

SURFACE TRANSPORTATION BOARD

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PUBLIC HEARING

UNITED STATES DEPARTMENT OF ENERGY--
RAIL CONSTRUCTION AND OPERATION--
CALIENTE RAIL LINE IN
LINCOLN, NYE, AND ESMERALDA COUNTIES, NEVADA

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NRC Hearing Facility
Pacific Enterprise Plaza, Building No. 1
3250 Pepper Lane
Las Vegas, Nevada

9:00 a.m.
Thursday,
December 4, 2008

BOARD MEMBERS:

CHARLES D. "CHIP" NOTTINGHAM, CHAIRMAN
FRANCIS P. MULVEY
W. DOUGLAS BUTTREY

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Adjourn

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. NOTTINGHAM: Good morning.

3 And welcome. We are pleased to be here today
4 to conduct a field hearing on the U.S.
5 Department of Energy's application for rail
6 construction and operation of the Caliente
7 Line.

8 I would first like to thank the
9 Nuclear Regulatory Commission for providing
10 this hearing space, and I'd also like to thank
11 the STB, Surface Transportation Board, staff
12 who have worked hard to put this hearing
13 together.

14 This past March the Department of
15 Energy filed an application seeking Surface
16 Transportation Board authorization to
17 construct and operate a 300-mile common
18 carrier rail line to be known as the Caliente
19 Line connecting an existing Union Pacific
20 Railroad Company line near Caliente, Nevada,
21 to Yucca Mountain.

22 While DOE did not file its
23 construction application until this year with

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1 the STB, in its Section of Environmental
2 Analysis, also known as SEA -- and we'll hear
3 a lot of acronyms today, so bear with it --
4 the SEA has been involved with Yucca Mountain
5 projects since 2004.

6 We are one of three cooperating
7 agencies on the Environmental Impact
8 Statement, also known as the EIS, that has
9 been prepared under the Department of Energy's
10 lead addressing the potential rail
11 transportation corridor and alternative rail
12 alignments.

13 The STB has participated as a
14 cooperating agency from the early stages of
15 the environmental process to provide expertise
16 in freight rail transportation and with the
17 knowledge that we would have jurisdiction over
18 the construction if DOE decided that the
19 proposed new line would have common carrier
20 service.

21 We have participated in 13 scoping
22 meetings and eight public hearings during the
23 environmental review process. Specifically

1 the STB's involvement as a cooperating agency
2 in the preparation of the draft EIS also
3 included participation in five public scoping
4 meetings in May 2004 here in Nevada,
5 participation in a second round of public
6 scoping meetings, including one in October
7 2006 in Washington, D.C., and seven in
8 November 2006 in Nevada, review of more than
9 4,100 comments received during the first
10 public scoping period and the nearly 800
11 additional comments received during the second
12 public scoping period, participation in site
13 visits to both the Caliente corridor in 2005
14 and 2006 and the Mina corridor in 2007,
15 participation in the selection of alternatives
16 to carry forward in the EIS, and also review
17 of the draft EIS documents.

18 Following release of the EIS, the
19 STB continued to be involved as a cooperating
20 agency, including participating in eight
21 public hearings on the draft EIS in November
22 and December 2007 in Nevada, California, and
23 Washington, D.C.

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1 Also we were involved in the
2 review of the approximately 4,000 public and
3 agency comments received during the draft EIS
4 public comment process and public hearings and
5 in the review of the final EIS documents.

6 The EIS will serve as the basis
7 for SEA's recommendations to the STB regarding
8 whether, from an environmental perspective,
9 DOE's application should be granted, denied,
10 or granted with environmental conditions.

11 In addition to the environmental
12 considerations the Board must also consider
13 whether the line would be inconsistent with
14 the public convenience and necessity by
15 weighing the transportation needs or benefits
16 against any potential environmental harm.

17 In applying this standard we
18 typically evaluate the public demand or need
19 for the proposed service, the financial
20 soundness of the applicant, whether the
21 proposed service is in the public interest and
22 would not unduly harm existing service, and
23 any safety and environmental concerns. We

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1 also have the discretion to modify the
2 proposal or place conditions on its approval.

3 The Board has already developed a
4 robust record on this matter. Comments in
5 support of or in opposition to the application
6 were filed on July 15, 2008, and DOE replied
7 on August 29, 2008. I look forward to hearing
8 further from the witnesses today on the issues
9 raised by this application. All of the
10 testimony will be considered part of the
11 record upon which we will rely to reach a
12 final decision on DOE's application.

13 Finally, let me discuss a few
14 procedural matters. We will hear from all the
15 speakers on a panel prior to questions from
16 the Commissioners. Speakers, due to our
17 temporary setup here, we do not have timing
18 lights but we will still be timing your
19 testimony. You will hear a beep when your
20 time has expired, and that's simply to allow
21 all the many witnesses to have ample
22 opportunity today to speak.

23 As you can see from the published

1 schedule we have many witnesses appearing at
2 this hearing, and I ask that you please keep
3 to the time you have been allotted. This is
4 particularly important given that we must
5 conclude the hearing prior to 5:00 p.m. when
6 the building closes. Additionally, just a
7 reminder to please turn off your cell phones.

8 Let me now turn to Vice Chairman
9 Mulvey for any opening remarks.

10 MR. MULVEY: Thank you, Chairman
11 Nottingham. Good morning and welcome to our
12 panelists and other attendees today. I am
13 pleased that we were able to travel here to
14 Nevada to hold this hearing and to listen to
15 the various views about this proposed rail
16 construction project. I also want to thank
17 the Board staff for all the work that they
18 have done to date on this case and to help us
19 to prepare for this meeting.

20 The Department of Energy's
21 application to construct the Caliente Rail
22 Line is one step in our nation's long-term
23 strategy for dealing with the byproducts of

1 our nuclear energy industry and, to a lesser
2 extent, nuclear waste from military
3 operations.

4 The STB plays a small, but
5 important, role in this strategy. The
6 construction of a repository for spent nuclear
7 waste at Yucca Mountain is not without
8 controversy. And while the repository itself
9 is not under our jurisdiction, the Caliente
10 Rail Line, if approved, would facilitate its
11 construction and then its operation.

12 The Board has tackled
13 controversial construction issues in the past
14 with success. And I am certain that we will
15 be able to do so again in this case. We will
16 evaluate DOE's proposal in accordance with our
17 statutory criteria for considering
18 construction applications. Under 49 U.S.C.
19 10901 the Board shall authorize the
20 construction applied for unless it finds that
21 such construction is inconsistent with the
22 public convenience and necessity. The Board
23 may also require compliance with conditions

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1 that it finds necessary to be in the public
2 interest.

3 The issue of how to allocate
4 fairly the risks of transporting nuclear waste
5 is a compelling one, particularly in a state
6 like Nevada with a fast growing and expanding
7 population. And determining whether and how
8 to mitigate any adverse impacts of a proposed
9 construction, should the Board approve it, is
10 of the utmost importance to me. The written
11 record developed thus far in this proceeding
12 has greatly aided my understanding and
13 consideration of these matters.

14 Now, I've been following this
15 issue for nearly a quarter century. Back in
16 1984 when I was with the National Academy of
17 Sciences Transportation Research Board there
18 was discussion over the relative merits of
19 transporting spent nuclear waste by rail over
20 good rail lines -- Class 1 rail -- which would
21 go through heavily populated areas versus less
22 populated areas, but taking it over less well
23 constructed and maintained rail. So it was a

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1 trade off between minimizing the exposure of
2 the population and minimizing the possibility
3 of an accident. No decisions or no findings
4 came forth at that time and this issue today,
5 of course, is still with us.

6 I'm very interested in hearing
7 today suggestions about how to balance our
8 nation's plans to move nuclear waste to
9 storage at Yucca Mountain with the Nevada
10 citizens and communities desire to maintain
11 their quality of life. I look forward to
12 hearing today's testimonies. And thank you
13 very much, Chairman Nottingham.

14 MR. NOTTINGHAM: Thank you, Mr.
15 Mulvey. Commissioner Buttrey?

16 MR. BUTTREY: Thank you, Mr.
17 Chairman. I'd just like to welcome everyone
18 here to our hearing today. It's encouraging
19 to see so many people in the audience who are
20 concerned about this issue. It's certainly
21 democracy in action when you have people
22 coming forward from the local community to
23 express their views to representatives from

1 the government.

2 I look forward to hearing the
3 testimony today. I'm going to dispense with
4 an opening statement. Mr. Chairman, I'd just
5 like to associate myself with your remarks
6 that you made this morning and the remarks of
7 my colleague, Vice Chairman Mulvey. And in
8 the interest of time I'm going to not have
9 anything further today to say about this. And
10 I look forward to hearing the witnesses.
11 Thank you, sir.

12 MR. NOTTINGHAM: Thank you,
13 Commissioner Buttrey. We will now to our
14 first panel. It's my pleasure to call forward
15 and welcome the Honorable Congresswoman
16 Shelley Berkley. We're delighted to have
17 Congresswoman Berkley here. And also
18 from Senator John Ensign's office I understand
19 that Christy Guedry is with us this morning as
20 well. And we also have on our panel list a
21 slot in the event that Senator Reid has a
22 representative here -- and I certainly invite
23 that person forward if he or she is here.

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1 It's safe to say we have more
2 technology in this room than we're accustomed
3 to, and so we're all trying to -- if you see
4 us fumbling and working around monitors bear
5 with us, Congresswoman. This is an impressive
6 facility. We tried to move some of these
7 screens a little bit out of the way so you
8 didn't feel like you were blocked behind a
9 monitor.

10 CONGRESSWOMAN BERKLEY: Well, I'm
11 a low-tech person, so this is a bit
12 challenging for me as well. First of all,
13 good morning and welcome to the great state of
14 Nevada. On behalf of Nevada's congressional
15 delegation and the families and businesses we
16 represent I want to sincerely welcome you to
17 our lovely community. We thank you for
18 today's forum and for allowing the views of
19 those here in person and those who contributed
20 comments to be added to the record.

21 Chairman Nottingham, we recognize
22 this is not something the STB does every day,
23 and your attention to an issue that is

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1 critical to both Nevada and our nation is
2 truly appreciated.

3 Senator Reid is unable to be here.
4 He is back in Washington on pressing issues,
5 and he has asked me to present for the record
6 his testimony. As you are well aware Senator
7 Reid has been a steadfast opponent of the
8 Yucca Mountain project long before he became
9 majority leader of the United States Senate.
10 Long before he became a Congressman he was a
11 local elected official and was one of the
12 first that stepped up to the plate and
13 expressed his views that Yucca Mountain, as a
14 repository for nuclear waste, was not in the
15 nation's interest and not in the interest of
16 the people of the state of Nevada.

17 I know I speak for a majority of
18 Nevadans when I say that we vehemently oppose
19 Yucca Mountain and the transportation of
20 nuclear waste to our home state. Both
21 proposals are unnecessary and both present
22 unacceptable risks to families, communities,
23 and our environment.

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1 The nuclear industry and the Bush
2 administration can continue to deny reality
3 and act as if nothing has changed on November
4 4. But we now have a President-elect who has
5 said there will be no nuclear waste stored at
6 Yucca Mountain when he is in the White House.

7 So the question is why are we
8 still discussing plans for a 300-mile long, \$3
9 billion, gold-plated railroad to nowhere that
10 ends at a hole in the Nevada desert and will
11 never become home to this nation's nuclear
12 waste?

13 Yucca Mountain is a \$100 billion
14 and growing dinosaur waiting to become yet
15 another fossil in the desert sands. And
16 working together with President-elect Obama
17 Nevada's congressional delegation will see
18 that it's safely buried once and for all.

19 This brings me to the subject of
20 today's hearings -- Nevada's opposition to the
21 Caliente Rail Line and the dangers that will
22 arise from current plans to ship more than
23 70,000 tons of nuclear waste across more than

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1 40 states to Yucca Mountain.

2 Approving the construction of this
3 rail line when the entire Yucca Mountain
4 project is on the verge of collapse would be
5 absolutely irresponsible. The Caliente Rail
6 Line will be of no benefit to the families in
7 Nevada and across the nation who will be at
8 risk from shipments of this toxic, radioactive
9 garbage, nor will it help boost Nevada's
10 tourism-based industry that is already
11 suffering.

12 But we know that the 50 million
13 Americans living along the transportation
14 routes will be endangered by decades of
15 radioactive waste passing within miles of
16 their homes, their workplaces, their churches,
17 their synagogues, and their playgrounds.

18 One accident or terrorist attack
19 involving nuclear waste will cause death,
20 injury, environmental damage, and the closure
21 of major transportation routes. And that's
22 before one of these waste canisters is ever
23 transported on the Yucca Mountain Express.

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1 At every step of the journey
2 nuclear waste shipments will be a prime target
3 for those seeking radioactive materials for
4 terrorist purposes. And we know that
5 accidents will occur statistically speaking,
6 whether in Nevada or on the way to Yucca
7 Mountain.

8 This is why the men and women who
9 operate the trains that will haul nuclear
10 waste to Nevada have also raised red flags
11 about this plan. Testifying before Congress
12 this past September on Yucca Mountain
13 transportation the Brotherhood of Locomotive
14 Engineers and Trainmen vice president John
15 Tolman warned -- and I quote -- We believe
16 that this will have negative impacts on the
17 safety of our members and the communities
18 through which these trains run, while adding,
19 Rail workers do not receive proper training to
20 handle spent fuel and do not receive the same
21 exposure protections given to other workers
22 exposed to nuclear radiation.

23 STB cannot ignore this risk to

1 railroad workers or any other American when
2 looking at the overall impact that current
3 plans for transporting nuclear waste will have
4 on railways from Maine to Missouri to Utah,
5 Arizona, and California.

6 The alternative to STB moving
7 forward would be to allow Nevada to regulate
8 DOE's railroad to nowhere, which we know is
9 never going to haul anything but supplies for
10 the proposed dump and radioactive garbage to
11 be buried next to Las Vegas.

12 The Bush energy department is
13 clearly hoping to do an end run on Nevada's
14 authority by shopping for a favorable forum
15 based on ridiculous claims. Those who would
16 ask you to believe that the Yucca Mountain
17 Express will be hauling fresh fruits and
18 vegetables to market may well be saying that
19 there's acres of oceanfront property to sell
20 in my county right along the rail route.

21 But if STB is going to buy this
22 hapless bluff and move forward on DOE's
23 application the Board must look at the true

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1 impact of thousands of radioactive waste
2 shipments transported over more than four
3 decades will have on America's railroads and
4 the residents of every state through which
5 these mobile Chernobyls will pass.

6 And people have this idea that
7 there's going to be one shipment and they're
8 going to remove all the nuclear waste from all
9 of the waste sites. That is simply not the
10 case, as we know. Anything less would be a
11 failure to recognize the real dangers that
12 would threaten those you are charged to
13 protect should waste shipments to Yucca
14 Mountain every occur.

15 Not a single canister of nuclear
16 waste will ever reach Caliente without
17 traveling along one of our nation's existing
18 rail lines. The STB must consider the entire
19 process from start to finish in order to truly
20 assess the total risk that would accompany the
21 mass movement of high-level nuclear
22 radioactive toxic waste, one of the most toxic
23 substances known to man and a prime target for

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1 terrorists hunting for the means to make dirty
2 bombs that they can unleash on U.S. soil.

3 I would urge the STB to reject
4 DOE's blatant attempt to game the system and
5 its claims that the Caliente Rail Line is
6 anything other than a one-trick pony meant
7 solely to speed nuclear waste to Yucca
8 Mountain. STB has no obligation to approve
9 DOE's application. I respectfully ask on
10 behalf of Nevadans and families across this
11 nation that you not allow this dangerous
12 scheme to move forward.

