

A LOCAL GOVERNMENT PERSPECTIVE ON INTERGOVERNMENTAL RELATIONS AT THE YUCCA MOUNTAIN PROJECT

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Background

Clark County, Nevada covers 8,000 square miles (about the size of New Jersey) and includes the city of Las Vegas. Its population of over 2 million represents 70 percent of the State's population and its economy is 70 percent of the State's economic base. It depends almost exclusively on recreational tourism and receives 40 million visitors annually.

Clark County Commissioners have steadfastly opposed the Yucca Mountain Project since 1985, out of concern about possible transportation or disposal incidents that might affect the tourist trade. The County's position is supported by surveys of Clark County residents that have consistently shown 75% opposition to a repository at Yucca Mountain.

Clark County is an "affected unit of local government", as defined in the Nuclear Waste Policy Amendments Act of 1987. The County receives an annual appropriation from Congress to study and comment on the DOE's program; analyze, monitor, and report on potential impacts; conduct public involvement and outreach; coordinate efforts with cities and tribes; and participate in the licensing proceeding.

Introduction

While good science and technical proficiency are the keys to successful development of a nuclear waste disposal system, the siting of a nuclear waste facility depends equally on public confidence in the safety of the facility and the competence of the managing agency. Technical expertise cannot substitute for lack of public confidence. Both are essential components of a nuclear waste disposal system, and require equal attention from policy-makers, planners and implementers of such a system. The key lesson to be learned from the Nevada experience is that public acceptance of a siting process is an essential ingredient for success of any nuclear waste storage or disposal system.

Too often scientists and engineers believe that the only real challenge of a disposal system is to meet an acceptable standard of safety through a competent assessment of the containment capabilities of a site. They often overlook, or dismiss as irrational, the concerns of people who live and work near the site and the transportation routes, and sometimes attribute objections to a lack of knowledge or understanding of complex technical processes. The responses of citizens and the local and state governments that represent them are, however, quite rational and deserve consideration from implementers of nuclear waste disposal systems.

Community Relationships

There are three elements of a successful relationship with a potential host community.

1. Respect for the concerns of the community
2. Acknowledgement of the potential health and safety risks of the facility
3. Acknowledgement of the potential economic risks or benefits from the facility

It is sometimes suggested that the public's fear of radiation risks may be out of proportion to the risks of other hazardous materials that are generally tolerated by communities. However, such fears are not irrational given the potential for destruction that was demonstrated by the use of nuclear weapons in World War II. The peaceful use of nuclear power and the management of nuclear wastes continue to elicit fear of radiation releases in a substantial segment of society. Fear of radiation has been reinforced by accidents at Three Mile Island and Chernobyl, which, in the latter case, resulted in extensive immediate and long term damage to people's health and the environment.

The risks of radiation exposure are also held to be unacceptable by insurance companies that have consistently refused to cover nuclear risks. Even homeowners' policies specifically waive responsibility for such risks. In the absence of commercial coverage, the insurer of last resort is not Lloyds of London, but the United States Government in the form of the Price-Anderson Act, which provides limited liability for nuclear accidents.

The private capital market is no more sanguine about nuclear risks than the insurance market. Wall Street banks have insisted on government guarantees of loans to support the construction of new nuclear power plants in the United States. No bank will extend credit without such guarantees, and Congress is currently debating the expansion of government guarantees from \$18 billion to \$54 billion in the FY 2011 appropriations process. Another example most relevant to Nevada's economy is that the major resort hotel casinos on the Las Vegas Strip have been required to list Yucca Mountain as a potential risk factor in their SEC filings, with potential effects on the investment climate. No commercial property along the Las Vegas Strip is insured against nuclear accidents.

Failure to acknowledge community concerns can lead to political resistance and public demonstrations. Nevada has a long history of demonstrations related to nuclear issues at the Nevada Test Site. In 2001 more than 600 people came to a DOE hearing on the

Yucca Mountain Site Suitability Report. There were major public protests at some of the Second Repository sites (e.g. Wisconsin, New Hampshire). In Germany, at the site of a transuranic waste storage facility, the entire facility was surrounded by a 30 foot high fence and a nearby field was designated for “our protesters”.

