Lenten" clearly legible.

Christine Van Lenten

cc: Dan Reicher, Natural Resources Defense Council
Tom Isaacs, OCRWM
Jerry Saltzman, OCRWM

Christine Van Lenten
Putting Words to Work
St. Petersburg, Florida

1/30/93

The Task Force agrees with many of the ideas advanced in this comment including the notion that bureaucratic and organizational behaviors, such as the "fear of losing control of the program" make it harder to act in ways that sustain trustworthiness. The panel also agrees that "management by improvisation" can sacrifice trust and that it is "risky" not to integrate stakeholders into planning and decision-making. The group, however, does not share the view that the managerial reforms proposed in the comment are the key to strengthening public trust and confidence, although they may well be a part of a more comprehensive approach.

The decline the Department has experienced, the Task Force believes, can be traced to a complex interaction of a number of factors that define the institutional context within which the two waste management programs operate. Some of those factors are within the Department's control and the impact of the others can be moderated by actions DOE can take. Only if the Department engages all of them is it likely to succeed in strengthening public trust and confidence.

24.2.1993

Professor Todd R. La Porte
University of California, Berkeley
Dept. of Political Sciences
Berkeley
CA 94720
USA

Dear Todd,

Thank you very much for your letter and the report. I found it very interesting and it raised some thoughts. The report is very much in the line of my own views that it is necessary to build trust and confidence. I enclose a short note I wrote for the IAEA Senior Expert Symposium in Helsinki 13-17 May 1991 (Electricity and the environment, IAEA-TECDOC-624, Sept. 1991).

[The problem seems however to be that it is easy to set up requirements for a process of preparing policies on controversial issues, but it is far harder to get such a process into operation. In spite of good intentions it is too easy to destroy whatever confidence through some unthoughtful statements or actions. My question is, if it really is possible to utilize such an ideal path. My feeling is that we end up in almost the same controversies regardless of the good intentions. I remember some studies on the nuclear referendum in Sweden in the early eighties which left many common people with increased instead of decreased confusion. A

One of the deep dilemmas in social decision making is to set the level on which it is necessary to base policies on the public opinions. It is well known that people make errors when issues are complex, when there are time pressures and when stakes are high and probabilities small. It is clear that the extremes of either expert dominance or populist demagoguery should be avoided, but the problem is to reach a balanced and believable approach between those two.

Nuclear power carries several dilemmas. The technology is in many aspect different from all other technologies. The plants cannot be shut off immediately and the waste is dangerous in a time perspective of ten thousand years. The technology is global in that respect that a small incident anywhere appears in the news headlines everywhere. We are however relying on nuclear plants already and a doubling of the nuclear power plants in the world would probably not double the problems.

Public fears seems to be forcing the society into less acceptable solutions. Nuclear power has the prospect of decreasing the burden of CO₂ emissions and correspondingly global climate change. Some solution of the nuclear waste problem is certainly better than the

alternative prospect of storing the waste at the plants for an unlimited future. To me it seems that we have adopted a technology without proper social institutions for policy making related to the technology. There is no return from yesterdays decisions, but we seem to be stalemated in indecision.

Nuclear power is different, but also similar to other large scale technologies. Reliance on technology has made it possible for the world population to reach the present five billions plus. Providing food and sheltering for a population which is expected to double by 2030 puts serious strains on all available resources. To single out one energy source seems in this situation extremely unwise. The prospects of forcing a cut-back in the standards of living for billions of people brings along far more frightening scenarios for the nearest future than the possibility of a leak from a nuclear waste repository some thousands of years from now.

In my mind there are more deep questions of how to prepare difficult issues for public decision making than we are able to tackle with present institutions. The transfer of views from individual to public and from local to global are places where the common should be allowed to have a higher weight. There is no prospects for reaching a high degree of support for controversial decisions, but fair compensations may render the necessary solutions livable. Building trust in such a system of fears, force and compensations seems even harder.]

I also enclose a draft of a paper where I have elaborated on some of these issues. I look forward to your comments.

Best regards, Yours

Björn Wahlström

Bjorn Wahlstrom
Technical Research Centre of Finland
Espoo, Finland

2/24/93

A. The Task Force does not find this pessimism to be unfounded. Yet it believes the problem is of sufficient importance that the struggle for improvement cannot be abandoned.

B. The issue of compensation is a very delicate and sensitive one. If compensation comes to be seen as "accepting bribes" then providing it may be counterproductive. While the availability of benefits does have some affect on public trust and confidence (see pages 50-51 and 54-55), the Task Force does not believe it is wise to make compensation a centerpiece for proposals to strengthen institutional trustworthiness.