13 I would recommend highly that we
14 wait to see what the new administration is
15 planning to do. We have been signaled more
16 than once by the incoming President, Barack
17 Obama, that they are going to scrap this
18 scheme of shipping nuclear waste to Yucca
19 Mountain as the nation's sole repository in
20 favor of dry cask storage on site.

21 Let us not move forward with this
22 boondoggle, spend more taxpayers' money that
23 we simply do not have in this very, very

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1 difficult economic time, and wait and see what
2 happens. I can assure you that there will
3 never be nuclear waste stored at Yucca
4 Mountain. We ought to ditch this deal before
5 it gets started. And I thank you very much
6 for your kind attention.

7 MR. NOTTINGHAM: Thank you,
8 Congresswoman Berkley. And let the record
9 reflect we absolutely will be including
10 Senator Reid's statement, and we thank you for
11 bringing it to us today. Now we'll hear from
12 Ms. Christy Guedry from Senator John Ensign's
13 office. Thank you.

14 MS. GUEDRY: Thank you. Mr.
15 Chairman, thank you for including me in this
16 very important hearing regarding the
17 construction of a rail line to Yucca Mountain.
18 I ask that my full statement be submitted for
19 the record.

20 This reaches far beyond the
21 borders of Nevada. It affects every single
22 American, and that makes it worthy of the most
23 thorough examination. Unfortunately, that has

1 never been the case for Yucca Mountain.

2 The storage of spent nuclear fuel
3 at Yucca Mountain has been plagued by
4 unrealistic assumptions about cost, poor waste
5 management planning, and insufficient testing
6 to ensure the safety of our communities.

7 The promise of Yucca Mountain was
8 to safely store the nation's nuclear waste,
9 leaving no waste at operating reactor sites.
10 This promise will never been fulfilled. As
11 long as reactors are operating they will
12 produce highly radioactive and thermally hot
13 waste that must be stored on the site for a
14 period of years.

15 And based on how much nuclear
16 waste we create a year Yucca Mountain will be
17 filled to capacity and there will still be
18 spent nuclear waste sitting at reactors across
19 the country. So we spent an estimated 100
20 million and start back at square one, not the
21 most productive use of taxpayer dollars.

22 These vital issues cannot be an
23 afterthought when it comes to the safety of

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1 our citizens. Instead, the waste should be
2 stored on site where the NRC says it can
3 remain safely for 100 years. Let's use that
4 time and the money saved by shutting down
5 Yucca Mountain to develop technologies to
6 recycle the waste, create new energy sources,
7 and truly manage spent fuel. Thank you for
8 your time and thoughtful consideration of this
9 critical issue.

10 MR. NOTTINGHAM: Thank you, Ms.
11 Guedry. I'd like to turn to my colleagues and
12 see if there are any questions for these --
13 this panel.

14 MR. MULVEY: I was going to ask
15 Ms. Berkley -- how are you again?

16 CONGRESSWOMAN BERKLEY: How are
17 you?

18 MR. MULVEY: Given current law,
19 what needs to be done in order to undo the
20 process? Yucca Mountain is sort of a -- I
21 wouldn't say a ship that's sailed, but it's an
22 ongoing process. So what needs to be undone
23 by the Congress and by the President to stop

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1 the Yucca Mountain project?

2 CONGRESSWOMAN BERKLEY: Well,
3 that's an interesting question, Vice Chairman.
4 And, as a matter of fact, we -- the delegation
5 has spoken of this to see what our next step
6 would be once the new administration took
7 over. It's our belief that President Obama
8 can unilaterally withdraw the application
9 that's now currently before the Nuclear
10 Regulatory Commission.

11 In -- if he chooses not to do
12 this, needless to say, there can be serious
13 funding issues. And the Yucca Mountain
14 project has to be funded on a yearly basis,
15 and that money I think could dry up
16 dramatically and be used for other projects
17 within the DOE like the development of renewal
18 energy sources. Those are two of several
19 options that we have available.

20 MR. MULVEY: Thank you. One other
21 question for Mr. Ensign's representative. You
22 mentioned about -- when Yucca Mountain is
23 full, isn't it also true that even without

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1 building any new power plants, the amount of
2 material out there will be equal to what is
3 out there today when Yucca is full? And
4 that's without building any new plants -- the
5 amount that's still out in other power plants
6 and other facilities?

7 MS. GUEDRY: Yes. I believe --
8 yes.

9 CONGRESSWOMAN BERKLEY: If I
10 may --

11 MS. GUEDRY: Yes. Go right ahead.

12 CONGRESSWOMAN BERKLEY: You're
13 absolutely correct. In addition to that,
14 there have been proposals that we have been
15 able to block in Congress to expand the
16 capacity of Yucca Mountain from 77,000 tons to
17 135,000 tons. That was when President Bush
18 was considering accepting the nuclear waste
19 from other nations across the planet. And not
20 only does Nevada not want this nation's
21 nuclear waste, we certainly don't want anybody
22 else's.

23 MR. MULVEY: Thank you.

1 MR. NOTTINGHAM: Mr. Buttrey, any
2 questions for this panel?

3 MR. BUTTREY: Congresswoman, I
4 would just like to say we appreciate very much
5 your coming here today and expressing your
6 views. Obviously those views will be taken
7 into consideration during our decision-making
8 process, and they will be taken very
9 seriously. Thank you very much.

10 CONGRESSWOMAN BERKLEY: I
11 appreciate it. And thank you so much for
12 being here and allowing my constituents and
13 fellow Nevadans an opportunity to express
14 their concern about this project. I would say
15 at the risk of sounding overly dramatic,
16 should this project go through the first
17 barrier that the train would face would be me
18 lying down on the track to prevent nuclear
19 waste from coming to Yucca Mountain. And I'm
20 hoping you're taking my poor aging body into
21 consideration when you reject this proposal.

22 MR. BUTTREY: Thank you.

23 CONGRESSWOMAN BERKLEY: Thank you.

1 MR. NOTTINGHAM: Well,
2 Congresswoman, we hope it doesn't come to
3 that. We like having you in Washington doing
4 your job. I know your constituents like
5 having you here doing your job too.

6 Let me do ask you seriously, you
7 sketched out a scenario that I guess is
8 possible that were we to approve this
9 application -- it's a hypothetical -- but the
10 facility was never actually opened. Would
11 there be any opportunities there -- granted,
12 it would be expensive, but are there people in
13 Nevada that would want to use the railroad?

14 CONGRESSWOMAN BERKLEY: Well,
15 that's an interesting question. And given the
16 fact that this state was created by --
17 initially by the railroads because of the
18 transportation of silver, we consider
19 ourselves a railroad state.

20 We think this is just another --
21 when the nuclear industry talks about this
22 rail line as having other purposes, and so if
23 it isn't built to haul nuclear waste it could

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1 be used to haul products of produce -- fresh
2 vegetables and fruit. We think that's
3 absolute insanity.

4 I mean, this is a very expensive
5 project. It's estimated it's going to cost \$3
6 billion. There's no way to recoup that kind
7 of money with fruits and vegetables. It
8 just doesn't pencil out. And I think that's
9 just another attempt to try to make this
10 palatable.

11 This is a state that -- especially
12 in the southern part of the state we rely on
13 a tourist economy. If there is one
14 transportation accident Las Vegas will turn
15 into a ghost town because people aren't going
16 come to Las Vegas to enjoy our wholesome
17 family entertainment if they think that their
18 health is going to be undermined by radiation
19 caused by an accident on this rail line.

20 There's absolutely in our opinion
21 no benefit, not only to the people of the
22 state of Nevada, but to our economy as well.
23 Quite the contrary, it might be extremely

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1 detrimental.

2 MR. NOTTINGHAM: Thank you. I
3 appreciate your expressions of welcome and
4 encouragement that we are here today. It is
5 not a small matter. As we handle over 800
6 proceedings a year, and we just can't possibly
7 have hearings on all of them. There just
8 aren't enough days in the year.

9 But this clearly is not our
10 typical proceeding, and we recognize that. We
11 recognize that the people of Nevada have often
12 been asked to bear a very arguably
13 disproportionate burden of 90 percent or so
14 federal land's ownership in the state, various
15 limitations and regulations that come with
16 that. And this is clearly a whole other
17 chapter of controversy that pits part of the
18 federal government against much of the people
19 here.

20 And we take our obligation very
21 seriously -- I want you to know that. We come
22 to this proceeding with a very open mind.
23 There's a long record. We'll make our

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1 ultimate decision on the record, which this
2 hearing will be helpful. We wanted to have
3 this hearing to build a more in-depth record.
4 So you're helping us do that.

5 Thank you again. Let me just turn
6 to my colleagues. Any additional questions
7 for this panel?

8 MR. MULVEY: No.

9 MR. BUTTREY: No.

10 MR. NOTTINGHAM: Thank you.

11 CONGRESSWOMAN BERKLEY: Well,
12 again, let me thank you on behalf of my
13 constituents and the people of the state of
14 Nevada. We appreciate your sensitivity just
15 by coming here. I know this is an
16 extraordinary hearing, and we appreciate the
17 opportunity to be heard.

18 And I have every confidence in the
19 world that you will collectively make the
20 appropriate decision. While I know that we
21 are not moved by poll numbers, it's
22 instructive to know that in the last poll 77
23 percent of the people of the state of Nevada

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1 north and south were opposed to the Yucca
2 Mountain project. And I thank you all very
3 much for your kind attention.

4 MR. NOTTINGHAM: Thank you very
5 much, both panelists. We will dismiss you
6 now. You're welcome, of course, to stay as
7 long as you care to today -- I think we're
8 going to have a full day.

9 And I'd like now to invite the
10 next panel to come forward. We have another
11 panel of government officials representing the
12 state of Nevada and the Agency for Nuclear
13 Projects -- Robert Halstead, the Agency
14 Transportation Advisor. Also representing the
15 state of Nevada from the Office of the
16 Attorney General I believe we have Ms. Mata
17 Adams. And from the state of California,
18 Susan Durbin, the deputy attorney general.

19 Each have been allocated ten
20 minutes. And as soon as you are up and ready
21 we will -- we'll start with the second panel.

22 (Pause.) Welcome. We'll start with Mr.
23 Halstead, Agency Transportation Advisor from

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1 the Agency for Nuclear Projects from the state
2 of Nevada.

3 MR. HALSTEAD: Thank you, Mr.
4 Chairman. Good morning and thank you all for
5 being here in Nevada. The Nevada Agency for
6 Nuclear Projects appreciates the opportunity
7 to again inform the Surface Transportation
8 Board of Nevada's opposition to the
9 application filed by the U.S. Department of
10 Energy for the authority to construct and
11 operate the Caliente Rail Line.

12 And I'm going to skip through some
13 of my comments to comply with the ten-minute
14 limit, so we request that our full written
15 comments be accepted for the record.

16 As previously stated, Nevada
17 believes that DOE's application fails to
18 provide sufficient detailed information
19 regarding key elements of the proposed
20 transaction to allow stakeholders and the
21 Board to fairly and critically evaluate the
22 actual railroad and construction -- the
23 railroad construction and operation plans for

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1 a Certificate of Public Convenience and
2 Necessity or to undertake a hard look
3 environmental impact analysis under the
4 National Environmental Policy Act, and,
5 therefore, urges DOE's application to be
6 rejected as presently filed or otherwise
7 require that it be appropriately supplemented.
8 To proceed without supplementation would
9 result in a premature decision based on
10 speculation.

11 We move to public convenience and
12 necessity. DOE as a non-carrier applicant has
13 not demonstrated that it is a proper party for
14 a CPCN. As an agency DOE is not organized for
15 or capable of the implementation, maintenance,
16 supervision, or monitoring of the construction
17 and operation of the proposed railroad in
18 Nevada, sole purpose of which is to facilitate
19 transport of DOE-owned spent nuclear fuel and
20 high-level radioactive waste from 76 sites in
21 34 states to the proposed geologic repository
22 at Yucca Mountain.

23 This is especially true in our

1 opinion since DOE has provided no agreements
2 with contractors or otherwise detailed the
3 actual necessary transportation arrangements
4 that it proposes to implement if granted a
5 CPCN. Virtually the entire nation would be
6 affected by the DOE proposal to construct and
7 operate the new rail line in Nevada.

8 DOE's proposal now calls for some
9 9,500 rail shipments and 2,700 truck shipments
10 over a sustained period of about 50 years.
11 DOE's proposed additional shipments could
12 dramatically increase depending on the status
13 of the second repository or future plans and
14 other nuclear energy proposals.

15 If DOE's proposal proceeds one or
16 more shipping cask of spent nuclear fuel or
17 high-level waste would be moving on a train
18 somewhere in America virtually every day for
19 five decades or longer. The representative
20 rail routes identified by DOE in its EIS would
21 traverse 44 states, the District of Columbia,
22 and 33 Indian nations.

23 Nevada's analysis shows that

1 selection of the Caliente Rail option would
2 affect about 22,000 miles of track in 836
3 counties with a total estimated 2005 census
4 population of about 138 million. Shipments
5 would also travel through 193 central cities
6 with a total estimated population of about 39
7 million -- and we've attached maps to our
8 statement showing those routes.

9 Now, the serious radioactive
10 characteristics of these shipments pose a
11 unique combination of impacts and risks to
12 employees in the public from routine
13 operations, transportation accidents, and acts
14 of terrorism and sabotage. Every rail cask
15 would contain 100 times the dangerous fission
16 products, primarily cesium and strontium, as
17 were released by the Hiroshima bomb.

18 The spent fuel from civilian
19 nuclear power plants, which would comprise 90
20 percent of the shipments, is so highly
21 radioactive that even after ten years of
22 cooling unshielded exposure could deliver a
23 lethal dose of radiation in one or two

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1 minutes. And the radiation from spent fuel
2 shipping cask in a routine transit can
3 endanger workers in the public. Severe
4 accident involving release of radioactive
5 materials could cost \$10 billion to clean up,
6 and clean up after a successful terrorist
7 attack could cost many tens of billions of
8 dollars.

9 To make matters worse, the
10 Department of Energy opposes mandatory
11 shipment of older spent fuel, which would
12 reduce the radiological hazards. To support
13 the canistered repository system DOE is
14 proposing a TAD canister system that doesn't
15 exist yet. DOE opposes mandatory full scale
16 testing of shipping casks.

17 And very important, because it is
18 within the purview of the Board in our
19 opinion, DOE oppose mandatory use of dedicated
20 trains for rail shipments. They've also
21 failed to provide details of their required
22 intermodal handlings.

23 And based on these issues we

1 believe the Board must weight the DOE claims
2 of public convenience and necessity against
3 the lack of information and these risks and
4 affects.

5 I'm going to skip forward to
6 discuss some NEPA issues -- environmental
7 impact issues. Should the Board proceed to
8 consider the DOE application it cannot adopt
9 DOE's NEPA impact analysis and documentation,
10 the rail corridor supplemental EIS, and
11 especially the rail alignment EIS.

12 We believe the Board has an
13 independent responsibility for determining
14 compliance of the DOE application with the
15 requirements of NEPA. And to that end we
16 believe the Board has not yet provided
17 opportunities for stakeholders to comment on
18 these issues, and we're not sure exactly how
19 the Board will segment its consideration of
20 the public convenience and necessity issues
21 and the NEPA review. So we are addressing
22 both of those issues in this hearing today.

23 In particular, we believe that DOE

1 has repeatedly failed to justify the selection
2 of Caliente as the preferred corridor. We
3 believe that the comparison with the Mina
4 corridor as the basis for DOE's selection of
5 Caliente is an illegal comparison with an
6 unacceptable and non-viable alternative.

7 We believe that within the
8 Caliente corridor DOE has failed to comply
9 with NEPA in the way that it has evaluated the
10 various alternatives for the selection of the
11 alignment it proposes to use. And we believe
12 that this systematic failure is well
13 illustrated by the treatment of the "City"
14 sculpture installation, which is along the
15 proposed alignment in Garden Valley.