In Nevada, the creation of Affected Units of Local Government (AULGs), authorized in the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, has had a dampening effect on public protests aimed at Yucca Mountain. Local governments in general are trusted more than higher levels of government, and an actively engaged local government can help to create confidence that the potential health, safety, economic, and environmental impacts of the repository are being evaluated. The absence of such structures is more likely to result in violent protests, as citizens fear that their concerns are not being heard.

Clark County has developed a comprehensive program to monitor developments at the Yucca Mountain repository, to identify potential social and economic impacts, to comment on U.S. Department of Energy plans and documents, and to inform its citizens. In administering this program, Clark County has made every effort to carry out its mandate for protecting the health, safety and economic welfare of its citizens, while recognizing and respecting the mandate of federal agencies responsible for implementing the repository program.

Public acceptance of nuclear waste disposal systems can be a struggle between risk and reward. When mishaps occur, as at Chernobyl or TMI, the public at large becomes more fearful of nuclear systems. When there are long periods without events, people locally think more about jobs and economic benefits to the community, while people nationally are inclined to respond to storage and disposal proposals in terms of “Not In My Back Yard” (NIMBY). People also are concerned about the risks of transportation accidents, despite the fact that small nuclear waste transport campaigns have largely been accomplished without risk to the public. It is unclear whether the same standard of safety can be maintained during much larger and longer distance campaigns to a repository, but the first 11 years of shipments to the WIPP site in New Mexico have been accomplished without serious accident or releases of radioactive materials.

The WIPP transportation campaign is a good example of a meaningful response to citizen concerns. Before the shipping campaign began in 1999, the City of Santa Fe insisted on a bypass being constructed for trucks traveling from Los Alamos to the repository site near Carlsbad. Santa Fe also negotiated an agreement to limit shipments on city streets to the hours of 12AM to 5AM, to avoid congestion with local traffic. South of Santa Fe, the Los Alamos shipments converged with those from Hanford and Idaho Falls, which were not subject to time of day restrictions. Shipments were to start through a community of 7000 people, but road construction was not completed to expand a two lane road to four lanes. Negotiations with the Department of Energy resulted in an agreement to limit the arrival of shipments at the construction zone to times outside the morning and evening rush hours. When shipments began with police escorts, they were initially met by

demonstrators, but protests diminished over time in part because accommodations were made with the community to address the most immediate transportation risks.

Political Resistance in Nevada

Surveys by the State of Nevada and Clark County have consistently revealed that over 70 percent of Nevada citizens are opposed to the siting of a nuclear waste facility at Yucca Mountain. Outsiders visiting the site see the immense open spaces and dry environment and, like one visiting legislator from Rhode Island in the 1980s, exclaim that “This would be a perfect place to bury nuclear waste”. Nevadans themselves have supported the Nevada Test Site’s (NTS) contribution to national security, despite revelations that above ground tests caused cancer among down-winders and Test Site workers. Why then, it may be asked, did Nevadans turn against a repository that would be deep underground, sited on the edge of a nuclear weapons testing area that was already heavily contaminated?

First, Nevadans were skeptical because of the history of DOE safety assurances in regard to NTS. Above ground explosions would not harm anybody, said DOE, not even the soldiers who were positioned close to Ground Zero. Guidebooks published by the Atomic Energy Commission simply informed the public that, “Fallout can be inconvenient”. These assurances were later revealed to be false. Second was the history of DOE environmental contamination at Hanford, INEL, Rocky Flats, Oak Ridge, Savannah River and other defense sites, which are currently being cleaned up at a cost of \$6 billion a year to U.S. taxpayers.

Third, the Department of Energy adopted a set of guidelines for evaluating the suitability of the Yucca Mountain site, and then abandoned them when the site failed to meet the guidelines. DOE also insisted on a separate standard for radiation releases for Yucca Mountain, when it became apparent that the site could not meet the general standards established by EPA for WIPP and other repository programs.

A fourth reason was related to the type of waste and its place of origin. Although about 10 percent of the waste going to Yucca Mountain was to be defense waste, most of the waste destined for the repository was commercial spent fuel from reactors in the eastern half of the country. Nevada has no nuclear reactors and the benefits were not apparent to its people. They observed that all of the benefit from nuclear power accrued to Easterners, while Nevada was being asked to accept all of the long term safety hazards and environmental costs of disposal. A media cartoon in the 1980s showed a huge pipeline from the East Coast spilling nuclear waste into Nevada.