Stuart D. Waymire
3588 S. Malafia
Las Vegas, Nevada
89103
(702) 362-7753
FAX (702) 251-8802

Secretary of Energy Advisory Board
C/O Dr. Daniel Metlay
AC-1, 1000 Independence Ave. S.W.
Washington, D.C. 20585

Dear Sirs,

This is in response to your request for comments on the draft version of the Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

My comments come as an author who is in the process of completing a four hundred page book on the political climate surrounding the Yucca Mountain nuclear waste repository. As an engineer and Nevada citizen with connections to the Nevada university system and to other politically knowledgeable sources, I have become privy to information that has a bearing on your report. Because of time limitations, I have only written a short comment as follows, but I believe there is a wealth of information that you and your advisory board have not seen which affects the climate of distrust that surrounds DOE in Nevada. Specifically, the political whirlpools surrounding Yucca Mountain are not random, but in large part orchestrated by certain factions within and without Nevada.

Further documentation of my comments are available on request, there simply wasn't time to include them here.

Sincerely,

A handwritten signature in cursive script that reads "Stuart D. Waymire". The signature is written in dark ink and is positioned below the word "Sincerely,".

Stuart D. Waymire

COMMENTS ON:

REPORT OF THE SECRETARY OF ENERGY ADVISORY BOARD TASK FORCE ON RADIOACTIVE WASTE MANAGEMENT

Prepared by: Stuart D. Waymire (a private Nevada citizen concerned with enhancing levels of trust regarding the Yucca Mountain Nuclear Waste Repository)

The draft report of the Task Force on Radioactive Waste Management (TFRWM) provides a broad analysis of the problems DOE and its contractors face in sustaining public trust in their implementation of a nuclear waste management program as well as a prescription for improving trust for these organizations in the future. [While much of the report is to be commended, it overlooks the fact that a major cause of public distrust of DOE in Nevada regarding the Yucca Mountain project, is the Nevada Nuclear Waste Project Office (NWPO) itself, which has explicitly manufactured public distrust for ideological and political reasons.]

The following paper will attempt to document the systematic attempts by the staff of NWPO to poison cooperation between DOE and the citizens of Nevada, and describe the driving forces behind this disruption. NWPO's ulterior political motives have reduced their objectivity regarding the disposal of nuclear waste and the agency is no longer concerned with guaranteeing the safety of the Yucca Mountain site and mitigating the effects on the population. Rather, NWPO is engaged in forwarding a political agenda which may eventually foreclose any cooperation between Nevada and the Federal government, not only in the area of nuclear waste but on most technological issues..

The purpose of this paper is not to whitewash DOE's own problems in maintaining public trust, their miscues and mistakes are well documented and discussed by TFRWM and others and solutions to these problems are welcome. [What we wish to demonstrate is that DOE is operating under special conditions in Nevada without precedent and that the good faith suggestions given by TFRWM in its report may not lead to successful enhancement of trust despite the best efforts of the DOE to do so.] Progress may be made, however, if the Nevada NWPO is simultaneously held to some of the same trust enhancing standards as proposed for DOE.

There are three important questions which need to be posed:

1) Are there any conceivable actions (scientific, managerial, organizational, etc.) that DOE can take that will improve the condition of trust between itself and the Nevada Nuclear Waste Project Office. If there are no reasonable measures that can be exercised to improve conditions, then attempts to mollify state opposition may be moot.

2) Are there any levels of proposed monetary compensation to the State of Nevada that

its politicians will accept to offset the impact of Yucca Mountain. If not, this suggests the state's motives in opposing the site are political in nature and not likely to ever be influenced by enhanced trust levels.

3) Is NWPO's mandate to conduct scientific oversight, or is it to run an anti-nuclear opposition campaign? If their mandate is the later, it is unlikely any degree of effort by DOE to alleviate problems between itself and NWPO will achieve viable results because NWPO's mission and reason for existence is opposition to nuclear energy in general.

Robert Loux, the executive director of the NWPO, has repeatedly made clear his view of what his agency's purpose is: namely to oppose at all costs the study and development of the Yucca Mountain nuclear waste repository. Since the State and its representative are committed to opposing Yucca Mountain *no matter what the scientific evidence*, it would be futile to try and change DOE's behavior without also looking at the conditions under which the department must operate within the State of Nevada

The entire premise of the TFRWM report is that there exist good-faith mechanisms for increasing cooperation between the DOE and Nevada's agencies, politicians and the citizens they represent. However, NWPO is not only emotionally locked in opposition to Yucca Mountain (a condition that might respond to trust enhancing measures), but is also *ideologically* locked in opposition. If the later is the case, then there are no means by which DOE's trust quotient can be raised to reasonable levels. [This leaves two options:

- 1) Completely abandon trust enhancing efforts, or
- 2) Ignore NWPO's input and sidestep Nevada's oversight.