16 I believe you're going to be
17 hearing later this morning from
18 representatives of Michael Heizer and the Art
19 Foundation, so I will move to the failure to
20 comply with NEPA regarding a consistent
21 evaluation of the radiological impacts that
22 would be delivered here in Las Vegas and Clark
23 County.

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1 Despite DOE's repeated discussions
2 that they selected Caliente to avoid shipments
3 through Las Vegas, Nevada has informed them,
4 and their own analyses have informed them,
5 that selection of Caliente will, in fact,
6 result in rail shipments through downtown Las
7 Vegas. It's only a matter of what percentage
8 of the total shipments would go through
9 downtown Las Vegas.

10 DOE says the minimum would be 8
11 percent. Studies conducted by the state show
12 it could well be 40 to 80 percent -- more
13 likely 40 percent under a strategy that DOE
14 calls the sweet of routes approach to routing.

15 And this is important because of
16 the way that the city is constructed around
17 the rail line. 95,000 residents currently
18 live within the one-half mile region of
19 radiological influence for routine shipments
20 in Las Vegas itself. There are 34 hotels and
21 49,000 hotel rooms within that half-mile
22 distance on each side of the rail line. And
23 within the 50-mile region of influence for

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1 accidents and sabotage we estimate 1.8 million
2 residents in Nevada and the adjacent areas of
3 Arizona, California, and Utah.

4 Critical to the failure to
5 demonstrate public convenience and necessity
6 and the failure to comply with NEPA, Nevada
7 believes the Board should reject the
8 application because it fails to adequately
9 address security risks of terrorism and
10 sabotage against DOE rail shipments to Yucca
11 Mountain and the communities and populations
12 along the affected rail routes.

13 The urgency of addressing the
14 risks of terrorism and sabotage is underscored
15 by the U.S. Departments of Homeland Security
16 and Transportation recent adoption of final
17 rules regarding rail transportation security.
18 I'm sure that you and your staff have been
19 following that. Those final rules were
20 promulgated last week I believe on November
21 26.

22 And concerning DOE's railroad
23 operations in Nevada, there's a serious

1 question as to whether and how DOE can comply
2 with those final rules as they relate to
3 shipments in Nevada, storage and delays in
4 transit, inspections and interchange
5 agreements, rail security coordination, chain
6 of custody requirements, none of which
7 elements are addressed in DOE's filing with
8 the Board.

9 On a national basis DOE as a
10 shipper is going to have to arrange shipments
11 that will reflect consideration of those same
12 rules. You've already heard -- and I suspect
13 you'll hear later today -- the concerns that
14 some of the carriers -- CSX and Norfolk
15 Southern -- have raised about the dedicated
16 train issue. And, of course, the use of
17 dedicated trains is absolutely essential to
18 the ability to comply with those final rules
19 on routing and security.

20 Let me conclude by saying that
21 Nevada contends that DOE's application and
22 supporting NEPA documentation did not
23 presently provide an adequate basis for the

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1 Board to grant this application, and it should
2 be denied without prejudice. DOE has made no
3 reasonable effort to provide a sufficiently
4 detailed Section 10901 application that
5 complies with the information requirements of
6 49 CFR Parts 1105 and 1150.

7 And we ask you to consider the
8 other materials that we have presented in this
9 proceeding in response to DOE's application
10 and also to consider the maps appended as an
11 attachment at the end of my statement which
12 show the routing impacts. Thank you.

13 MR. NOTTINGHAM: Thank you, Mr.
14 Halstead. We appreciate you keeping your
15 remarks to the time limit and recognize your
16 entire statement, and all of the witnesses'
17 entire statements will be made a permanent
18 part of the complete record today. Ms. Adams.

19 MS. ADAMS: Thank you, Mr.
20 Chairman. And on behalf of Nevada Attorney
21 General Catherine Cortez Masto we appreciate
22 this opportunity.

23 On behalf of the Nevada Attorney

1 General we share the concerns expressed by
2 Congresswoman Berkley and my colleague Mr.
3 Halstead that the STB may be in a position to
4 inappropriately expedite DOE's application for
5 a Certificate of Public Convenience and
6 Necessity while a new administration is
7 imminent and will be assuming office in
8 January 2009.

9 DOE's application to construct
10 over 300 miles of new rail line in rural
11 Nevada has potential impacts for the entire
12 nation well beyond Nevada's border. In fact,
13 this application presents unprecedented
14 national impacts and could potentially affect
15 huge swaths of the country's rail system.

16 If granted, the Caliente Rail Line
17 will be the country's first and only rail line
18 proposed solely or primarily for the transport
19 of thousands of shipments of deadly spent fuel
20 and high-level radioactive waste to the
21 proposed repository at Yucca Mountain.

22 This rail line, if approved and
23 constructed, will result in major impacts to

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1 the national rail system. With the prospect
2 of nearly 10,000 shipments of dangerous
3 nuclear waste moving along the country's
4 railroad system for 30 years or more the
5 implications clearly extend to the nation as
6 a whole. Almost every major metropolitan area
7 in the country will be affected.

8 The potential for accidents and
9 terrorist attacks create new and poorly
10 understood risks. The potential national
11 impacts will require massive preventative
12 measures, infrastructure improvements, and
13 maintenance efforts which will affect states,
14 cities, and local governments, in addition to
15 the railroad companies charged with this very
16 large and potentially devastating task.

17 On behalf of the Nevada's Attorney
18 General I ask this Board to reconsider its
19 current course and its schedule for processing
20 DOE's application. I ask that STB postpone
21 any decision until the new administration is
22 in place and has had an opportunity to review
23 the entire Yucca Mountain program and

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1 determine how it intends to proceed.

2 President-elect Obama has
3 expressed serious doubts about the wisdom of
4 the Yucca Mountain project and has proposed to
5 end it if elected. This fact alone should
6 suffice for the STB to suspend its proceedings
7 on DOE's application.

8 Nevada is also concerned about the
9 nature and purpose of this hearing. It
10 appears to be both premature and too
11 unstructured in scope to provide for
12 meaningful public input. The STB record on
13 the CP* and the National Environmental Policy
14 Act issues remains incomplete.

15 The Notice of Hearing identified
16 no particular issues to be addressed, while
17 STB staff reported that the hearing is, quote,
18 open for anyone who has anything to say about
19 the Yucca Mountain project. And, as is
20 obviously the case, Nevada always has much to
21 say about this project. In addition, it is
22 unclear how the testimony you receive today
23 will affect STB's deliberations concerning the

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1 application.

2 Finally, Attorney General Cortez
3 Masto is concerned that STB chose the location
4 of this hearing today without due regard for
5 the relative inaccessibility of this facility
6 to the public. There's relatively limited
7 access, there's restrictions on parking, and
8 it's to some degree difficult to find. We're
9 also concerned that there's some limitation or
10 restriction to press access, and we believe
11 that is inappropriate for a public hearing
12 such as this one.

13 It is my understanding that STB
14 historically has segmented the application
15 process for rail construction into two equally
16 important components. One deals with the
17 requirements for issuance of the CPCN and the
18 other addresses the full range of NEPA
19 requirements in support of any prospective
20 CPCN decision.

21 This historical approach does not
22 appear to be the case here. Many of the
23 issues that will be raised today and in

1 written comments submitted into the record
2 address issues related to the adequacy of
3 DOE's Environmental Impact Statements and
4 STB's independent NEPA responsibilities. It
5 is unclear how, when, and in what form STB
6 plans to address the vital NEPA issues or
7 whether adequate opportunities for public
8 involvement will be afforded.

9 Our review of DOE's application
10 and related NEPA documentation reveals a
11 number of deficiencies. The application omits
12 material facts and details regarding
13 construction of facilities and operations,
14 including the shared use option or common
15 carriage that DOE is now asserting for this
16 rail line.

17 Such details are essential to a
18 complete evaluation of CPCN and NEPA issues.
19 Implementation of the shared use option will
20 require facilities and service that will
21 certainly increase environmental impacts.
22 This application offers no details.

23 STB's own regulations in Part 1150

1 require informative detail, especially
2 operational data, for obvious evaluative
3 reasons. After decades of study and analysis
4 and many opportunities to provide informative
5 submissions to support this application DOE
6 continues to omit foundational material facts
7 for public scrutiny. Other representatives
8 speaking on behalf of the state of Nevada and
9 local governments will be providing specific
10 information regarding particular deficiencies
11 in DOE's application.

12 I urge this Board to immediately
13 suspend this review until the new
14 administration has determined its course of
15 action with regard to the entire Yucca
16 Mountain program. On behalf of the state of
17 Nevada the Nevada Attorney General's Office is
18 prepared to pursue all legal means to assure
19 that no precipitous or unwarranted action on
20 the Caliente Rail Corridor application is
21 taken. Thank you very much.

22 MR. NOTTINGHAM: Thank you, Ms.
23 Adams. We'll now hear from Susan Durbin from

1 the State of California Attorney General's
2 Office.

3 MS. DURBIN: Thank you. Good
4 morning. Thank you for the opportunity to
5 appear. On behalf of the state of California
6 I'm Susan Durbin, a deputy attorney general in
7 the Attorney General's Office. With me is
8 Kevin Bell, who is the senior staff counsel
9 for the California Energy Commission. We both
10 represent the state.

11 California thanks the Surface
12 Transportation Board for this opportunity to
13 present our concerns and to reiterate our
14 belief that the record before the Board does
15 not contain sufficient information upon which
16 the Board may adopt the Department of Energy's
17 Environmental Impact Statement as the Board's
18 own or may issue a Certificate of Public
19 Convenience and Necessity, particularly as to
20 the Mina Corridor.

21 We'd first like to reiterate our
22 formal comments to the Board and incorporate
23 them here by reference. In those comments we

1 express very strongly our opposition to
2 approval by the Board of the Mina route, even
3 as an alternative.

4 Very briefly, DOE has not complied
5 with STB regulations regarding the amounts of
6 material to be shipped, the timing of
7 shipments, frequency and number of trains,
8 possible commercial or shared use of a Mina
9 route line, and certainly no detailed map with
10 the supporting information that the STB
11 regulations require.

12 The substantial evidence upon
13 which the STB could base a decision to
14 authorize use of the Mina route simply does
15 not exist in the record, even given the
16 presumption of granting of licenses. We
17 believe that DOE has not provided sufficient
18 information in its STB application or in its
19 EISs to support approval of the Mina line
20 under the applicable regulations.

21 That failure is part of a broader
22 failure. DOE has failed to provide enough
23 information in its EISs about where, when, and

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1 how it will transport the spent nuclear fuel
2 and high-level radioactive waste it seeks to
3 store at Yucca Mountain to allow the STB to
4 regard those EISS as adequate compliance with
5 NEPA that the STB may validly rely on or may
6 adopt as the STB's own NEPA compliance.

7 DOE has focused its time and
8 resources on the storage and disposal of the
9 spent nuclear focus and high-level waste it
10 seeks to send to Yucca Mountain and has given
11 the safe and efficient transport of those
12 materials so little attention that DOE has
13 altogether ignored major environmental
14 infrastructure and safety issues involved with
15 transportation.

16 California's concerned that this
17 Board's decision will have a huge potential
18 environmental impact on California that has
19 not been examined or disclosed by any federal
20 agency. As you heard from other speakers, and
21 will hear again today, this is not solely a
22 Nevada issue. It is as multi-state issue and
23 a national issue.

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1 As we stated in our comments, the
2 decision between the Mina and the Caliente
3 routes will have very significant effects on
4 California. DOE estimates that if the
5 Caliente route is used 755 casks will be
6 transported through California. But if the
7 Mina route is used about 2,000 casks will be
8 transported by rail through California --
9 about one-and-a-half times as many.

10 But even these numbers are purely
11 speculative because they are based on a
12 computer model that DOE concedes is not
13 consistent with how railroads actually route
14 the shipments. DOE itself states that it is
15 impossible to know what routes will be used.
16 The number of casks sent through California,
17 if the Mina route is used it's likely to be
18 much higher than DOE estimates.

19 The Mina route would sent
20 radioactive spent fuel hundreds of miles
21 farther than the Caliente route and send it
22 through the heart of California's agricultural
23 region, often paralleling the route of the

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1 state Water Project Aqueduct that provides
2 drinking water for half of California; would
3 send it through our capital city and over the
4 Donner Pass, with its steep -- severe storms,
5 steep grades, and terrain in which retrieval
6 of a derailed cask would be a monumental
7 undertaking.

8 None of the DOE's EISs present an
9 analysis of the non-radiological route
10 specific environmental risks or possible
11 impacts of the shipment of this material
12 through California. They concentrate solely
13 on radiological effects, which they again
14 present only at a programmatic level, not at
15 a route specific level, and ignore everything
16 else that could possibly go wrong. There is
17 no route specific analysis at all, only a
18 comparison of so-called representatives routes
19 that do not reflect the actual configurations,
20 facilities, and risks of specific routes.

21 Second, only radiological impacts
22 are analyzed, not the environmental and
23 economic damage that will result from even an

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1 accident that did not breach a cask, let alone
2 one that did. Just as an example of the
3 impacts DOE has chosen to ignore, the two
4 representative California routes which would
5 connect to Caliente and the Mina respectively
6 that DOE presents are major international
7 trade routes carrying about \$150 billion worth
8 of trade goods in 2004, the last year for
9 which data were available. Compromise of
10 either route would cause a national economic
11 disaster, something that DOE has not analyzed
12 or considered.

13 None of the EISs present a route
14 specific comparison of the Mina and Caliente
15 routes, information that we believe is legally
16 required to support any decision by the STB to
17 approve the Mina route even as an alternative.

18 The EISs address the environmental
19 impacts of transport solely on a programmatic
20 basis, and are inadequate even on that basis.
21 The STB must make a route specific decision,
22 and a programmatic analysis in DOE's EISs is
23 insufficient to support that kind of decision.

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1 California also wants to address a
2 serious issue that has surfaced only recently.
3 On November 6 of this year Ward Sproat, the
4 director of DOE's Office of Civilian
5 Radioactive Waste Management, and the man in
6 charge of the overall Yucca Mountain project,
7 attended a conference on nuclear waste held by
8 the Center for Strategic and International
9 Studies.

10 The New York Times reports that
11 Mr. Sproat told that conference that DOE is
12 about to send a report to Congress that will
13 recommend that Congress give up seeking to
14 build a second repository and, instead,
15 authorize the expansion of Yucca Mountain's
16 currently authorized waste storage from 70,000
17 metric tons to accommodate the entire
18 inventory of nuclear waste that will be
19 produced by the 103 existing nuclear reactors
20 over their useful lives and also the waste
21 from "the first handful" of new reactors that
22 may be authorized.

23 Since the existing plants are

1 expected to produce as much as 140,000 metric
2 tons Yucca would have to be expanded to hold
3 at least that amount and more if the waste
4 from new plants is disposed there in the
5 absence of a second repository. The maximum
6 amount of waste storage at Yucca Mountain is
7 analyzed in DOE's EISs as 119,000 metric tons.
8 Expansion of that amount to twice the
9 statutory 70,000 metric tons, perhaps 30,000
10 metric tons more than the maximum that has
11 been analyzed under NEPA, is a major change in
12 the Yucca Mountain project.

13 Under the NEPA regulations issued
14 by the Council on Environmental Quality, under
15 decades of NEPA law, and under this Board's
16 own fairly stringent NEPA requirements a
17 change in a project of this magnitude
18 absolutely requires a supplemental EIS before
19 it can be approved.