Fifth, and most important to Clark County, was the potential risk to the visitor-based economy of the region. Clark County has opposed the siting of a repository at Yucca Mountain because it cannot afford to have visitors deterred by reports in the media of possible transportation incidents or repository malfunctions. Clark County draws visitors from all over the world, and is very vulnerable to media reports that undermine visitors’ confidence in their safety at resorts in Las Vegas. Although there might be little actual

risk of personal harm, the perception of risk may be enough to cause cancellation of vacation plans in Las Vegas. The casino industry experienced major drops in bookings after the MGM hotel fire in 1980 and the Monte Carlo hotel fire in 2008. The economic consequences of the 9/11 attacks in 2001 were severe, with hotel reservations down 21 percent in the month following the attack, and hundreds of conferences cancelled. Approximately 20,000 people lost their jobs and economic losses to Clark County businesses were estimated in the billions of dollars.

Finally, Nevadans were incensed in 1987 when studies of three potential sites on the basis of comparative scientific merit were abandoned in favor of a political decision to consider only Yucca Mountain. This occurred at a time when Nevada was not represented on the key energy and appropriations committees, while competing sites in Texas and Washington were represented in leadership positions in the House of Representatives. As a result, an Appropriations Conference Committee decided, without Nevadans present, to focus exclusively on a single site at Yucca Mountain. The NWSA Amendments Act of 1987 became known as the “Screw Nevada bill”, and resulted in a bipartisan alignment of political forces in Nevada to oppose the repository. Nevadans felt betrayed by a flawed and unfair political process.

The DOE Response

The Department of Energy evolved from the former Atomic Energy Commission, whose mission was to expedite the implementation of a nuclear weapons program and subsequently the development of commercial nuclear power. The AEC culture, which valued achievement of the mission with only cursory attention to stakeholder concerns about health, safety and the environment, has been carried forward to succeeding generations of employees at DOE. With few exceptions, the DOE response to Nevada’s resistance to the repository has been to deny or minimize the risks of nuclear waste disposal and to attribute people’s fears to misinformation or ignorance of complex technical processes.

For more than 20 years, DOE acted as an advocate rather than an applicant, stressing the inevitability of the repository and belittling any objections. This attitude continued until broader concerns were raised by the Government Accountability Office (GAO) report on Uncertainties about the Yucca Mountain Project in 2002, the Nuclear Waste Technical Review Board conclusion that the DOE technical basis for site recommendation was “weak to moderate” in 2002, the Nuclear Regulatory Commission decertification of the DOE Licensing Support Network in 2004, and the revelations of falsification of data by the U.S. Geological Survey in 2005.

DOE largely adopted an attitude of “We know best because we have the technical expertise”. Clark County’s concern about perceived risk was not considered to be a legitimate socioeconomic impact at DOE in the 1980s and 1990s and found no mention in the Environmental Assessments of that period or in the Draft Yucca Mountain Environmental Impact Statement in 1999. The work of nationally recognized experts on

perceived risk, like Paul Slovic of Decision Research, was basically ignored until acknowledgement in the Final EIS in 2001.

With one significant exception, during the tenure of Ward Sproat as Director of the DOE Office of Civilian Radioactive Waste Management (OCRWM) from 2006-2008, the Department has consistently withheld support and respect for the oversight activities of state and local governments in Nevada. Nevada's political and public opposition to the repository has too often been seen at DOE as willful obstruction without sound basis in fact, with the consequence that few efforts have been made to listen to local concerns or to remediate them. At various times, DOE has:

- undermined public confidence in the siting process by changing its own guidelines for site recommendation when the Yucca Mountain site was unable to meet the existing guidelines.
- unsuccessfully defended in court its efforts to block Inyo County, California and Esmeralda County, Nevada from becoming Affected Units of Local Government. The Court over-ruled DOE leading to the creation of seven additional AULGs in California and Nevada.
- recommended a zero budget for AULG oversight in FY 2004 because it was felt that local governments would only use the funds to obstruct the progress of the repository;
- tried unsuccessfully to withhold a portion of appropriated funds for AULGs in FY 2000 because DOE itself had been under-funded by Congress;
- required annual work plans from each AULG to justify proposed expenditures, and, under the guise of exercising its fiduciary responsibility, denied approval for activities deemed outside the scope of AULG authority under the NWPA;
- initiated Inspector General audits of oversight programs at Clark, Nye and Lincoln Counties and demanded repayment of funds for activities previously approved by OCRWM under annual work plans;
- failed to pass through funds to AULGs during Continuing Resolutions until Congress acted;
- sought legislation unsuccessfully to preempt state and local regulatory authority and to remove the Department of Transportation as arbiter of transportation claims involving Yucca Mountain.