C

Neither of these options is desireable, however given a choice it is believed jettisoning NWPO is a far more favorable option that for DOE to withdraw into a bunker mentality.]

ORIGINS OF DISTRUST

The actions of three main contingents within the Nevada Nuclear Waste Project Office are especially worrisome:

- 1) Socioeconomic studies section.
- 2) Leadership of NWPO.
- 3) Public Relations and lobbying groups within NWPO.

There are also two external issues that bear watching:

1) NWPO's incestuous ties with environmental special interests and a local advocacy group called Citizen Alert (sharing a graphic artist and even allowing Citizen Alert to publish a critical NWPO report on the Air Force nuclear rocket proposal as its own).

2) The political climate in Nevada, in which NWPO is used as a weapon against citizens who might have an open mind about the Yucca Mountain project.

In synergy, these factions surrounding and within NWPO have pursued a proactive disinformation campaign against DOE designed to destroy the trust in that federal agency. We'll address these concerns in order.

SOCIOECONOMIC STUDIES

The main contractor for socioeconomic studies for NWPO was Mountain West of Tempe Arizona. The fact that almost all the \$15 million dollars in socioeconomic funds spent to study impacts were done out of state (as was the peer review) indicates the likelihood that the best interests of Nevadans were ignored by NWPO in designing the socioeconomic studies. Even the socioeconomic peer review board hired by the state disagreed with the overtly rigged studies, but its opposition was purposely muted and its meetings eventually closed to the public. The fact that the socioeconomic studies were biased to promote a political agenda that relies on the distrust of not only DOE but technical institutions in general is unfortunately compelling.

By the bulk of reports done for the NWPO, we see the prime mover behind the socioeconomic studies was one Roger Kasperson of Clark University's Center for the Environment, Technology and Development (CENTED, directed by Kasperson). The contents of a paper called "Participation, Decentralization and Advocacy Planning" written by Kasperson in 1974 shows the direction NWPO has taken under guidance of its socioeconomic researchers:

"A third general objective is more self-consciously radical than the preceding ones. Some proponents of decentralizaation believe it to be a means for creating territorial power bases from which to contest established power erlite. This notion has its roots, of course, in the revolutionary experience of Communist China and the "city and country" model of world revolution. Decentralization, in this view, is a vehicle for political mobilization, a strategy for creative countervailing force, a force for democratization. Milton Kotler, for example, argues

The radical task which the left must undertake if it is to assist democratic revolution is to challenge the very concept of nationalism and central control. To be radical, intellectual and physical force must accord with the original phenomena of revolution - local insurrection and local control - within which structure democracy can flourish. The left must develop and articulate a theory of local sovereignty.

and also from Kasperson in 1974:

"To enable individuals to shed their dependency, future planners and social scientists

cannot deal with local issues in a vacuum. Reactive, directed advocacy can no longer lose sight of long range political, social and economic goals, lest (as with the antipoverty program) it become simply another form of "political perversion".

and:

"It is time for reconstruction to begin. But major social revision will require commitment to a set of alternative values and a search for institutions to realize them. Because this process will challenge establish vested interests, each advance will only further escalate the resistance. The outcome will not be decided over sherry."

Kasperson evidently went looking for a revolution and found the nuclear waste issue to be the perfect testbed for his decentralist theories as they evolved from Marxist / Maoist dogma into Rawlsian anarchism. Nevada was the perfect guinea pig for this social scientist to prove his ability to manipulate the political process. In so doing, Kasperson and his co-workers sabotaged trust within Nevada as they manipulated their socioeconomic results to suit their political ends. In the process, they committed the cardinal sin of science, becoming a proactive part of their own social experiment.

There is little wonder that DOE is distrusted in Nevada after a corrupt socioeconomic experiment attempted to impose a politically correct Marxist/Maoist/Decentralist perspective on Nevada. In fact, all findings of the state's socioeconomic studies are suspect and the entire \$15 million in socioeconomic research done by Mountain West is in essence wasted.

In reality, the socioeconomic studies done for the state have become the primary vehicles for inflating fear, mistrust and suspicion of DOE because these fit the Maoist/Marxist/Decentralist/Rawlsian paradigm of the political geographer Roger Kasperson who sees technology as being distant from man. While this makes for great academic philosophy, it does not go to the heart of the matter at Yucca Mountain which is whether the technology will actually work.