20 Similarly, this change makes DOE's
21 NEPA documents inadequate for the STB to use
22 as a basis for issuing a Certificate of Public
23 Convenience and Necessity. We now do not know

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1 how many trains will actually use the new rail
2 line whose approval DOE seeks, when, or for
3 how long. Will the trains come twice as often
4 for the same number of years, at the same rate
5 for perhaps a full century rather than 50
6 years, or will the trains carry twice as many
7 casks with the attendant increase risk of
8 public exposure to radiation?

9 In the face of this uncertainty
10 the STB cannot adopt DOE's NEPA documents as
11 its own since those EISs now manifest the
12 required supplementation. Without adequate
13 NEPA compliance the STB cannot approve DOE's
14 application, even if it were adequate in other
15 respects, as it is not. We urge the STB to
16 step back and reexamine the DOE application
17 and its supporting documents very carefully.

18 Another new piece of information
19 that should also cause DOE to supplement its
20 EISs is the recent admission by DOE that it is
21 not committed to using dedicated trains for
22 all shipments to Yucca Mountain, at least not
23 outside of the Nevada. That admission has

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1 surfaced in the context of the STB
2 application, as you well know, and has been
3 the subject of several submissions to the
4 Board.

5 While DOE has stated that this is
6 not a change of plan DOE's EISs do not analyze
7 the shipment of spent nuclear fuel or high-
8 level nuclear waste in commercial trains. The
9 EISs consistently assume that this very
10 dangerous material will be shipped on
11 dedicated trains whose schematics are laid out
12 in some detail in the EISs.

13 Those schematics include a limited
14 number of casks per trains, placement on the
15 train of the casks within the train, and
16 placement of security for the casks. There is
17 no analysis of how the huge heavy casks would
18 be handled when a commercial train is made up,
19 no discussion of the effect of the weight
20 distribution on the risk of derailment on
21 tight curves or steep slopes -- and in
22 California we have plenty -- or whether other
23 flammable or hazardous cargo might be shipped

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1 on commercial transit also carrying nuclear
2 waste, and the possibility that risks might
3 become additive from the shipment of these
4 materials together.

5 Perhaps more seriously, there is
6 no analysis of how security would be handled
7 on commercial trains that would carry
8 radioactive materials to Yucca over several
9 decades and how that security would be
10 enforced or maintained. These very serious
11 submissions make it legally untenable for the
12 STB to adopt DOE's EISS as its own NEPA
13 documents.

14 In conclusion, California believes
15 that the administrative record and the NEPA
16 documents tendered by DOE in this proceeding
17 are inadequate to support the issuance of the
18 Certificate of Public Convenience and
19 Necessity. We urge the STB to return DOE's
20 application for the supplementation that the
21 law requires.

22 We thank you again for this
23 opportunity to present California's position

1 and California's concerns.

2 MR. NOTTINGHAM: Thank you, Ms.
3 Durbin. Mr. Halstead, you raised I think an
4 important issue -- maybe a reality I guess.
5 There is currently -- just to make sure I'm
6 correct on my facts -- there currently is an
7 act of Class 1 railroad that goes through
8 downtown Las Vegas -- you mentioned rail
9 traffic.

10 MR. HALSTEAD: Yes. It's the
11 Union Pacific main line between Salt Lake and
12 Los Angeles.

13 MR. NOTTINGHAM: Right. And I
14 assume, as is the case with all main lines and
15 Class 1 lines that I'm familiar with, it
16 carries the whole range of freight rail
17 traffic that one can imagine -- everything
18 from intermodal containers that come from the
19 Port of L.A. Long Beach to things such as
20 hazardous materials, toxic inhalants -- the
21 full gamut.

22 MR. HALSTEAD: Yes, it does, and
23 we're acutely aware of those other risks

1 because of a runaway chlorine tanker incident
2 that occurred here last year. So there's a
3 long-term concern, and you may also be
4 familiar with some of the past efforts by the
5 state of Nevada to, for example, regulate the
6 storage of explosives on rail properties in
7 urban areas. We have a long history of being
8 concerned with HAZMAT shipments through urban
9 areas, not just with these shipments.

10 But I think it's important to
11 understand why these shipments are different
12 than other hazardous materials. The gamma
13 radiation on spent fuel assemblies is so
14 intense that if you had a zero emission rate
15 on the outside of the package you could not
16 economically move them.

17 So we allow -- that is, the
18 Nuclear Regulatory Commission allows by
19 standard routine emissions from these casks.
20 Those emissions are sufficient to post a
21 threat to workers, and in some circumstances
22 members of the general public depending on
23 proximity and stop time.

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1 So what makes spent nuclear fuel
2 different from all other hazardous materials
3 is it's a danger to workers and the public,
4 even when the system is operating perfectly.
5 It's not to say we're not concerned about
6 chlorine and other hazardous materials.

7 Secondly, I think the new final
8 rules, which many of us have been speculating
9 about -- the TSA and PHMSA rules -- may
10 actually make it very difficult for DOE to
11 ship spent fuel through urban areas. And they
12 may, in fact, raise concerns of -- you know,
13 you're I'm sure well aware of the proximity of
14 the STB offices to routes in the District of
15 Columbia that carry chlorine and other toxic-
16 by-inhalation substances. And there was, of
17 course, the controversy over those substances
18 that set in motion the chain of events that
19 resulted in last week's final rules.

20 So, yes, we're deeply concerned
21 about all those hazardous materials shipments.
22 And I think it's going to be a national
23 concern, as well as a Nevada and a Las Vegas

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1 concern, even more so as the carriers try to
2 figure out how they will comply with those new
3 security plan requirements, which, of course,
4 don't just relate to spent nuclear fuel and
5 high-level waste, but all of the other high
6 hazard dangerous goods.

7 MR. NOTTINGHAM: It's my
8 understanding that currently along different
9 corridors around the country rail lines
10 currently handle some amounts, although less
11 concentrated amounts, of spent nuclear fuel
12 currently. Does any of that traffic go
13 through Las Vegas to your knowledge?

14 MR. HALSTEAD: I don't know of any
15 rail shipments offhand that have come through
16 Las Vegas. There have been some rail
17 shipments on the northern Union Pacific lines.
18 Of course, there have been some truck
19 shipments.

20 It's important to remember that at
21 the present time there are very few shipments
22 of spent nuclear fuel by any mode. And,
23 secondly, most of the rail shipments are

1 shipments between reactors in the Carolinas.
2 There have not been the kind of cross-country
3 rail shipments comparable to these. There
4 were a couple of movements of spent nuclear
5 fuel from West Valley, New York, to Idaho.
6 But because that was a very small movement it
7 doesn't represent the kind of planning and
8 risks here.

9 But at the present time we really
10 don't on a routine basis have the kind of
11 spent fuel shipments going through urban areas
12 that would be certainly a weekly, and, in some
13 cases, a daily occurrence under the proposal
14 that DOE has brought to the table.

15 MR. NOTTINGHAM: Thank you. I'll
16 give different Commissioners a chance to ask
17 questions in a different order.

18 Commissioner Buttrey, would you
19 like to take a --

20 MR. BUTTREY: Thank you, Mr.
21 Chairman. Are there areas within the state of
22 Nevada where areas or territory are off limits
23 to people -- human beings -- because of other

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1 nuclear activities that have taken place in
2 the state over the years?

3 MR. HALSTEAD: Well, certainly,
4 Commissioner, there are many -- the acreage
5 and mileage escapes me, but, certainly, the
6 entire Nevada Nuclear Test Site is restricted.
7 There are a few --

8 MR. BUTTREY: Restricted meaning
9 human beings aren't allowed --

10 MR. HALSTEAD: Restricted --

11 MR. BUTTREY: -- to go in there.

12 Is that correct?

13 MR. HALSTEAD: Well, restricted
14 for civilians obviously.

15 MR. BUTTREY: Yes.

16 MR. HALSTEAD: And you'll notice
17 that the Department of Energy has skirted the
18 NTS lands in its rail corridor selections that
19 are currently being evaluated. And in the
20 past DOE considered an option called the Chalk
21 Mountain option, which would have gone across
22 Air Force and other lands -- other federally
23 restricted lands.

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1 So there are some areas, yes, that
2 are restricted. Unfortunately, those don't
3 provide a very good alternative for DOE. And,
4 in particular, the Air Force informed DOE that
5 building the railroad across the area that is
6 used for Air Force activities would be
7 incompatible.

8 I think it's fair to say that
9 there is a lot of land in Nevada outside of
10 the cities that is very sparsely populated.
11 But the only land that's actually restricted
12 is the Nevada Test Site lands.

13 MR. BUTTREY: It seems to me that
14 your state, and maybe the state of New Mexico
15 and certainly the state of Tennessee because
16 of Oak Ridge, has had a considerable amount of
17 experience with issues of this nature. Is
18 that something that we can safely assume --
19 probably more than any other states in the
20 entire country?

21 MR. HALSTEAD: Yes, it is. And
22 I'd go further and say that many of our state
23 and local governments -- jurisdictions that

1 are responsible for responding to
2 transportation emergencies have benefitted by
3 receiving the training that has been
4 available.

5 However, that level of training is
6 not necessarily sufficient to deal with the
7 issues that would occur in urban
8 transportation accidents. And there's also
9 the problem with rural areas where you're
10 often relying on volunteer people or personnel
11 like sheriff's deputies that turn over. So
12 you often have a pretty much complete turnover
13 in emergency response personnel every two to
14 four years.

15 So while there's some advantage in
16 having had the presence of these nuclear
17 activities and the kind of training that the
18 federal agencies provide for local and state
19 agencies that doesn't necessarily mean that we
20 don't have the same concerns. And, of course,
21 you know, there's a whole program within the
22 Department of Energy that's supposed to be
23 funded called Section 180C that would provide

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1 financial and technical assistance to training
2 all of the first responders along the
3 corridors. But the details for that have not
4 yet been worked out.

5 MR. BUTTREY: Thank you. Ms.
6 Adams, I have a question for you. Is it --
7 and you might not be able to answer this, but
8 I'm just curious. Is it the plan of the
9 Office of the Attorney General for the state
10 of Nevada to seek the repeal of the Yucca
11 Mountain Development Act of 2002?

12 MS. ADAMS: Yes, Mr. Commissioner,
13 it certainly is. Nevada has a long standing
14 20-year history of opposition to this project.
15 And as our oversight has proceeded over the
16 years we've been more committed to that than
17 ever before because we believe that the site
18 really doesn't hold water, so to speak -- and
19 there's no pun intended. It's a very
20 unfortunate site for the nation's first
21 geological repository and cannot really
22 contain this material. So, yes, indeed, it is
23 the state's position that the project should

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1 not go forward.

2 MR. BUTTREY: Are you officially
3 on record as having any public position on
4 what the alternatives should be to a
5 repository like the one that's proposed at
6 Yucca Mountain? Could you, for the record,
7 enlighten us on whatever public position you
8 might have on that?

9 MS. ADAMS: Yes, Commissioner
10 Buttrey. As a matter of fact, consistent with
11 statements that Senate Majority Leader Reid
12 has made, it's Nevada's position that the
13 onsite storage in state-of-the-art dry cask
14 storage is preferable to shipping it to a
15 location that is not sound.

16 The NRC has said that the state-
17 of-the-art dry casks can hold this material
18 for over 100 years. And it's the state's
19 position that during that period a more
20 appropriate permanent site could be
21 determined.

22 MR. BUTTREY: Thank you very much.

23 MS. ADAMS: Thank you.

1 MR. BUTTREY: That's all I had,
2 Mr. Chairman.

3 MR. NOTTINGHAM: Vice Chairman
4 Mulvey?

5 MR. MULVEY: Just following up on
6 that a little bit, the United States has more
7 nuclear power plants than any other country
8 but we only get about 20 percent of our
9 electrical power from -- of our power from
10 nuclear plants.

11 The French, on the other hand, get
12 the vast majority of their energy power from
13 nuclear plants and they do not have this
14 problem with storage. Could you enlighten us
15 with what the French do instead?

16 MS. ADAMS: Well, sir, I'm
17 probably not the best authority, but I can
18 tell you what I do know. As a matter of fact,
19 the Europeans primarily -- as I understand it
20 the Swedes and the Finns are proceeding along
21 the path to site a geologic repository.

22 The French too, although they do
23 utilize the breeder reactor, which I

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1 understand the Japanese actually paid for,
2 reduces the volume of high-level nuclear waste
3 but it -- the byproduct of the breeder reactor
4 is actually more toxic than the spent fuel and
5 high-level waste we're talking about here.

6 It's really not a resolved issue
7 in France. I know many people bring this up.
8 I'm not sure it's quite as successful as those
9 of us in this country believe it is. But,
10 again, I'm not the best authority on that.
11 Thank you.

12 MR. MULVEY: Okay. Thank you.
13 I'll ask that question again later. Mr.
14 Halstead, has the Department of Energy ever
15 indicated at all who they thought might
16 actually operate the railroad, if it was
17 indeed approved? Is it an assumption it will
18 be the UP or were they considering getting
19 some sort of short line railroad to handle it?
20 Have they ever given an indication of that and
21 how important that would be in the overall
22 consideration?

23 MR. HALSTEAD: To my knowledge,

1 Vice Chairman Mulvey, they've never taken a
2 formal position on the relationship with the
3 Union Pacific, although all of those who are
4 close to it have assumed that the most likely
5 operator based on the discussions with the DOE
6 people would be the Union Pacific.

7 On the other hand, when you talk
8 to the railroad people, and particularly at
9 the carrier, and when you also talk with the
10 national railroad people who -- particularly
11 the AAR has been active in overseeing this --
12 there doesn't seem to be any railroad that is
13 especially anxious to take on the task of
14 operating this railroad for DOE.

15 So I think you characterized it
16 appropriately. There have been some
17 discussions with UP, a lot of speculation
18 about UP, but there are no formal arrangements
19 that we're aware of.

20 MR. MULVEY: Well, the railroads
21 are on record as saying that they are not
22 interested in carrying HAZMATs of any type
23 generally because of the liability issue.

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1 Albeit in the case of nuclear the Price-
2 Anderson Bill does give them protection that
3 they don't have with other hazardous
4 materials. But the railroads are pretty
5 skittish about carrying them.

6 However, isn't it also true that
7 thus far there has never been an accident
8 involving the transportation of spent nuclear
9 waste? I've heard that --

10 MR. HALSTEAD: Well, there have
11 been accidents. There have been two rail
12 accidents. There haven't been any accidents
13 that involved releases --

14 MR. MULVEY: Right.

15 MR. HALSTEAD: -- since the 1960s.
16 There were actually a couple of rail
17 accidents -- I'd have to go back -- '62 and
18 '64 were -- there were actually some
19 radioactive released that required what would
20 today be a very expensive cleanup. The
21 standards were very different then.

22 It's fair to say that the
23 record -- the safety record of evaluating --

1 let me put it this way. If you evaluate the
2 safety record based on horrific incidents the
3 industry has a very good record of
4 transporting spent fuel by rail.

5 On the other hand, if you look at
6 it the way transportation planners do in terms
7 of frequencies per miles traveled or ton miles
8 traveled or shipment miles they actually have
9 statistically a very high rate of incidents --
10 somewhere in the neighborhood of five to ten
11 incidents per million miles traveled. That's
12 because there have been a couple of incidents.
13 There have not been a large number of rail
14 shipments. Most of the rail shipments have
15 been relatively short.

16 And that is one of Nevada's
17 concerns -- that the assurances that have been
18 given about past performance need to reflect
19 the extremely different operating requirements
20 that would occur in the system that DOE has
21 proposed for Yucca Mountain.

22 To make those facts short you're
23 talking about going from an average rail

1 shipment of less than 6- to 700 miles to an
2 average rail shipment of about 2,100 miles.
3 You're talking about going from primarily
4 operations in the midwest or the east -- as I
5 said, there have been a few cross-country
6 shipments, but you have a whole different
7 animal out there on the operating level day-
8 to-day when you're talking about moving
9 through the terrain and weather conditions
10 that exist in the west.