Only during the two year tenure of Ward Sproat as OCRWM Director was there genuine recognition of the critical role of state and local governments in the siting process. Under Sproat, the Department incorporated AULG budget requests as its own request to the Office of Management and Budget and supported these requests in the OMB review process. Mr. Sproat agreed to quarterly meetings with Affected Units of Government (AUGs) to talk about areas of concern to them, attended all of the meetings, and followed up action items identified by AUGs. He was open and transparent about DOE activities and problems. He earned respect from AULGs for his insistence that a quality license application be submitted to the Nuclear Regulatory Commission. Even so, the license application drew more than 300 contentions from state and local government interveners,

of which almost all were accepted for further review by NRC's Construction Authorization Board (CAB).

The NRC Response

The Nuclear Regulatory Commission has had a more amicable relationship with affected governments. When NRC learned in the 1980s that its role was seen in Nevada as being indistinguishable from that of DOE, it set out to make its own relationships with affected governments. Several commissioners made visits to Nevada to explain the regulatory responsibilities of their agency and their responsibility for review of DOE's technical work before a construction authorization could be granted. Subsequently staff made visits to individual counties to explain their function and to listen to local concerns. NRC held several "training sessions" to familiarize potential interveners with the licensing procedure. Both Commissioners and senior NRC staff made themselves accessible to delegations from the communities. The CAB accepted the vast majority of contentions submitted by interveners, despite the recommendations of NRC staff. This generally cooperative stance has contributed to a more productive dialogue with affected governments than has characterized relations with DOE.

The Congressional Response

Congress has vacillated in its response to affected governments since Congressman Morris Udall brokered a comprehensive approach to nuclear waste management in the Nuclear Waste Policy Act (NWPA) of 1982. The original NWPA incorporated a delicate balance between the needs of the nuclear industry and of other stakeholders, with provisions in Section 116 and 118 giving specific authority and funding to states and Indian tribes (and in 1987 to local governments) to carry out oversight of the repository siting process (see attached).

From 1995 to 2000, major efforts were made to rewrite the NWPA to expedite the siting process and constrain the rights of the State of Nevada and the AULGs. Each of these efforts foundered on the threat of, or the actual exercise of, a presidential veto. A further unsuccessful effort occurred at the request of the Bush Administration in 2006, which would have preempted state and local authority over the repository. Other proposals sought to remove the NWPA prohibition on the siting of an interim storage facility in the same state as the repository, and to allow interim storage at the Nevada Test Site. These efforts failed to gain traction in Congress.

In the 1980s, Congress was generally willing to support appropriations for the State of Nevada and other state oversight programs in Washington, Texas, Utah, Mississippi, and Louisiana. AULGs began receiving funding support in the late 1980s under the 1987 Amendments Act, but this ended abruptly upon the change of control in the House in 1994. The first Republican Energy and Water Development (E&WD) Appropriations bill in FY 1996 called into question the authority of DOE to pass through funds to the

AULGs, and DOE stopped all funding for the oversight programs. In FY 1997, Congress failed to fund the AULGs at all, but in FY 1998, Senator Reid of Nevada became Ranking Member of the E&WD Subcommittee and insisted on the restoration of funding for the affected governments. The House continued for several years to zero out the oversight programs, but in each case the appropriation was restored by Senator Reid in the Senate. Since FY 2001, both Houses of Congress have included funding for affected government oversight programs.

Over the years the list of provisos attached to the funding line item has grown (see attachment) to include prohibitions on the use of funds for litigation, or for lobbying of Congress or State legislatures, or for multi-state coalition-building activities. AUGs were required to certify that the funds were used for purposes consistent with the authority granted in the NWPA. More recently, other provisos prohibited DOE from monitoring or auditing AULG expenditures under the Act, or to pursue repayment of funds provided to AULGs that had previously been approved by DOE. Most importantly, the State and AULGs were specifically authorized to use funds for participation in the licensing proceeding, thereby clarifying confusion about the prohibition on litigation.