LEADERSHIP OF THE NEVADA NUCLEAR WASTE PROJECT OFFICE

Robert Loux, as director of NWPO, is a dedicated anti-nuclear advocate who has used his bully-pulpit to sow distrust of the Department of Energy at every opportunity. For example, after a series of earthquakes rocked Yucca Mountain but caused only superficial surface damage, DOE representatives attempted to explain that earthquakes have only minor impact on subsurface facilities. In an interview with Roger O'Neil of NBC News July 22, 1993,

Loux had the following to say about the claims made by the respected scientist, Dr. Bruce Crowe:

"Well it proves one point, that DOE is going to be willing to say or do anything.

It reminds me of the old story about the optimist and the pessimist. When you throw the optimist into a room full of horse manure, he's the one looking for the poney. And I suspect DOE is trying to find the poney at Yucca Mountain."

Mr. Loux, it turns out, is a former high-school teacher who has no technical expertise but was politically appointed to his position for the express purpose of derailing the Yucca Mountain Project. His repeated attempts to undermine trust in DOE are transparent but effective, in fact his job depends on his being able to spread disinformation about DOE. Loux's close ties with the local protest group, Citizen Alert, consequently come as no surprise, and are in fact emblematic of the reality that NWPO is being used by special interest groups to destroy trust in the Department of Energy and its contractors at Yucca Mountain

Mr. Loux has purposely skirted the Code of Federal Regulations to staff NWPO with anti-nuclear factions. Most contracts for NWPO are let without Requests for Proposals or competitive bids specifically so anti-nuclear advocates can be paid to work for the state. This would not be so bad if these advocates were Nevadans, but the staff is instead hired from national interest groups who have no stake in Nevada's future.

As an example of a larger problem of non-competitive bids awarded to anti-nuclear protestors whose specific purpose is to create distrust of DOE, we offer the following letter from Judy Treichel (now a NWPO subcontractor awarded her \$150,000 per year bid by fiat from Bob Loux) to Bob Loux describing how she is trying to fool Nevada DOE project director into believing she can be an unbiased information officer.

Judy Treichel
Las Vegas, Nevada 89108
7-4-86

Dear Bob,

Here's the sort of stuff Bob Dickinson tosses into the weekly publication that goes to all So. Nevada. contractors. It makes me crazy every year when we renew our subscription but you really need to know what's printed in here and there's no good substitute.

In this article he uses strange logic. The first paragraph says that we don't want govt. handouts or interference. To achieve that we would take the nuke waste for the govt. He places the govt. where he wants it - like it has nothing to do with our test site. Wilderness projects restrict us, but nuke sites don't!

Dickinson's group hasn't had any public functions for long time. I think the "fact" bank was the last correspondence. However, in the local papers pro-waste letters to the editor have been frequently appearing. I have lots of stuff I want to write to the papers but I don't dare do that while my proposal is grinding its way through Don Vieth's

red tape.

I met with Don last week. He took the proposal and letters and I am to call on Monday and see where we are. I think it will be a long negotiating process.

Thanks so much for your letter. It was great and should really help. The piece you wrote for the paper was good and I'm trying to see what I can do with it, without rocking the boat on my proposal. I'll let you know.

Till Next Time -

Judy

According to the Code of Federal Regulations, 10 CFR 600.436, section c

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 600.436. Some of the situations considered restrictive of competition include but are not limited to:

(iv) Non-competitive awards to consultants that are on retainer contracts.

Judy Treichel was brought in specifically by Loux on a non-competitive bid because Treichel is a Test Site protest organizer (Citizen Alert, Clergy and Laity, Nevada Desert Experience, etc.) with long experience in provoking confrontation with DOE. There was competition for the informational services that Treichel provides through her Nevada Nuclear Waste Task Force, but as the above letter shows, no competition was allowed for this post because Loux and Treichel were in collusion.

ILLEGAL PUBLIC RELATIONS AND LOBBYING EFFORTS

NWPO has also repeatedly ignored Federal regulations prohibiting the use of funds for public relations and lobbying. In fact, substantial funds have been spent by NWPO, both openly and through diverted funds, to promote public distrust of DOE, taking advantage of sophisticated public relations and lobbying professionals.

LOBBYING EFFORTS

Murphy, M.R. & Davenport, J.H.
Sutherland, Asbill & Brennan

TOTAL \$60,000

Tillson, D

TOTAL \$144,000

Peck, D.R.

TOTAL \$30,000

Phillips, F. J.