11 So while we acknowledge that there
12 have not been the kinds of catastrophes with
13 spent fuel that there have been with chlorine
14 and propane and other hazardous materials
15 shipped by rail that does not, in our opinion,
16 provide a basis for any complacency
17 whatsoever.

18 We believe that the shipments can
19 be made safely. We don't believe the
20 Department of Energy has presented a plan that
21 assures us that they will be shipped safely.
22 And that's something that we expect the Board
23 to follow if they make a PCN decision in this

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1 proceeding -- that they actually look at the
2 operational protocols -- the arrangements that
3 DOE might have, the requirements for an
4 integrated safety plan between whoever is
5 carrying on the DOE operated line from
6 Caliente to Yucca Mountain as proposed, as
7 well as the national network.

8 MR. MULVEY: Thank you. Can
9 anybody answer this question? When was the
10 Yucca site first proposed? I know we're
11 dealing with the 2002 law, but when was Yucca
12 Mountain first proposed as a repository for
13 spent nuclear waste? Does anybody know that?

14 MS. ADAMS: Mr. Vice Chairman,
15 actually we here in Nevada call it -- or
16 affectionately call it the screw Yucca
17 Mountain bill, which was 1987. The Yucca
18 Mountain itself was identified as a
19 prospective site, along with numerous other
20 ones, in the 1982 Act. So it was 1987 that
21 Congress decided to exclusively characterize
22 the Yucca Mountain site.

23 MR. MULVEY: So it's 20, 25,

1 almost 30 years ago now that the Yucca was
2 first identified. Would you say that there's
3 been some changes as to the demographics of
4 Nevada in those last 30 years?

5 MS. ADAMS: Yes. As a matter of
6 fact, there's been tremendous changes. And,
7 certainly, Nevada has borne a disproportionate
8 share of nuclear presence by virtue of the
9 Nevada Test Site. And we have long lasting
10 and considerable contamination issues at the
11 site as we speak.

12 MR. MULVEY: Ms. Durbin, you had
13 talked about the amount of traffic that would
14 be going through the Mina site if that was to
15 become the preferred route at some point.
16 Where does all that nuclear waste originate?
17 Does it all originate in California or would
18 there also be some coming down from Oregon and
19 Washington or other places as well?

20 MS. DURBIN: Yes, sir, Mr. Vice
21 Chairman. If you look at the maps that are
22 attached to Mr. Halstead's testimony you'll
23 see that depending on whether it goes to the

1 Caliente route or goes the Mina route a great
2 proportion of the waste from the southern --
3 from the reactors in the southern part of the
4 United States will go through California, up
5 through California's central valley, then over
6 the Donner Pass, and then down to connect at
7 Hazen to the Mina route, as opposed to the
8 Caliente route where it will come into
9 southern California to the Barstow area and
10 then come straight back to connect to the
11 Caliente in Nevada. It's a huge difference.

12 Also waste from the Hanford site
13 will come down and connect in the Redding area
14 and then go over the Donner Pass to connect to
15 the Mina site where it will not if the
16 Caliente route is chosen.

17 MR. MULVEY: Thank you. I'm
18 familiar with all those areas, and that's --
19 a lot of population that would be exposed if
20 indeed they were to take those routes. The
21 only map I have in front of me that's provided
22 by the DOE doesn't include any of California
23 movements, and, in fact, it doesn't even

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1 include Las Vegas. So it cuts off a lot of
2 the routes. So it was hard to tell exactly
3 where it's coming from and exactly where it
4 would be originating from.

5 One last question, and that is on
6 this map that I have in front of me -- if you
7 look at it you can see that a direct route
8 through the Air Force base -- the Air Force
9 range and the Test Site would be a lot
10 quicker -- a lot faster than either the
11 Caliente or the Mina or any of the routes that
12 have been proposed.

13 I know the Air Force is opposed to
14 it, but it seems to me we're trading off here.
15 There's a trading off of incapacibilities. One
16 incapability might be routing all of this
17 nuclear waste through fairly populated areas.
18 Another one -- incapability is accommodating
19 the needs for the Air Force for a training
20 facility. I'm not sure which one is easier to
21 accommodate.

22 But do you think that if you could
23 accommodate the Air Force that would be a

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1 better route than the Caliente route or the
2 Mina route? Anybody can answer.

3 MR. HALSTEAD: Well, Vice Chairman
4 Mulvey, the state's position has been since
5 1995 that we would tell DOE how we thought
6 they should select their corridors under NEPA,
7 but we said we will not select the corridor or
8 corridors for them. So anything I say needs
9 to be seen in that context.

10 There's still some larger issues
11 with the way the rail system would operate if
12 the Chalk Mountain alternative were used.
13 Certainly if there were not the conflict with
14 the Air Force one might say why isn't that the
15 more obvious choice.

16 First, you still have the problem
17 with the main line connector being the route
18 that goes through Las Vegas, and DOE has not
19 chosen to deal with that by saying how they
20 would block shipments through Las Vegas. In
21 my opinion, if they thought it would only be
22 8 percent they would be willing to use
23 circuitous routing to move those shipments.

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1 So, number one, the Chalk Mountain doesn't
2 deal with the problem from the state of Nevada
3 of shipments through Las Vegas.

4 Secondly, it's just a peculiarity
5 of the physical geography of Nevada that the
6 most difficult stretch of terrain for the
7 Caliente route that DOE has chosen -- and I
8 argue there are other ways you could pick a
9 route out of Caliente, but they seem to have
10 insisted on choosing the most difficult one --
11 involves a lot of difficult mountain terrain
12 so that first 120 miles out of Caliente
13 involves going through Bennett Pass and Timber
14 Mountain Pass and some of the examples that
15 we've used.

16 So the short answer is in order to
17 get to Chalk Mountain and go through the Air
18 Force you still have to go through the most
19 difficult portion of the Caliente route. So
20 whatever advantage there might be of avoiding
21 that extra 120 miles or so going around the
22 northwest corner of the Test Site you would
23 still have the problem from Nevada's

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1 standpoint of shipments through Las Vegas and
2 you would still have all of the environmental
3 impact issues of getting from Caliente to the
4 point of somewhere around Garden Valley where
5 you would turn south and go into the Air Force
6 around where the town of Rachel is located.

7 MR. MULVEY: Thank you very much.

8 MR. NOTTINGHAM: Commissioner
9 Buttrey, any follow up?

10 MR. BUTTREY: Just one follow for
11 Mr. Halstead, or perhaps Ms. Adams. I don't
12 know who would be the best to answer this.
13 But if you could, for the record today, give
14 us some order of magnitude of how many either
15 hundreds of sections or thousands of sections
16 or hundreds of thousands of sections -- I'm
17 not sure what that number -- give us order of
18 magnitude of the Nevada Test Range and how far
19 that is from the city of Las Vegas. Is it --
20 which one of those -- I mean, I'm sure it's
21 larger than hundreds of sections -- it's
22 probably into the thousands of sections.

23 MR. HALSTEAD: Well, I'm

1 embarrassed that I'm prepared to answer many
2 of your questions today, Commissioner. But I
3 will have to send you that one after the
4 hearing in writing. I do think it's important
5 to understand that the expansion of greater
6 Las Vegas has brought Las Vegas closer to the
7 southern border of the Test Site than I think
8 anyone would have imagined even 20 years ago.

9 It's true in the current situation
10 some of these development plans now may slow
11 down, but the growth of -- the distance
12 between downtown Las Vegas and Yucca Mountain,
13 depending on whether you actually take the
14 repository or the entry to the restricted
15 area, is about -- 110 miles is the large
16 distance. And Las Vegas has grown out about
17 40 miles towards Yucca Mountain in the time
18 since the Act was passed.

19 And you also have the development
20 of some rather large population centers in Nye
21 County, particularly in the Pahrump area,
22 which is a very big retirement community now.

23 So the distance which once seemed

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1 like a very long distance between Las Vegas
2 and the Test Site -- and certainly because I
3 was involved in those deliberations with the
4 federal legislation in 1983 -- and 1987 I can
5 tell you that was in another life as an
6 employee of the state of Wisconsin when I
7 advised the Congressional delegation on that.
8 That was one of the things that seemed to
9 appear attractive about Yucca Mountain -- lots
10 of federal land and no nearby populations.

11 But as we've said several times
12 here the demographic reality has changed
13 extraordinary. And while there is still a lot
14 of federally restricted land there it doesn't
15 necessarily make it easier for DOE either to
16 site the repository or build a railroad to the
17 repository. But I will get back to you on
18 this specific issue.

19 MR. BUTTREY: Thank you very much.

20 MR. NOTTINGHAM: Thank you. I
21 think that concludes the questioning for this
22 panel. I did want to note that Vice Chairman
23 Mulvey mentioned the French experience, and I

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1 would dare to say we probably won't be able to
2 get to France for our next hearing on our
3 limited budget.

4 But I can report that having
5 successfully contributed to the local last
6 evening after we arrived you can actually
7 almost experience Paris right here in Las
8 Vegas. So I'm sure, who we're going to
9 welcome momentarily, can describe that in
10 more detail, but I saw some familiar looking
11 structures as I was surveying the skyline.

12 We will now dismiss this panel --
13 thank you -- and call forward the next panel,
14 Panel I(C). We're also going to make a quick
15 change to add Mayor Goodman and his colleagues
16 from the city council and the city attorney's
17 office to come join this panel if you could.
18 We understand that the mayor has some time
19 scheduling constraints today. We respect
20 that, and out of deference to the fact that we
21 in his fair city we would want to work around
22 his schedule as best as we can.

23 And so we're going to ask the

1 mayor to be our first speaker once he gets
2 settled. And he'll be joined also by -- I
3 believe by either Larry Brown from the council
4 and/or Brad Jerbic, the City Attorney. But we
5 also have on this panel Susan Brager, the
6 Commissioner from Clark County. We have
7 Jeffrey D. VanNiel, council from Nye County,
8 representing the Nevada counties of Nye,
9 Churchill, Esmeralda, and Mineral. George T.
10 Rowe, Commissioner of Lincoln County. Dr.
11 Mike Baughman, consultant to the White Pine
12 County Nuclear Waste Project Office from White
13 Pine County.

14 As soon as you are all settled we
15 will start momentarily with Mayor Goodman.
16 Mayor, welcome. It's an honor to have you
17 here. Thank you for letting us trespass in
18 your fair city for a day or two. It's
19 impressive to see what you have going on here
20 in the way of economic development. And you
21 wouldn't even know -- from my perspective you
22 wouldn't know we were in a recession arriving
23 at the airport and walking the streets. And

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1 that may just be because I'm not used to the
2 kind of crowds you get during peak times. But
3 things seem to be still buzzing along here in
4 your economy, so congratulations to you and
5 your team.

6 Without further adieu we will turn
7 it over to you for your statement up to ten
8 minutes. Thank you.

9 MAYOR GOODMAN: Thank you very
10 much, Mr. Chairman. I have to say that I am
11 very pleased to have sat in these chambers for
12 the past 15 minutes and listened to the
13 questions which this Commission tendered to
14 the various witnesses.

15 The questions were significant,
16 they were meaningful, they were thoughtful --
17 and we're not used to that here as far as
18 representatives or concern with promoting the
19 nuclear repository about 90 miles from my fair
20 city.

21 What we've experienced in the
22 past -- and I say this with a great deal of
23 forethought -- is virtually a charade on the

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1 part of the officials who have come out here.
2 And once again I say respectfully, because I
3 respect the office, but a former Secretary of
4 Defense -- of Energy came here charged with
5 responsibility of reporting back to the
6 President on the issues of the scientific
7 validity of the repository itself, charged
8 with the responsibility to go through the
9 records and to ask the questions that you've
10 been asking, and the Secretary spent about ten
11 minutes in performing that charged obligation
12 and then returned and pontificated, with all
13 due respect, to the President that everything
14 was all right when it's not all right.

15 What I would like to do is I'd
16 like to have my City Attorney Brad Jerbic make
17 some comments. And then after he completes
18 his statement, I'd like to give you my
19 perspective as far as whether or not the
20 repository should accept nuclear waste in this
21 day and age.

22 MR. JERBIC: Thank you, Mayor.
23 Thank you, Chairman and members of the

1 Committee. I'll be very brief. I want to
2 just as a matter of technicality incorporate
3 all the comments made by the state of Nevada
4 on the record on behalf of the City of Las
5 Vegas. I appreciate the work that Mr.
6 Halstead had done and I agree with everything
7 that he has said and I agree with his written
8 comments that were filed prior to today.

9 It's my understanding that this
10 Board is charged with looking at a number of
11 things. But one of them is whether or not
12 there is an absence of public convenience and
13 necessity, and I understand there's a very
14 broad standard that you apply. And the broad
15 standard allows you to weigh the
16 transportation benefits against any kind of
17 harm likely to result as a result of the
18 construction of this rail line.

19 I also noted that we are here
20 today because this is going to be a common
21 carrier line. If it were a private line this
22 would not appear before the Surface
23 Transportation Board. It's interesting

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1 that -- this is a common carrier line that I
2 imagine there are other things that are going
3 to go down the line -- maybe goods, maybe
4 people, maybe services of some sort.

5 But this application isn't filed
6 on behalf of a commercial railroad. It's
7 filed on behalf of the Department of Energy.
8 And we're not sitting in some chambers
9 listening to people who might benefit from it.
10 We're sitting in the offices of the Nuclear
11 Regulatory Commission. It is abundantly clear
12 that the primary purpose of this line is for
13 the transportation of high-level nuclear
14 waste.

15 And, as such, I think that public
16 safety, as you are charged with being able to
17 examine it, should be the focus of this
18 Committee. Now, there are many other
19 issues -- environmental issues and other site
20 locations -- but as City Attorney for Las
21 Vegas for the past sixteen-and-a-half years
22 and as a resident of Nevada for 46 years in
23 Las Vegas I've seen this project migrate, and

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1 I happen to be familiar with the three things
2 that are going on right now. One is a lawsuit
3 challenging the siting of the dump at Yucca
4 Mountain. Two is a challenge to the licensing
5 of the waste dump. And, three, this hearing
6 that we're having today to discuss the rail
7 line. And all are intertwined.

8 With respect to the repository one
9 has to go back in time to the charge by
10 Congress. The United State Congress was to
11 locate -- find a site that was geologically
12 capable of containing radioactive waste for
13 10,000 years or more. At the end of all the
14 analysis of all the study that place is not
15 Yucca Mountain.

16 So something's happened. What's
17 happened is there's been a slight of hand
18 where there has been a substitution of safety
19 devices. No longer is the repository alone
20 going to contain the waste. Now it's going to
21 be what I will refer to as the magic casks.
22 These are casks which have not been developed,
23 which have not been tested, which we are told

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1 that when they are will be able to withstand
2 all sorts of explosions, collisions, damage,
3 and ultimately contain the waste in Yucca
4 Mountain for a period of time as yet to be
5 determined.

6 Since the magic casks have not
7 been developed how can you possibly evaluate
8 the safety of transporting these casks on this
9 rail line or any other rail line in this
10 country? How can you possibly know what kind
11 of HAZMAT team is going to have to respond --
12 how many people, how much money, how much
13 training. How can you possibly know the
14 damage?

15 I would submit as a matter of
16 record these hearings are so premature that
17 until the very thing that this railroad is
18 going to be used to transport -- or developed
19 how can you possibly determine public safety?

20 Mr. Vice Chairman, I had the
21 pleasure of reading your biography as they
22 handed it out as I came in. I noticed that
23 you were staff director for pipelines and

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1 hazardous materials for the Subcommittee on
2 Highways and Transit.

3 MR. MULVEY: True.

4 MR. JERBIC: And I had an
5 opportunity to meet a few individuals from
6 your office as part of our City Attorney
7 organization, the National Municipal Lawyers
8 Association, and I can tell you you have fine
9 people that I think you work with.