Recommendations

We ask the Commission to consider the following recommendations to enhance the siting process for future nuclear waste systems:

- That DOE be replaced by an agency that is not deeply rooted in the values and attitudes of the former Atomic Energy Commission;
- That the mission of the implementing agency be defined in both technical and institutional terms, with equal attention to resolving the scientific and engineering challenges and to addressing public concerns about the proposed facility;
- That affected governments be involved as parties to the siting decision with legitimate interests in the siting process.
- That safety be the guiding principle of the implementing agency, and that siting guidelines be developed in concert with stakeholders and adhered to by the agency, even to the extent of abandoning a site if it cannot meet those guidelines;
- That future siting efforts be guided by the principle of risk and reward, with clear benefits accruing to communities that are prepared to accept the risks of long term storage or disposal.
- That adequate funding be consistently provided to affected governments to undertake independent oversight responsibilities on behalf of their citizens, including identification of potential impacts from the facility, review of the implementing agencies' plans, programs and documents, and public outreach to citizens.
- That attention be given to the experience of other countries, where initial efforts to impose a site on local communities met resistance and had to be revised to include full engagement with a new set of communities (e.g. Canada, France, Germany, Sweden ,United Kingdom)

Attachments follow:

- Nuclear Waste Policy Act of 1982, as amended in 1987, Section 116(c), related to financial assistance for Affected Units of Local Government, pages 26-28
- Energy and Water Development Appropriations Act of 2010, related to funding for Nuclear Waste Disposal, pages 31-34.

(c) Financial Assistance.

(1) (A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 [42 U.S.C. 10137] or authorized by written agreement entered into pursuant to section 117(c) [42 U.S.C. 10137(c)]. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2) (A) (i) The Secretary shall provide financial and technical assistance to the State of Nevada and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b) [42 U.S.C. 10133(b)].

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3) (A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4) (A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 115 [42 U.S.C. 10135]; or

(iii) ~~the date on which~~ the Commission disapproves an application for a construction authorization for a repository at such site; whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under title IV.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

(d) Additional notification and consultation. Whenever the Secretary is required under any provision of this Act [42 U.S.C. 10101 et seq.] to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

[42 U.S.C. 10136]

CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

Sec. 117. (a) Provision of information.

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this subtitle [42 U.S.C. 10131 et seq.], and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation. In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 112(c) [42 U.S.C. 10132(c)], and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle [42 U.S.C. 10131 et seq.], the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement. Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c) [42 U.S.C. 10132(c)], or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) [42 U.S.C. 10136(a)] to the Secretary, whichever first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin

negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress. Such written agreement shall specify procedures—

- (1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;
- (2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;
- (3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;
- (4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 116(c) [42 U.S.C. 10136(b)] or section 118(b) [42 U.S.C. 10138(b)], as the case may be;
- (5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;
- (6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for

State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative. The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.
[42 U.S.C. 10137]

PARTICIPATION OF INDIAN TRIBES

Sec. 118. (a) Participation of Indian tribes in repository siting decisions. Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114 [42 U.S.C. 10134]. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be

1 *vided*, That \$15,000,000 appropriated under this heading
2 under prior appropriation Acts for the Advanced Research
3 Projects Agency—Energy is hereby transferred to the
4 “Advanced Research Projects Agency—Energy” account:
5 *Provided further*, That, of the amount appropriated in this
6 paragraph, \$37,740,000 shall be used for the projects
7 specified in the table that appears under the heading
8 “Congressionally Directed Science Projects” in the report
9 of the Committee on Appropriations of the House of Rep-
10 resentatives to accompany this Act.