TOTAL \$97,000

Afton & Associates

TOTAL \$55,000

GRAND TOTAL \$315,000

PUBLIC RELATIONS EFFORTS

Joy Hamann Advertising

TOTAL \$170,000

Nevada Nuclear Waste Task Force

TOTAL \$1,278,889

Kamer and Singer

TOTAL \$90,000

Robert Loux, NWPO's director, claims their lobbying and P.R. efforts are strictly informational, but this is hardly the case. What is in fact being waged by NWPO is a sophisticated psychological campaign designed to destroy DOE's credibility, ironically paid for with nuclear ratepayer funds.

INFLUENCE OF THE ENVIRONMENTAL MOVEMENT

Were DOE's trust problems due strictly to local considerations, these problems would be surmountable. In reality, there is a national environmental movement whose main overriding goal is to shut down all nuclear technology. These forces have invaded Nevada and through their close ties with NWPO have worked overtly and covertly to destroy DOE's credibility.

Among the groups fighting Yucca Mountain are the Safe Energy Communication Council, Greenpeace, Sierra Club, Public Citizens, Citizen Alert, Friends of the Earth, American Peace Test, Hundredth Monkey, Don't Waste U.S., CAN-WIN, ad infinitum. The key is that these groups do not represent Nevadans, but are part of a well-funded national political movement.

Many of the environmental activists have as their primary goal shutting down weapons testing, but view Yucca Mountain as a related issue because of the plutonium contained in nuclear waste. Consequently, the peace groups are not motivated to protest so much by distrust of DOE, but because of the larger political question surrounding nuclear disarmament. For propaganda purposes, the peace movement needs DOE to be viewed as a tyrant. These groups will never be favorable to DOE's efforts at Yucca Mountain no matter what levels of trust are cultivated.

But how representative are the protest groups for what is good for America? A flier from Citizen Alert show their aims are extreme:

FUNDAMENTALS OF NUCLEAR WASTE MANAGEMENT

1) No acceptable disposal method for nuclear waste exists. Proposed methods will not dispose of the waste, only postpone contamination of the environment.

2) No level of radiation exposure is safe. Every dose carries a risk of damage. Epidemiological studies into cause/effect relation of radiation and health are premature and inconclusive. We need baseline health profiles for any community which has an existing or planned nuclear facility so we can start gathering

information.

3) Radioactive waste is radioactive waste. The distinction between types and levels, such as high level, low level, transuranic, etc., are artificial and arbitrary and should not determine handling procedures. All radioactive material should be treated with the same care.

4) Our present inventory of nuclear waste should be isolated in retrievable, aboveground facilities which are as durable as we know how to make them. All necessary political, social and financial arrangements should be made to ensure, to the best of our ability, its careful guardianship.

5) Existing nuclear waste should not be moved; it should be isolated on-site in retrievable facilities. Exceptions may have to be made in rare cases where not even a carefully designed, retrievable facility is able to secure public health and safety; for instance when waste is located on an active earthquake fault or flood plain.

6) No more waste should be created . . . from weapons, from electricity generation or from industry. Wastes from nuclear medicine are a miniscule portion of the radioactivity of our waste stream. Their disposal poses a manageable problem because of their short half lives and low concentrations; they can be tolerated until reliable substitutes can be found.

The depth of Citizen Alert's scientific naivete and their alarming brand of apocalyptic environmentalism are displayed rather boldly by the preceeding position paper. What on the surface may seem to many to be admirable concern turns out on inspection to be revolutionary and more than a little bit daffy:

1) While it is true nuclear waste cannot be made instantly benign and does require millenia to degrade, contamination of the environment is no more inevitable nor dangerous from radioactive waste than it is from other artifacts of civilization. Coal plants spew by far more Uranium, Thorium, Carbon 14 and other radioactive substances into the atmosphere than the nuclear industry. Radioactive waste from nuclear energy production is compact, solid, traceable (even a cheap geiger counter can detect a leak) and can be isolated permanently from the environment in geologic repositories, unlike other energy sources whose pollution is spread around the globe.

2) If Citizen Alert truly believes no radiation level is safe, then they should protest human exposure to the sun, television sets, airline travel, out door cosmic ray exposure, x-rays, cigarettes, and their own skeletons, which are all sources of radiation (more on this in later chapters).

3) All radioactive waste does not have the same intensity and biological effect, that's why there is the special measurement called the rem used to distinguish different intensities of biological exposure. All radioactive waste should NOT be handled with the same care, it is lethal to handle spent fuel direct from a reactor, yet the minute amounts of Carbon-14 caused by cosmic rays striking nitrogen in the air is not something we even consider a waste and would never consider isolating.