10 I notice that in the state's
11 comments, page 6, there is an interesting
12 comment about public safety, and it is in part
13 due to a report from the Pipeline and
14 Hazardous Materials Safety Administration. I
15 don't know if you were a part of it or a
16 director of it at the time it was written.

17 But, Mr. Vice Chairman and members
18 of the Committee, it reads -- and I will just
19 quote this directly -- That the types of
20 materials that are going to be transported
21 have been determined to represent the greatest
22 rail transportation safety and security risks
23 and the most attractive targets in a target-

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1 rich environment of an exposed rail
2 infrastructure in densely populated areas as
3 weapons of opportunity or mass destruction.
4 And the final rules represent the continuing
5 collection efforts to ensure safe and secure
6 transportation of the DOE's materials.

7 This is a finding by another
8 federal committee -- that this is very
9 dangerous stuff that is subject, because it's
10 above-ground railroads coming through the
11 country, to possible terrorists.

12 Now add to that accidents -- add
13 to it the things that we all say should never
14 happen. Trains shouldn't wreck -- they do.
15 Planes shouldn't fall out of the sky and
16 crash -- they do. Space shuttles shouldn't
17 blow up, but they do.

18 Without knowing what the magic
19 casks are, what they're made up, how people
20 are going to respond to it, and just
21 anticipating where human beings make things
22 there will be human error, how can you
23 possibly determine that public safety isn't

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1 significantly impacted by the transportation
2 of materials so deadly that exposure to it,
3 even after it's cooled for ten years -- one or
4 two minutes' exposure is deadly. That's what
5 we're dealing with here.

6 With those comments, I would
7 submit the better spokesman for the City of
8 Las Vegas, my boss, Mayor Oscar Goodman.

9 MAYOR GOODMAN: I'm not going to
10 say I'm the better spokesman, Mr. Chairman.
11 But I came here in 1964. It was a city of
12 70,000 people. We now have in this valley 2
13 million people.

14 When I came here people told me
15 about the atomic testing that was taking place
16 out in the desert. It was actually a
17 recreational opportunity because when the
18 tests were going to take place everybody got
19 into their cars and they drove out to the
20 desert and they saw the big mushroom and they
21 were told that it's not dangerous. If you get
22 some of the dust on you all you have to do is
23 wipe it off or take a shower. That was the

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1 official word.

2 And now we have folks who went out
3 there for the recreation trusting the word of
4 the federal government that there was no
5 danger called down-winders. They're all
6 suffering from the most egregious forms of
7 cancer and getting very little attention as
8 far as their needs are concerned.

9 So we don't necessarily in Nevada
10 trust what people tell us. We like to test it
11 out. And Yucca Mountain is 90 miles from my
12 city. The railroad goes right by City Hall.
13 It goes by our casinos. If, God forbid, there
14 were an accident and the nuclear waste was
15 exposed Las Vegas would become a ghost town
16 virtually overnight because we have a
17 community which is based on tourism, a
18 community that has 144,000 hotel rooms, a
19 community that is flourishing for all
20 intensive purposes, even in these difficult
21 economic times.

22 But if, in fact, there were a
23 disaster, because we are a discretionary

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1 location -- we're not a mercantile center yet,
2 we're not a financial center yet, we're not a
3 government center yet. Because of that people
4 wouldn't come here. And basically those 2
5 million people who live in the valley would
6 have to be disbursed. And it's my obligation
7 as the mayor of at least 600,000 of them to at
8 least express my real concern.

9 But I think we have to speak more
10 broadly than just trying to protect Las Vegas.
11 I don't see this as Las Vegas' problem alone.
12 I see it as a national problem. And I took
13 the issue before the United States Conference
14 of Mayors several years ago, and the mayors
15 there were not supportive of my position
16 because they had nuclear waste being stored in
17 their backyards and they wanted to dump it in
18 my backyard.

19 And it sounded very attractive to
20 them until we provided the proposed routes
21 that the waste would travel on. And one of
22 the mayors discovered that the route was going
23 to go through her living room, and she then

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1 became an ally. And then the other mayors --
2 when they looked at the routes they saw that
3 it's going through their living rooms and it's
4 going past their hospitals and their schools
5 and their universities and their business
6 centers.

7 And I got support, and we had a
8 resolution passed by the Conference of Mayors
9 indicating that until and unless people were
10 trained along the way to address issues of
11 hazardous material accidents or terroristic
12 activities involving hazardous materials that
13 the mayors as a group would oppose the
14 establishment of any kind of transportation.

15 And I submit in these very
16 difficult challenging times as far as
17 economics are concerned there's no way in the
18 world the federal government is going to be
19 able to pay for, nor the states will be able
20 to pay for, nor the counties, nor the cities
21 to train people to have the expertise to
22 address these issues along the way. It's not
23 just being trained when it hits the Nevada

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1 border or on its way up to the repository.
2 It's all the way across the country,
3 crisscrossing and going upside down, and a
4 disaster could happen.

5 And my position is that we're just
6 not ready for it until we get the ducks in
7 order, if ever. And I don't see that
8 happening. And I think in answer to the Vice
9 Chair's observations perhaps the only solution
10 at this point in time is to keep the junk
11 where it is.

12 MR. NOTTINGHAM: Thank you, Mayor
13 Goodman and Mr. Jerbic. We'll now hear from
14 Susan Brager, Commissioner of Clark County.

15 MS. BRAGER: Thank you. And I
16 appreciate the Chairman and the Board members
17 for granting the public hearing on this
18 important and controversial issue for southern
19 Nevada. And I will be submitting my detailed
20 record, but I will be very brief today as
21 there are many speakers.

22 While we believe the application
23 to build a rail line is not yet approved the

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1 repository is premature and we believe the
2 issues we're discussing today are appropriate
3 in front of the STB and need to be considered.

4 Clark County opposes the DOE's
5 application to build the proposed Caliente
6 Rail Line to Yucca Mountain and the granting
7 of a Certificate of Public Convenience and
8 Necessity for a number of reasons.

9 First and foremost, we oppose the
10 rail line because we oppose the construction
11 of Yucca Mountain. If the repository is not
12 approved by the NRC then a rail line is no
13 longer convenience or necessary. There would
14 not be a reason to build a rail line if
15 there's not going to be nuclear waste brought
16 to southern Nevada.

17 We believe the DOE has failed to
18 meet federal environmental standards in its
19 application to build the rail line and the EIS
20 which supports it. For example, we don't
21 believe reasonable alternatives or
22 socioeconomic impacts were adequately
23 considered.

1 The STB should require the DOE to
2 be held to the standards of NEPA and Council
3 on Environmental Quality for both direct and
4 indirect impacts of all the rail construction.
5 Our written statements will outline that for
6 you and give you reasons why we believe that
7 is very important.

8 The STB should carefully examine
9 the DOE's financial and operational
10 capabilities before it considers granting the
11 application. The DOE has never built or
12 operated a rail line, and we believe based on
13 the DOE's record the risk is high and that the
14 rail line either will never be built or that
15 if built it cannot be operated with the utmost
16 in cost containment, safety, and security,
17 which is extremely important.

18 We believe there is no dispute
19 that Clark County would be directly impacted
20 by rail transport to the repository. Clark
21 County provides local and regional first
22 responder services. The DOE's reliance on
23 Section 180(c) of the Nuclear Waste Policy Act

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1 to meet the burden for first responders is
2 inadequate and inappropriate.

3 Granting DOE's application would
4 result in an unfunded mandate -- and I
5 repeat -- unfunded mandate to Clark County for
6 public safety, security, and emergency
7 management. Our rural first responders and
8 university medical center are not equipped to
9 handle potential accidents resulting from a
10 rail accident involving high nuclear waste.
11 And we've heard that discussed earlier -- that
12 planes drop from the sky and trains do have
13 accidents. Clark County believes granting the
14 DOE a Certificate of Public Convenience and
15 Necessity poses too many risks to the public,
16 the environment, and the economy of southern
17 Nevada.

18 And the application should be
19 denied. And we really appreciate your time
20 and attention and that you would hold these
21 hearings here in our state as our state is
22 very concerned what the possibilities of what
23 could happen. So we, again, thank you for

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1 your time, and all my comments and documents
2 will be provided to you. And I apologize if
3 I do have to step out. I had another
4 engagement that I postponed but may have to
5 leave before this panel is finished.

6 MR. NOTTINGHAM: We understand,
7 Commissioner. Next we'll hear from Jeffrey D.
8 VanNiel, Council for Nye County and the Nevada
9 Counties for Nye, Churchill, Esmeralda, and
10 Mineral.

11 MR. VANNIEL: Thank you, Your
12 Honor. Mr. Name's Jeff VanNiel. I am an
13 attorney. I do represent Nye County actively.

14 I wanted to thank the Board for
15 coming to Nevada to provide Nevada residents
16 and local government the opportunity to
17 provide a public statement on the record
18 concerning DOE's pending application to
19 construct a joint use rail line to the Yucca
20 Mountain facility.

21 In that regard I'm making my
22 statement here today, not only on behalf of my
23 client Nye County, but also on behalf of the

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1 Nevada Counties of Churchill, Esmeralda, and
2 Mineral Counties.

3 Each of these counties also ask
4 that their previously filed comments on the
5 STB record be included in the record of this
6 meeting we're hearing here today.

7 My comments are extremely brief.
8 Based on the current construction time frames
9 that we're looking at we ask the Board to
10 require DOE to preserve all of its rail
11 routing options for as long as possible,
12 specifically the through going rail option
13 which adds flexibility, reduces possible
14 congestion, and, last, but not least, takes
15 all of the spent fuel and nuclear waste rail
16 shipments out of the Las Vegas valley
17 entirely. Thank you.

18 Oh, also I wanted to note for the
19 record that, as to the economic benefits of
20 the various rail options there is a study
21 attached to the previously filed Nye County
22 comments that are already in the record at the
23 STB.

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1 And although I do not have
2 personal knowledge I was informed just before
3 I came up here that with respect to the Nevada
4 Test Site question asked previously the Test
5 Site itself is roughly 1,000 square miles. To
6 be honest, I don't know how many sections that
7 would be. But it sits roughly 60 miles at its
8 closest point to the city of Las Vegas. Thank
9 you for the opportunity to speak.

10 MR. NOTTINGHAM: Thank you, Mr.
11 VanNiel. We'll now hear from George T. Rowe,
12 Commissioner of Lincoln County.

13 MR. ROWE: Thank you. First of
14 all, I'd like to thank the Board for coming to
15 Nevada -- and welcome. Thank you for the
16 opportunity to testify today. My name is
17 George T. Rowe. I am a member of the Lincoln
18 County Commission. With me today to help me
19 with any questions that the Board might have
20 is Dr. Mike Baughman, president of Intertech
21 Services Corporation, a consultant to Lincoln
22 County.

23 The Caliente Rail Alignment begins

1 in Lincoln County, Nevada, specifically in
2 Caliente, my home. A line will cross the
3 county from east to west, a distance of 108
4 miles. Lincoln County is a large rural area
5 where ranching and other land-based pursuits
6 define the character of our county.

7 Of the more than 10,600 square
8 miles that comprise Lincoln County, private
9 land represents less than 2 percent of the
10 area. Federally administrated land,
11 principally managed by the Bureau of Land
12 Management, serves to support nearly ever
13 facet of the economy and the daily lives of
14 the Lincoln County residents.

15 Lincoln County contains 66
16 operating ranches that utilize grazing on
17 public lands. The Caliente Rail Alignment
18 directly affects at least 16 of these ranches
19 which sustains nearly 15,000 cattle and sheep
20 within Lincoln County. Lincoln County
21 supports the comments that will be offered
22 later today by the N4 State Grazing Board.

23 As documented in a November 2007

1 Lincoln County report titled Proposed DOE
2 Caliente Rail Corridor, Lincoln County,
3 Nevada, an analysis of impact and alternatives
4 was recommendation: mitigation. All
5 effective grazing operations, including land
6 and water property rights will be profoundly
7 impacted and, even with implementation of
8 mitigation, a number of the grazing operations
9 may be forced out of business.

10 If the Caliente Rail Line is to be
11 built and operated Lincoln County believes
12 that no owner of private property or users of
13 public land should be left to contend with any
14 mitigation consequences of the public for the
15 project.

16 To ensure that ranching operation
17 and their use of public and private land and
18 water resources are maintained at today's
19 level Lincoln County asks the Surface
20 Transportation Board for conditions that would
21 result in DOE accomplishing the following
22 goals as it designs and implements mitigation
23 strategies regarding public land.

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1 Achieve no net loss of animal-unit
2 months of forage on public grazing land --
3 AMUs. Make sure mitigation plans are
4 implemented for each impacted allotment before
5 the land is disturbed. Maintain all existing
6 access to public lands. Ensure that adequate
7 funds are available to identify, carry out,
8 and monitor these mitigation, working with the
9 directly impacted parties. Provide lands that
10 require mitigation address direct, indirect,
11 and unanticipated impacts. Establish a
12 cooperative process for identifying,
13 evaluating, implementing, and monitoring the
14 effectiveness of these mitigation measures.

15 The additional shipments by rail
16 of spent nuclear fuel each year costs Lincoln
17 County because of this project poses a
18 relatively small, but not insignificant,
19 incremental public health risk.

20 Lincoln County urges STB and DOE
21 to work with Lincoln County to effectively
22 mitigate these risks by providing adequate
23 emergency first response, medical personnel,

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1 training, and equipment.

2 By a letter dated July 7 of '08
3 Lincoln County provided STB with comments on
4 DOE's application to the Board, which includes
5 specific recommendations for mitigation,
6 related conditions, for any such certificate
7 granted to DOE. In DOE's August 29, '08 reply
8 to STB we note DOE indicates their commitments
9 to these mitigation measures and other
10 developed as details in the rail EIS Chapter
11 7 process.

12 DOE has asserted its commitment
13 and implementation outright or agreed to work
14 with affected parties to design effective
15 approaches for addressing 73 of the 100 plus
16 mitigation measures suggested by Lincoln
17 County in its comment letters to STB.

18 Lincoln County recommends that the
19 STB encourages DOE to adopt, monitor, and
20 changes needed to these mitigation measures.
21 To protect the public interest we recommend
22 that these measures be included as conditions
23 to any certificate. Lincoln County looks

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1 forward to working with all federal agencies
2 to ensure actual implementation of these
3 important mitigation measures.

4 Although expected to be a low
5 probability accidents along the Caliente Rail
6 Line could have serious consequences.
7 Accidents of any magnitude would likely cause
8 considerable media attention, potentially
9 impacting the region as a place to live, work,
10 and visit.

11 It is important that all work to
12 ensure that the frequency, severity, and
13 consequences of rail accidents and incidents
14 be minimized. Page 12 through 15 of Lincoln
15 County's comments to STB describes appropriate
16 rail safety mitigation measures and suggests
17 these measures be included as conditions to
18 DOE's certificate.

19 Lincoln County is characterized by
20 an abundance of outdoor recreational
21 opportunities. As a result of the undisturbed
22 and remote nature of much of the county's
23 public land tourism is an important component

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1 to the local economy.

2 If Lincoln County were to have
3 stigma because of rail shipments or nuclear
4 waste tourism in the county could well
5 decline. Private property values might also
6 be adversely impacted by these negative views.

7 In comments to DOE's rail
8 alignment EIS and to DOE's application for a
9 certificate from STB Lincoln County raised
10 issues regarding potential for the
11 construction and operation of the Caliente
12 Rail Line to result in negative perception of
13 areas along the rail line. Lincoln County was
14 encouraged by DOE's response to our comments
15 that they indicated their continued commitment
16 to work with local communities and tribes to
17 fully understand and mitigate the potential
18 negative perceptions because of the rail
19 project.