11 NUCLEAR WASTE DISPOSAL

12 For nuclear waste disposal activities to carry out the
13 purposes of the Nuclear Waste Policy Act of 1982 (Public
14 Law 97–425)(“NWPA”), including the acquisition of real
15 property or facility construction or expansion,
16 \$98,400,000, to remain available until expended, and to
17 be derived from the Nuclear Waste Fund: *Provided*, That
18 of the funds made available in this Act for Nuclear Waste
19 Disposal, \$5,000,000 shall be provided to the Office of the
20 Attorney General of the State of Nevada solely for expend-
21 itures, other than salaries and expenses of State employ-
22 ees, to conduct scientific oversight responsibilities and par-
23 ticipate in licensing activities pursuant to the NWPA: *Pro-*
24 *vided further*, That notwithstanding the lack of a written
25 agreement with the State of Nevada under section 117(c)

1 of the NWPA, \$1,000,000 shall be provided to Nye Coun-
2 ty, Nevada, for on-site oversight activities under section
3 117(d) of such Act: *Provided further*, That \$9,000,000
4 shall be provided to affected units of local government, as
5 defined in the NWPA, to conduct appropriate activities
6 and participate in licensing activities: *Provided further*,
7 That, of the \$9,000,000 provided, 7.5 percent of the funds
8 shall be made available to affected units of local govern-
9 ment in California with the balance made available to af-
10 fected units of local government in Nevada for distribution
11 as determined by the Nevada units of local government:
12 *Provided further*, That this funding shall be provided to
13 affected units of local government, as defined in the
14 NWPA: *Provided further*, That \$500,000 shall be provided
15 to the Timbisha-Shoshone Tribe solely for expenditures,
16 other than salaries and expenses of tribal employees, to
17 conduct appropriate activities and participate in licensing
18 activities under section 118(b) of the NWPA: *Provided*
19 *further*, That notwithstanding the provisions of chapters
20 65 and 75 of title 31, United States Code, the Department
21 shall have no monitoring, auditing, or other oversight
22 rights or responsibilities over amounts provided to affected
23 units of local government: *Provided further*, That the
24 funds for the State of Nevada shall be made available sole-
25 ly to the Office of the Attorney General by direct payment

1 and to units of local government by direct payment: *Pro-*
2 *vided further*, That within 90 days of the completion of
3 each Federal fiscal year, the Office of the Attorney Gen-
4 eral of the State of Nevada and each of the affected units
5 of local government shall provide certification to the De-
6 partment of Energy that all funds expended from such
7 payments have been expended for activities authorized by
8 the NWPA and this Act: *Provided further*, That failure
9 to provide such certification shall cause such entity to be
10 prohibited from any further funding provided for similar
11 activities: *Provided further*, That none of the funds herein
12 appropriated may be: (1) used directly or indirectly to in-
13 fluence legislative action, except for normal and recognized
14 executive-legislative communications, on any matter pend-
15 ing before Congress or a State legislature or for lobbying
16 activity as provided in 18 U.S.C. 1913; (2) used for litiga-
17 tion expenses; or (3) used to support multi-State efforts
18 or other coalition building activities inconsistent with the
19 restrictions contained in this Act: *Provided further*, That
20 all proceeds and recoveries realized by the Secretary in
21 carrying out activities authorized by the NWPA, including
22 any proceeds from the sale of assets, shall be available
23 without further appropriation and shall remain available
24 until expended: *Provided further*, That no funds provided
25 in this Act or any previous Act may be used to pursue

1 repayment or collection of funds provided in any fiscal
2 year to affected units of local government for oversight
3 activities that had been previously approved by the De-
4 partment of Energy or to withhold payment of any such
5 funds: *Provided further*, That of the funds made available
6 in this Act for Nuclear Waste Disposal, \$5,000,000 shall
7 be provided to create a Blue Ribbon Commission to con-
8 sider all alternatives for nuclear waste disposal.

9 TITLE 17 INNOVATIVE TECHNOLOGY LOAN GUARANTEE
10 PROGRAM

11 Such sums as are derived from amounts received
12 from borrowers pursuant to section 1702(b)(2) of the En-
13 ergy Policy Act of 2005 under this heading in prior Acts
14 shall be collected in accordance with section 502(7) of the
15 Congressional Budget Act of 1974: *Provided*, That for
16 necessary administrative expenses to carry out this Loan
17 Guarantee program, \$43,000,000 is appropriated, to re-
18 main available until expended: *Provided further*, That
19 \$43,000,000 of the fees collected pursuant to section
20 1702(h) of the Energy Policy Act of 2005 shall be credited
21 as offsetting collections to this account to cover adminis-
22 trative expenses and shall remain available until expended,
23 so as to result in a final fiscal year 2010 appropriations
24 from the general fund estimated at not more than \$0: *Pro-*
25 *vided further*, That fees collected under section 1702(h)