4) Above ground storage is NOT safer than geologic storage. As for the statement "All necessary political, social and financial arrangements should be made to ensure, to the best of our abilities, its careful guardianship", in reality they are calling for a totalitarian Green police

state, though this may not have occurred to Citizen Alert in quite those words.

5) If Citizen Alert considers radioactive waste so deadly, why would they endorse on-site storage when this statistically increases the risk of exposure by the population? As we've seen before, on-site storage makes sense only if the true objective is decentralization, a political dogma born of the deep-ecology anarchist movement and not from any concern for the safety of Nevadans or Americans in general. As for the rare case exceptions, just about every major nuclear power plant is near some combination of rivers, faults, oceans or other critical areas which makes Citizen Alert's own point moot.

6) "No more waste should be created. . ." This is a fine sentiment, but the problem is hardly limited to nuclear waste. Every industry, even the protest industry, creates waste (everything from spent fuel to discarded protest posters). Relatively speaking, however, nuclear waste as contained at Yucca Mountain will be environmentally benign compared to other energy industries and the chemical industry. As for radioactive nuclides being replaced in medicine, this is highly unlikely unless we wish to return to invasive procedures with sharp scalpels in everything from cancer treatment to medical imaging.

Consequently, the suspicion is that the environmental movement in Nevada distrusts not only DOE, but any technological institution, no matter what the benefits of that technology might be.

POLITICAL CONSIDERATIONS

Finally, there are political considerations in Nevada which make increasing trust in DOE problematic. Nevada Senators Bryan and Reid, Governor Miller and the head of the Nevada Nuclear Waste Commission, former governor Grant Sawyer, are all lawyers. Each has spent a lifetime in politics, and none have any technical background. To these politicians, Yucca Mountain is a vote getter, they have little concern for establishing or maintaining trust with DOE.

In fact, because they value this issue so much, the Nevada political elite have given Robert Loux a sinecure at the Nevada Nuclear Waste Project Office specifically to oppose Yucca Mountain, no matter what laws he breaks or what truth he hides. As Senator Bryan implied, nuclear waste would come to Nevada only over his dead body.

Consequently, because there now exists a political monopoly in Nevada which thrives on bashing DOE, and specifically promotes disinformation through their own \$5 million per year agency (NWPO) designed from scratch to propagandize against nuclear technology, there

is little wonder DOE is distrusted in Nevada and the wonder is that it has retained its integrity at all under these trying conditions.

CONCLUSIONS

While it may not be possible to change all the adverse conditions faced by DOE in its efforts to "do the right thing" regarding the siting of the nuclear waste repository, there is one development which might make life easier for all concerned.

In the spirit of the TFRWM suggestions on how DOE can improve its trust level, it is proposed that the Nevada Nuclear Waste Project Office be held to the same standards. Unless NWPO is subject itself to normal rules of conduct, DOE must be prepared to fulfill its mandate despite local opposition and manufactured distrust. This is certainly not an optimal way to conduct research since it implies a broken feedback loop, yet it may not be physically possible for DOE to increase trust levels given NWPO's aggressive and well funded opposition and its radical ideology.

The feeling is that we should "bring NWPO home". The Nevada university system and local contractors must be relied on by NWPO to provide the substantial part of research, just as DOE should rely on local talent. NWPO's scientists should meet the same high standards of competence as DOE and be ready to answer for their actions. NWPO needs to restore trust as much as DOE.

To bring this about, no better guide exists than the TFRWM suggestions already developed for DOE. With simple modifications (as presented following) perhaps a level of trust can finally be achieved in Nevada regarding the study of the Yucca Mountain nuclear waste repository.

NEVADA NUCLEAR WASTE PROJECT OFFICE POLICY REFORM

TO ENHANCE TRUST IN NEVADA

INTERACTIONS WITH EXTERNAL PARTIES

The Nevada Nuclear Waste Project Office should strive to give all citizens and their representatives, whether for or against Yucca Mountain, a sense of involvement and fairness in negotiating the terms of their relationship. In General, NWPO should commit itself to:

- * Broaden its reach beyond environmental special interest groups to include continuous involvement of DOE, local pro as well as anti Yucca Mountain groups, and advisory bodies composed of Nevada's professional engineers, university faculty, business leaders and even national nuclear trade organizations.

- * Active, periodic presence of very high level NWPO leaders making them visible and accessible to citizens and their representatives.

- * Assuring the availability of negotiated benefits for the community along with resources that might be needed to detect and respond to unexpected costs.