20 To facilitate design and
21 implementation of the adaptive management
22 approach suggested by DOE Lincoln County
23 recommends that STB add a condition for DOE to

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1 include the use of adaptive management
2 approach to account for changes, estimate
3 impacts, and to make adjustments to mitigation
4 measures for actual rather than perceived risk
5 for the construction and operation of the
6 railroad.

7 Lincoln County's comment letter to
8 STB details the need for DOE to design and
9 implement a baseline health condition
10 assessment and monitor projects, including a
11 plan for compensation of health affected
12 parties. The DOE final rail alignment EIS
13 disclosed that exposure to radiation will
14 result in people working and living along the
15 rail alignment. Monitoring of baseline health
16 conditions and establishment of protocol for
17 compensation of affected persons will go a
18 long ways to mitigate the consequences and
19 alleviate public concern regarding radiation
20 exposure from DOE's rail operations.

21 Finally, to make sure that the
22 Caliente Rail Line and mitigation measures
23 take place in a timely and complete fashion we

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1 ask that your certificate include the
2 following three conditions and they be met
3 before any construction begins.

4 DOE should possess a license to
5 build the Yucca Mountain Repository from the
6 Nuclear Regulatory Commission. Number two,
7 obtain all rights of ways from the BLM and
8 have permission for all affected private
9 owners to occupy land chosen for rail -- the
10 rail line. And, number three, obtain
11 authorization and adequate funding from the
12 U.S. Congress to build the rail line,
13 implement all mitigation measures, comply with
14 all STB conditions, and implement all BLM
15 right of way conditions.

16 Again, I thank you for the
17 opportunity to testify today and would be
18 happy to answer any questions that you might
19 have with the help of Dr. Baughman.

20 MR. NOTTINGHAM: Thank you,
21 Commissioner Rowe. Dr. Baughman, do you have
22 remarks you'd like to make as well?

23 DR. BAUGHMAN: Thank you, Mr.

1 Chairman, members of the Board. My name is
2 Mike Baughman. I'm appearing today on behalf
3 of White Pine County Nuclear Waste Project
4 Office.

5 Pursuant to the Nuclear Waste
6 Policy Act, as amended, White Pine County,
7 Nevada, is one of ten units of local
8 government designated by the Secretary of
9 Energy as affected by the proposed Yucca
10 Mountain Geologic Repository System, including
11 transportation. The county is located
12 downwind from the Yucca Mountain site and is
13 concerned with exposure pathways for
14 radionuclides originating at the repository.

15 In addition, the state of Nevada
16 has identified U.S. Highway 93 and U.S.
17 Highway 6 through White Pine County as a
18 possible designation as an alternate highway
19 route for shipments of spent nuclear fuel to
20 Yucca Mountain.

21 The Caliente Rail Alignment does
22 not cross White Pine County. At its nearest
23 point the county and the rail alignment is

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1 approximately 35 miles south of White Pine
2 County line.

3 While White Pine County supports
4 DOE's plans to make the proposed Caliente Rail
5 Alignment available for commercial traffic,
6 construction and operation of the line will
7 impact public and private lands utilized by
8 residents of White Pine County.

9 The proposed rail alignment would
10 cross public lands and may cross or otherwise
11 impair private lands and improvements owned
12 and operated by or otherwise utilized by
13 residents of White Pine County. In
14 particular, White Pine County based livestock
15 operators owning permits to utilize public
16 land grazing allotments crossed by the
17 Caliente Rail Alignment may see the use and/or
18 value of private base property in White Pine
19 County impacted due to impaired use of public
20 land grazing allotments and related range
21 improvements impacted by the proposed Caliente
22 Rail Alignment.

23 The Caliente Rail Alignment will

1 result in a wide variety of impacts to private
2 and public land resources and neighboring, as
3 well the Lincoln and Nye Counties, utilized by
4 residents and industries based in White Pine
5 County. As a consequence, construction and
6 operation of the rail line to Yucca Mountain
7 may impact the economy of White Pine County
8 and the characteristic way of life for some
9 White Pine County residents.

10 In addition, White Pine County's
11 principal community, the city of Ely, is the
12 location of the nearest full service hospital
13 to segments of the proposed Caliente Rail
14 Alignment located in southeastern Nye County
15 and northeastern Lincoln County. Medical
16 emergencies during construction and operation
17 of the proposed rail line in these locales may
18 result in transport of injured persons to
19 medical facilities in Ely.

20 If fully identified and evaluated
21 many of the potential impacts of constructing
22 and operating the Caliente Rail Alignment may
23 be avoided or minimized through design and

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1 implementation of appropriate mitigation
2 measures. To the extent that potential
3 impacts are not fully identified and properly
4 evaluated the rail line may result in
5 unanticipated and unmitigated adverse
6 consequences.

7 White Pine County believes DOE
8 must be required by STB to fully identify and
9 mitigate all direct and indirect impacts to
10 the county in a realignment regardless of
11 their significance.

12 In addition, DOE should be
13 required to develop and implement, in
14 cooperation with affected parties, a process
15 for monitoring actual impacts of the
16 construction and operation of the line and to
17 monitor the effectiveness of all mitigation
18 measures implemented by DOE.

19 The STB is encouraged to condition
20 any certificate granted to DOE to ensure that
21 all direct and indirect impacts are
22 identified, appropriate measures to mitigate
23 said impacts are implemented, and the

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1 effectiveness of mitigation monitored during
2 construction and operation of the Caliente
3 Rail Alignment.

4 In its July 10, 2008, comments to
5 DOE's application for a Certificate of
6 Convenience and Public Necessity White Pine
7 County noted that its economy is heavily
8 dependent upon vehicular traffic and
9 traveler -- and related traveler services
10 along U.S. 93, U.S. 6, and State Route 318,
11 all of which will be crossed by the Caliente
12 Rail Alignment in neighboring Lincoln and Nye
13 Counties.

14 The county's comment letter noted
15 that in the event that a rail incident or
16 accident involving nuclear waste were to occur
17 along the Caliente Rail Alignment in the
18 vicinity of U.S. 93, U.S. 6, or State Route
19 318 it is possible that media-amplified
20 negative public perceptions of risk may
21 significantly reduce, at least on a temporary
22 basis, highway traffic through White Pine
23 County and the city of Ely. Such a reduction

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1 in traffic can result -- would result in
2 diminished traveler spending and related
3 fiscal impacts to the county and city.

4 Although the Department of Energy
5 considers the probability of a transportation
6 accident to be low that possibility
7 nevertheless cannot be ignored, particularly
8 given the potential for such an event to be
9 attended by media amplification and to result
10 in significant economic and fiscal
11 consequences.

12 Business disruption may result in
13 lowered sales, loss wages for employees, and
14 reduced tax revenues. Depending on the length
15 of the disruption existing businesses may
16 experience irreversible effects.

17 Accordingly, White Pine County
18 recommended to STB that the DOE be required to
19 mitigate stigma-induced impacts of the
20 Caliente Rail Alignment in the following ways.

21 DOE should assist White Pine
22 County with development and implementation of
23 a monitoring system to detect negative impacts

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1 on traveler-related economic and fiscal
2 activity due to the Caliente Rail Alignment.

3 Impact thresholds should be
4 established at which predetermined mechanisms
5 for compensating businesses and local
6 government impacted by reductions in traffic
7 and traveler-related economic and fiscal
8 activity would be employed.

9 DOE should assist White Pine
10 County with development and funding of a
11 standby marketing campaign to be implemented
12 immediately following any incident or accident
13 involving a radioactive waste shipment along
14 the Caliente Rail Alignment in the vicinity of
15 U.S. 93, U.S. 6, or State Route 318.

16 In its August 29, 2008 submission
17 to STB DOE disagrees with the aforementioned
18 mitigation measures. While DOE's response to
19 STB states, In some instances risk perceptions
20 could result in adverse impacts on portions of
21 a local economy the Department provides no
22 commitments to monitor such impacts or to
23 consider alternative measures to mitigate

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1 them.

2 DOE's response to STB does not
3 include a commitment found in the Department's
4 final rail alignment EIS which states, DOE
5 will continue to work with local communities
6 and tribal nations to understand and mitigate
7 negative perceptions of its operations.

8 White Pine County requests that
9 STB include a condition to the DOE certificate
10 requiring the Department to work with local
11 communities and tribal nations to understand
12 and mitigate potential negative perceptions of
13 its operations.

14 In closing, let me observe that in
15 its August 29, 2008 response to STB DOE
16 identified many mitigation measures proposed
17 by White Pine County and others as being among
18 those which DOE has either already committed
19 to implementing or will be considered and
20 further developed during the mitigation
21 process described in Chapter 7, pages 7-1 to
22 7-9, of the rail alignment EIS.

23 White Pine County requests STB to

1 include as conditions to the DOE certificate
2 all such measures DOE has identified in its
3 August 29, 2008 submission to STB as being
4 among those which DOE has either already
5 committed to implementing or will be
6 considered and further developed during the
7 mitigation process. On behalf of White Pine
8 County thank you for allowing this testimony
9 for your consideration.

10 MR. NOTTINGHAM: Thank you, Dr.
11 Baughman. I believe it's important
12 information you shared about impact --
13 potential secondary or related impacts of this
14 project, if it were to be built -- licensed
15 and built -- we're talking about hundreds and
16 perhaps thousands of people coming to the
17 area.

18 And, Commissioner Rowe, you live
19 and lead the local community there. What --
20 do you have -- what's the housing situation
21 like and the infrastructure like -- water and
22 sewer -- if you were to have hundreds of
23 construction and contractor personnel come in

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1 to Lincoln County to start building this
2 hypothetical railroad if it were to get
3 licensed?

4 MR. ROWE: Presently our local
5 hospital is a 28-bed hospital. And its there
6 mainly for long-term care patients. We have
7 an emergency medical treatment center there,
8 and then we use it for stabilization, and then
9 we have to transport anything that's important
10 that needs care elsewhere.

11 MR. NOTTINGHAM: So certainly
12 impact on the health care infrastructure
13 sounds like it would be significant. What's
14 the housing situation like? Is there ample
15 housing for hundreds of new workers to come
16 in? Presumably it will take a period of years
17 to build this. The 300 miles won't all be
18 happening in Lincoln County, but it will start
19 there it sounds like. Has there been much
20 consideration or talk in the county about what
21 that would look like -- how that might play
22 out if it were to come to pass?

23 MR. ROWE: Locally in the area

1 around Caliente there's not very much housing
2 available. We do have three larger
3 developments coming up in the southern end of
4 the county that would be able to accommodate
5 these people. The Coyote Springs area as --
6 as the -- big article in yesterday's Nevada
7 business came out. Their first phase in their
8 construction is going to be in '10 -- the year
9 2010, and they want to start out with up to
10 10,000 homes. But this is the southern part
11 of the -- of Lincoln County.

12 MR. NOTTINGHAM: Thank you. Dr.
13 Baughman, you mentioned some of the highways
14 in the area -- U.S. 93, U.S. 6, I believe, and
15 at least one other you mentioned. I want to
16 make sure I understand. You are not here to
17 tell us today that moving spent nuclear waste
18 by truck via highway is a better idea than via
19 railroad, are you? I just want to make sure.
20 I don't think I heard you say that, but I want
21 to make sure -- in the record there is some --
22 the big record that DOE and STB have developed
23 there is some discussion, of course, of the

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1 relative merits and risks and the relative
2 safety of moving spent nuclear waste via truck
3 versus via rail. And I think the general
4 consensus has been that it's generally safer
5 by rail, though we're certainly hearing some
6 strong concerns about safety -- concerns about
7 rail movement. Let me make sure I understand
8 what you want us to hear about the highway
9 network there.

10 DR. BAUGHMAN: Mr. Chairman, our
11 testimony today from White Pine County is
12 basically saying that where the county and
13 rail alignment would cross the three highways
14 that I mention in my testimony -- we
15 understand it would be by grade separation --
16 probably an overpass.

17 And the issue, quite frankly, is
18 in the event of some kind of an incident or
19 accident in the proximity of those overpasses
20 or those highways that might result in those
21 roads being shut down. We have few
22 alternative ways to move people in and out of
23 our area, and depending upon how long those

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1 highways were shut down we could see
2 significant decline in travelers.

3 MR. NOTTINGHAM: Okay. And,
4 Commissioner Rowe, you mentioned the
5 importance in your request for mitigation of
6 maintaining the current level of access to the
7 BLM lands for grazing and other mitigation
8 ideas. How do you envision the proposed DOE
9 rail line impacting grazing and related
10 livestock operations? And right now
11 presumably the livestock are able to roam
12 relatively freely over BLM lands with the
13 appropriate permits and protocols in place.

14 You put a rail line in the midst
15 of that setting and presumably it's a
16 different environment. How do you anticipate
17 that working through -- the feasibility of all
18 that? Would you envision the line being
19 fenced off entirely? Cattle and sheep
20 crossings being constructed?

21 I know the record has some
22 discussion of these different ideas. I just
23 wanted to get your impression. You're there

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1 on the scene. It's safe to say you know a lot
2 more about what's going on there and what
3 could happen there than we do, so I just want
4 to make sure I understand it.

5 MR. ROWE: We hope that the
6 Surface Transportation Board would see that
7 DOE would make mitigation efforts in all of
8 these circumstances that you just mentioned.
9 Some of the allotments the railroad would go
10 right down the middle of, separating water on
11 one side and range on the other, and water is
12 a scarce item in southern Nevada.

13 Mitigation would help, whether the
14 DOE would put water on both sides if they were
15 going to fence the land, if they would
16 compensate for the cattle that should be
17 killed on the crossing. I think all of these
18 questions will probably be answered on the N5
19 Grazing Board's testimony that's coming up a
20 little later today.

21 MR. NOTTINGHAM: Thank you. Mr.
22 VanNiel, I want to just ask you to amplify, if
23 you could, on what you refer to as the through

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1 going corridor. We've heard about some
2 different corridors here today. I want to
3 make sure I understand more fully the corridor
4 that you are suggesting would be worth more
5 consideration.

6 MR. VANNIEL: Yes, sir. The
7 through corridor essentially starts at the
8 Yucca Mountain facility and then proceeds
9 through south to Jean where it would connect
10 with one of the major lines down south. But
11 when we talk about the corridor, we
12 essentially would modify the original design
13 from a spur to actually a through loop, thus
14 giving access to the Yucca Mountain facility
15 from both the north and the south.

16 In that context implementing the
17 through route from the south through Jean
18 would provide DOE with the opportunity from
19 the way we look at the way the design would be
20 put forward to eliminate all rail
21 transportation of both spent fuel or high
22 waste through the Yucca -- I'm sorry --
23 through the Las Vegas valley itself.

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1 Eliminating any transportation through Las
2 Vegas -- it would either go -- come through
3 the north, not touch Vegas, and then come
4 through either Caliente or Mina, depending on
5 which of the northern routes you were to
6 implement or choose.

7 And then coming in through the
8 south would come in through the south, never
9 having to go through Las Vegas from the north
10 at all, thus eliminating at least a portion of
11 what I heard this morning from the state of
12 California. The southern route rail
13 transportation going north up then back down
14 through Mina would not have to do any of that
15 transportation at all through central
16 California as it could all be funneled through
17 the southern route.

18 Also, that would provide
19 opportunities for both elimination of some of
20 the congestion on the route itself from
21 whatever northern route you're discussing and
22 free up the possibility of more commercial
23 traffic to use that route at the same time as

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1 these rail trains for transportation of spent
2 fuel and waste.

3 MR. NOTTINGHAM: Thank you.
4 Commissioner Brager, as we've heard earlier
5 today, this idea of a repository at Yucca
6 Mountain has been kicking around in some
7 fashion or another since the early 1980s it
8 sounds like. A lot has changed for Clark
9 County since the early 1980s. You've
10 presumably witnessed much of those changes.
11 Can you just give us a sense of what Clark
12 County looks like today compared to the early
13 1980s in size and population and other
14 characteristics?