- * Consistent and respectful efforts to reach out to DOE and pro-Yucca Mountain community leaders and to the general public for the purpose of informing, consulting and collaborating with them about the technical and operational aspects of NWPO activities.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS NWPO

1. To provide information fully and rapidly, NWPO should

- * Release any NWPO generated material that has been shared, even informally, with any other non-governmental organization.

- * Disseminate without exception information about past practices that may raise questions about potential political and economic activities.

2. To ensure that programs speak consistently to Nevada's citizens, NWPO should

- * Publish on a regular basis, perhaps every six months, a summary of major positions that represent program policy.

- * Indicate how activities carried out since the last report have been either consistent or inconsistent with those positions.

3. To improve the quality of its interaction with all Nevada citizens, whether for or against Yucca Mountain, NWPO should

- * Include training that stresses the importance of candor and the differences between "one" and "two" way communications.

- * Make career advancement and promotion dependent on successful demonstration of the capability to interact positively with a wide range of sectors in the public, including contingents favorable to Yucca Mountain.

- * Establish mechanisms to solicit and incorporate feedback from various sectors, both pro and con, on the training program's effectiveness.

- * Require NWPO contractors to conduct equivalent training for their employees. Their performance evaluations and awards would be structured to include contributions to the overall public involvement effort.

4. *To make public involvement a means for creating partnerships, NWPO should*

- * Develop initiatives to ensure that a broad range of stakeholders, pro Yucca Mountain as well as anti, are involved in the decision-making process beginning at the pre-decisional stage and continuing through NWPO'S ultimate policy implementation.

- * Create and rigorously enforce procedures that produce thoughtful and specific responses to public comments.

- * Obtain and use advice from citizens and DOE about what policy alternatives should be analyzed and evaluated.

5. *To make NWPO's scientific work even more credible, it should*

- * Expand to the maximum extent possible NWPO's peer review network to include experts from within Nevada.

- * Jointly design and conduct experiments and share data at the earliest possible time with teams from DOE.

- * Seek authorization for joint auditing of NWPO's quality assurance programs.

- * Be prepared to "bend over backwards" to address and resolve, if possible, plausible scientific arguments that might arise over the life time of the waste management programs that are favorable to the project.

- * Allow DOE and its subcontractors to nominate, subject to negotiated preconditions, individuals who would participate in exercises that elicit "expert judgements" that are often employed in safety and risk analyses.

- * Clarify carefully and publicly the reasons when advice from technical overseers, such as University of Nevada Las Vegas, University of Nevada Reno and Desert Research Institute are not accepted.

6. *To empower Nevada's citizens, affected communities and tribes, and citizen groups, NWPO should*

- * Offer pre-decisional involvement that includes review of methodology, data validity, and premises underlying analyses.

- * Scrupulously comply with all Federal regulations that are administered even-handedly, specifically FAR and 10 CFR 600-436 regarding limits on public relations lobbying and the need for competitive bidding on contracts..

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED BY NWPO

1. *To make sure a stakeholder in the Nevada community is served, NWPO should*

- * Expand the local presence of key decision-makers so as to ensure greater public access to them.

- * Require full-time residence for all employee, contractor personnel and consultants working on the project for the State of Nevada.

- * Favor local industries and firms as sources for supplying consulting services to NWPO.

- * Obligate the providers of research to live as near as possible to Southern Nevada.

2. *To further become a good citizen in the area where it is overseeing the repository, NWPO should*

- * Make good faith efforts to keep all commitments made even if that might facilitate the Yucca Mountain schedule.

INTERNAL OPERATIONS AND PROGRAMMATIC CHOICES

When the various segments of the public gain access to programs, they should discover internally activities that increase institutional trustworthiness, not decrease it. In general, NWPO should commit itself and require its contractors to:

- * Maintain a high level of professional and managerial competence, continually honed by rigorous training in the technical field for which they were hired.

- * Develop tough internal process for reviewing and discovering internal processes open to all Nevadans.

- * Reward honest self-assessment, even if it is critical of NWPO.

- * Establish and meet technical performance measures that are dictated by the project's intrinsic scientific requirements.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED ACROSS NWPO.

1. *To promote a "new non-confrontational culture" within NWPO, it should*

- * Consider the deployment of "truth and confidence" tiger teams that would regularly evaluate how different units performed.

- * Disseminate experientially derived "best practises" for building and sustaining trust.

2. *To ensure that the public trust and confidence implications of critical NWPO activities have been properly identified and weighed, NWPO's director should*

- * Order that any analysis of policy options presented to him or to staff include an explicit assessment of the impact on trust and confidence for various segments of the public.

- * Support efforts to increase the objectivity of those assessments over time.

- * Require a sound explanation for the recommendation of an option that is likely to substantially weaken the trust and confidence of any significant segment of the public, even those who are pro Yucca Mountain.

- * Publish that explanation along with a plan for mitigating the causes of lower trust and

confidence.

- * Review the predicted effects for degree of consistency with actual public reactions. Publicize such reviews both for internal managerial purposes and public understanding.

3. To ensure that organizational dysfunctions are not responsible for decreased institutional trustworthiness, NWPO should

- * Institute overlapping self-regulatory processes.

- * Reward the discovery of error.

4. *To ensure that central and crucial technical issues are well ventilated, NWPO should*

- * Create competing teams of technical and scientific experts to peer review each others' work. (Faculty at a Nevada university should perform this role.)

- * Make their critiques public.

- * Provide incentives (resources, prestige, etc.) if they persuade the broader expert community of the soundness of their arguments.

SPECIFIC MEASURES AND POLICIES THAT MIGHT BE ADOPTED BY NWPO

1. *To demonstrate its commitment to taking into account the interests of the citizens of Nevada, NWPO should*

- * Undertake public and private initiatives to initiate a dialog with DOE officials.

- * Be forthcoming with respect to what they seek, but offer as part of the bargain appropriate conduct from the State into the relationship.

- * NWPO should not condition its offer on the DOE dropping its support for characterization of the Yucca Mountain site.

2. *To acknowledge by deeds that the "first-of-a-kind" nature of Yucca Mountain requires special attention to public trust and confidence, NWPO should*

- * Aim to help DOE design a repository system whose predictable performance exceeds by a substantial margin the standards set up by regulators.

- * Help assure performance claims made to the public are accurate.

- * Not promote the mistaken impression that Yucca Mountain is beyond the experimental mode.

3. *To acknowledge the symbolic and real barriers to trust and confidence that arise when NWPO inflates the dangers of the repository beyond reasonable, NWPO should*

Support the research and development of Yucca Mountain as well as alternative technologies for disposing radioactive waste.

- * Acknowledge that the primary driving force behind the Yucca Mountain program is the need to solve a serious national problem, not an attempt by DOE to "Screw Nevada".

Stuart Waymire

Affiliation not mention, although comments were expressed-mailed by
    Oram, Ingram, and Zurawski, a public relations firm working for
    the American Nuclear Energy Council
Las Vegas, Nevada

No date

A. The Task Force believes that no single factor is predominantly responsible for the lack of public trust and confidence in DOE's operations in the state of Nevada. It does not dispute the claim that, in a highly charged political environment, partisans will present their cases in ways that can advance their interests. They will emphasize issues that appear to resonate with large segments of the public. By focusing on the question of trust and confidence, the Nevada Nuclear Waste Project Office may have also caused a further decline in it. See pages 37-38.

B. The Task Force agrees that even faithful implementation of all its suggestions does not guarantee an increase in public trust and confidence. See the discussion on pages 60-61.

C. The Task Force agrees that DOE should not "abandon its trust enhancing efforts." But to ignore input from an important stakeholder and to sidestep the state's oversight responsibilities and authorities almost certainly will doom those efforts.

The Task Force expressly wishes to dissociate itself from the personal attacks leveled in these comments.

PRINCIPLED NEGOTIATIONS, INC.

March 11, 1993

Dr. Daniel Metlay
SEAB Task Force on Radioactive Waste Management
1000 Independence Avenue SW
Washington, DC 20585

Dear Dan,

Thanks for the Draft Final Report. It represents dedication to fulfilling Admiral Watkins' charge and has brought forth a grand comprehensive list of ideas that must be studied by the new Secretary and her entire leadership team. The training programs recommended need to be installed and followed through by an Assistant Secretary. The report will serve the new Secretary well despite the skepticism of an academic and intellectual analysis that colors the document.

Even as a pragmatic idealist I perceive the responsibility and success of your recommendations will be difficult and of long duration; however, "faith is the substance of things hoped for, the evidence of things not seen."

Congratulations on the success of the Task Force.

Cordially and sincerely,

ARNIE

Arnie Wight

P.S. I've sent Tom Grumbly (nominated as an Assistant Secretary of Energy) a copy of your report and "Ensuring Public Trust and Confidence" from the National Academy of Public Administration.

Arnie Wight
President
Principled Negotiations, Inc.
Amherst, New Hampshire

3/11/93

No substantive suggestions for improving the Draft Final Report.