15 MS. BRAGER: Just the area I
16 represent has over 300,000 constituents, and
17 that is in the southernmost area to the
18 California border with some rural areas of
19 Sandy Valley, Goodsprings, Blue Diamond,
20 Mountain Springs -- just that small portion is
21 larger than what we had 20, 30 years ago.

22 So that the intense growth -- and
23 I have one of the largest areas in Clark

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1 County that is growing. From Mountain's Edge
2 to Southern Highlands to the Coyote Springs is
3 not there, but with our current economic
4 situation -- you asked about housing. And I'm
5 in real estate on my side job. It will be
6 years before we see something really happen in
7 that general area. And they are not really
8 building entry level homes to begin with out
9 there that would meet the needs.

10 So even if something were to
11 happen that's a very not feasible -- but the
12 growth -- as the Mayor said earlier, it is
13 incredible. And if I even went back to when
14 I came here in 1952 -- which I should quit
15 admitting I think -- but, you know, you're
16 talking 70,000, 100,000, 300,000, 500-, a
17 million, and now being at the 2 million with
18 in the future lots of land that is going to
19 have housing on it.

20 So it has become more and more
21 populated. And 20 years ago when it was first
22 looked at it did look probably like a
23 wasteland. But in driving around now you see

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1 so much, and especially with our strip economy
2 and the safety of our -- not only our
3 constituents and citizens but the people that
4 come from across the world.

5 MR. NOTTINGHAM: Thank you. Vice
6 Chairman Mulvey?

7 MR. MULVEY: For a moment there I
8 wasn't sure if I was in Nevada or Missouri.
9 You seem to have a show-me attitude over
10 there, and so do I -- we appreciate that.

11 I wanted to talk a little bit
12 about this Jean corridor. I have it in front
13 of me. And if the Jean corridor was adopted
14 you say that no traffic -- no spent nuclear
15 waste at all would move through Las Vegas. Is
16 that correct? You could all bypass Las Vegas
17 by --

18 MR. VANNIEL: It's --

19 MR. MULVEY: -- the Las Vegas
20 Valley?

21 MR. VANNIEL: I'm sorry. I didn't
22 mean to speak over you.

23 MR. MULVEY: That's all right.

1 MR. VANNIEL: It's our
2 understanding that if the Jean corridor were
3 actually a route that were implemented and
4 used that you could eliminate -- depending on
5 how you were to pass traffic from various
6 parts of the country as it's coming into and
7 out of the mountain, and also depending on
8 which of the northern routes you were to
9 implement, you could then virtually eliminate
10 all traffic from the Las Vegas Valley.

11 MR. MULVEY: Because looking at
12 it -- if you're moving it to Caliente it would
13 have to go through Las Vegas even if it was
14 coming from the south. It strikes me as very
15 difficult to get around moving through Las
16 Vegas if you're going up to Caliente, at least
17 from this map anyway.

18 MR. VANNIEL: It's my
19 understanding -- I'm sorry I don't have the
20 map that you have in front of you. It's my
21 understanding that were the traffic to come in
22 through the Jean route from the south you
23 don't need access through the Las Vegas Valley

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1 to get to the Jean corridor.

2 MR. MULVEY: Okay. And you would
3 not go to Caliente -- you would go up the
4 western side of it. Correct? I think -- I
5 have the map in front of me and you don't
6 so --

7 MR. VANNIEL: I'm sorry. Again, I
8 don't have the map in front of me.

9 MR. MULVEY: You mentioned
10 earlier, Mr. Jerbic, about the studies done
11 earlier looking at Yucca Mountain and a number
12 of other possible repositories and that Yucca
13 was not the one that seemed to rise to the
14 top. Do you recall which other ones were
15 considered and which ones seem to have been
16 better than Yucca?

17 MR. JERBIC: I don't, Mr. Vice
18 Chairman. I know they were in different
19 states. I want to say one was in Washington
20 state. I don't recall. I know one I think
21 looked at a proposed salt mine or something of
22 that nature.

23 I don't want to say that Yucca

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1 didn't rise to the top. It did. There were
2 three final candidates for the site, and there
3 seemed to be a very acceleration in the
4 thinking on behalf of DOE and the other two
5 were eliminated, bringing us to Yucca.

6 Maybe I can give you a brief
7 history of our lawsuit just because,
8 Commissioner Buttrey, you asked the question,
9 what would you do with this waste if it
10 weren't transported and stored at Yucca
11 Mountain.

12 Congress charged the Government
13 with finding a geological repository, like
14 they said, that would last 10,000 years, and
15 it was determined that Yucca was that
16 repository. More studies concluded that Yucca
17 was not that repository and the Government, in
18 many of the papers that have been filed -- and
19 this is in our lawsuit that's pending in the
20 District of Columbia -- began to switch -- why
21 they were using Yucca and what they would do
22 to make up for the fact it was no longer
23 geologically capable.

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1 And what they are using now as the
2 primary method of containment of high-level
3 nuclear waste are these casks, which is,
4 again, have not yet been developed, you know.
5 It makes you wonder. If these casks will be
6 developed just the way the Government says
7 they will be developed and are just as capable
8 of containing waste as they say they would --
9 even more capable than the mountain -- why the
10 heck are you moving the stuff to begin with?
11 Why don't you just leave it on site, put it in
12 these super casks, and avoid the 9,500 trips
13 to Nevada.

14 If I could just a moment, we
15 brought this map. This is more than Nevada.
16 This is 77 major population centers over 30
17 Indian nations -- 138 million Americans are
18 going to have this pass through their
19 community. And it's hard to imagine how you
20 ever get around from the choke point in
21 Nevada -- the funnel that brings all of this
22 to Yucca Mountain.

23 But that's our argument is that --

1 in one of our lawsuits -- is that the casks
2 now appear to be everything -- they haven't be
3 developed. And I could leave you with one
4 more thought, even though you haven't asked
5 the question, just imagine a local public
6 responder when one of these trains
7 accidentally drops a cask, you know, a chain
8 breaks, it falls off, there's a collision,
9 there's something worse.

10 What do you assume as a local
11 responder -- that that super cask didn't
12 break? Do you assume that everything's fine?
13 Or do you assume what we assume every time you
14 have a rail wreck involving hazardous
15 chemicals -- that it's the worst scenario and
16 you've got to clear people out. What if
17 there's chlorine gas on a train? What do you
18 do then? What do you do if there's flammable
19 material? What do you do then?

20 What's going to happen here when
21 people have to assume that radiation that can
22 kill you in one or two minutes might be
23 released? And then imagine that spread over

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1 this entire country on a rail system. Who's
2 going to respond to this? Who's going to
3 clean this up? Who's going to train these
4 people? Who's going to be there when the
5 local government shuts down -- when Las Vegas
6 has to evacuate the Las Vegas strip with over
7 110,000 rooms and an economy almost 1,000
8 percent dependent on it if one small accident
9 occurs?

10 And it makes you wonder. If it's
11 not about the mountain anymore and it's all
12 about the casks why the heck are we doing
13 this?

14 MR. MULVEY: I'm going to pose a
15 hypothetical -- and it's purely a hypothetical
16 at this point. What if indeed Yucca Mountain
17 was to open and that the railroad was to be
18 built? The STB, when it approves and when it
19 evaluates construction projects, it often
20 identifies mitigation factors.

21 Lincoln County mentioned some
22 mitigation factors -- we received them. But
23 we would be developing mitigation factors.

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1 Could you identify three or four mitigation
2 factors that you feel would be the sine qua
3 non for letting this operation go forward?

4 MR. JERBIC: Mr. Vice Chairman, in
5 all honesty, I can't imagine a single factor
6 that could mitigate this. This is
7 unprecedented in the history of our country.
8 It is absolutely unprecedented to think that
9 we are really talking about picking up all
10 high-level nuclear waste spread coast to coast
11 and funneling it into one area.

12 And what could you possibly do to
13 mitigate? What are you going to do, pump
14 billions of dollars into training people to
15 deal with the hazard? What are going to do --
16 are you going to isolate these railways and
17 keep them 5 miles, 10 miles, 50 miles, 100
18 miles? What are you going to do for the
19 people in Chicago, in Minnesota, in Washington
20 state, in northern California? What are you
21 going to do for the people in Missouri -- in
22 St. Louis and in Kansas on one side and then
23 St. Louis on the other side? What are you

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1 going to do to protect them from all this
2 stuff coming through?

3 I think we're talking about a
4 scale of stupidity well beyond anything we
5 have ever seen this Government do before.
6 This really is incredible. I can't imagine
7 how you mitigate it.

8 MR. MULVEY: I won't comment on
9 relative stupidity at this point.
10 Actually that's exactly the kinds of things
11 that we're talking about in terms of
12 mitigation. I mean, how much training would
13 actually be needed? Would there be required
14 spacing between trains? Would there be
15 requirements that the trains be dedicated
16 rather than mixed contents with other
17 potential HAZMAT, et cetera?

18 All of those would be the kinds of
19 mitigations that might need to be considered
20 if, indeed, we were going to approve this rail
21 line. So that's what I was asking about.

22 From Lincoln County, you mentioned
23 about one of your mitigations was that every

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1 landowner had to agree with the railroad --
2 that to acquire the land and build the line.
3 What if a particular landowner said, No,
4 there's no way I would ever allow this to go
5 through? What would the railroad do then? Do
6 you think that the railroad should then have
7 the right of eminent domain to take the land
8 at fair compensation? Or should that be a way
9 of stopping the line?

10 DR. BAUGHMAN: Mr. Vice Chairman,
11 we do understand that the federal government
12 can exercise its form of eminent domain, and
13 we are very concerned that there will be
14 landowners that will not agree to provide the
15 Department of Energy with an easement or right
16 of way or an outright purchase of the
17 corridor. And in that event the DOE will
18 simply occupy the land, construct the project,
19 and they'll fight it out over time.

20 That leaves our landowners at a
21 very extreme disadvantage. And that impact
22 then is unmitigated for quite some time and
23 the costs of prosecuting it in court isn't, in

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1 fact -- probably will be unmitigated.

2 And so I think the thing that we
3 would like to see is that before the
4 Department engages upon starting the
5 construction of the project -- the worse thing
6 that can happen is you start and you stop and
7 you have constructed improvements that are
8 disrupting the land -- private lands -- but
9 are not being used in any -- as a productive
10 asset. And those impacts go on for quite some
11 time then.

12 And so that's why I think that the
13 counties suggested that perhaps the Department
14 be required to secure all of its rights of
15 ways, whether it be public or private, and not
16 in an adversarial manner, but have resolved
17 those issues so that you have basically title.
18 You can go -- and we don't have outstanding
19 litigation with our individual landowners over
20 some protracted time period.

21 MR. MULVEY: So do it beforehand
22 rather than afterwards or as we go along then.

23 DR. BAUGHMAN: If at all possible.

1 And obviously that puts the onus on DOE's back
2 I think to be a better negotiation -- to be a
3 better, more willing partner in trying to
4 resolve these issues with landowners rather
5 than just put the big hammer of the federal
6 government on them and go forward.

7 MR. MULVEY: You also suggested
8 compensation for impacts that affect the fact
9 that they're moving close by White Pine
10 County -- that that would have a negative
11 impact on the overall area and that there
12 should be some compensation.

13 But wouldn't that be true of
14 virtually every route in the country where
15 this stuff is going to be passing through?
16 Every place would be impacted because, judging
17 by that map and maps we have here it looks
18 like wide swaths of the country are going to
19 be affected and there would be these impacts
20 throughout all of these routes. I don't see
21 how we could compensate everybody who's going
22 to be affected by the movements of spent
23 nuclear waste.

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1 DR. BAUGHMAN: Mr. Vice Chairman,
2 I think that speaks to the brevity of the
3 problem that Mr. Jerbic has pointed out and
4 whether it is, in fact, feasible to try and do
5 that. We raise it in our area because we have
6 very few choices for getting through our area
7 on the existing highway system.

8 We're not like Chicago where you
9 have perhaps 2- or 300 alternate routes you
10 can take to get across town. We have two or
11 three highways, period, that come through our
12 community. And if any of those are cut off
13 it's hours to get around to an alternative
14 route. And we're very concerned about that.

15 MR. MULVEY: So this would be
16 large uncompensated losses to these
17 communities. Is that -- if, indeed, this was
18 to go forward.

19 DR. BAUGHMAN: Correct.

20 MR. NOTTINGHAM: Mr. Buttrey, any
21 questions for this panel?

22 MR. BUTTREY: Thank you, Mr.
23 Chairman. I think it's probably clear to the

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1 people that are present in the room today that
2 this hearing is striking some nerves on the
3 members of this panel. Mr. Rowe, is it -- Mr.
4 Rowe -- I'm sorry. Is it's Mr. Rowe or is it
5 Mr. Rowe? I'm sorry.

6 MR. ROWE: Rowe.

7 MR. BUTTREY: Rowe. Okay. I want
8 to pronounce your properly, even if not the
9 first time from here on out. Are you a
10 rancher yourself? Are you a rancher?

11 MR. ROWE: No, I'm not.

12 MR. BUTTREY: You're not. But a
13 lot of your constituents are ranchers?

14 MR. ROWE: Right.

15 MR. BUTTREY: People who, if
16 they're not ranchers, then they're certainly
17 using the grazing land in your county and the
18 surrounding area.

19 MR. ROWE: Not only the grazing
20 land, but it's BLM land. As was stated
21 before, about 98 percent of our county is
22 managed by the BLM. Not only is it grazing
23 land, but it's also multiple purpose -- for

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1 multiple purpose use.

2 MR. BUTTREY: And BLM does not pay
3 you taxes for -- in your county they do not
4 pay property taxes. Is that correct?

5 MR. ROWE: They --

6 MR. BUTTREY: Or do they pay
7 property taxes?

8 MR. ROWE: They do not pay
9 property taxes, but they do have a Pelton fund
10 that is issued through Washington to
11 compensate for some of this -- these taxes.

12 MR. BUTTREY: It's like a non-tax
13 compensation of some kind.

14 MR. ROWE: Right. Right.
15 Payments in lieu of taxes.

16 MR. BUTTREY: And the people who
17 use these grazing lands are using these
18 grazing lands because there's not enough other
19 grazing land available -- or they lease the
20 BLM land to graze their livestock and sheep or
21 whatever.

22 MR. ROWE: Right.

23 MR. BUTTREY: Okay. In my part of

1 the world where I come from, in Tennessee --
2 we have these bumper stickers that say, I'm a
3 lawyer by training but I'm a farmer by the
4 grace of God. You know, you struck a nerve
5 with me because I was a farmer before I was
6 anything else. You struck a nerve with me
7 when you started talking about farmers and
8 ranchers and people who have to graze cattle
9 and make a living doing that. I'm familiar
10 with that process.

11 You don't have to be a nuclear
12 physicist to understand that water's pretty
13 precious in this part of the world. And I
14 read a lot in the record about the issue of
15 water. And even before I read this record
16 I've watched as an observer, if you will -- we
17 don't have range wars anymore but we have a
18 lot of water wars going on.

19 And we had a witness here from
20 California this morning -- earlier this
21 morning. And I understand that California may
22 get a lot of their water from Nevada. I don't
23 know that to be an absolute fact. Maybe you

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1 can confirm that for me.

2 But water is a very precious
3 commodity in this part of the world. And it
4 concerns me that, you know, there continues to
5 be more and more activity that's drawing more
6 and more water which is less and less
7 prevalent it seems over time. And every time
8 one of these projects gets done it seems to me
9 maybe we don't focus enough on the fact that,
10 you know, water may turn out to be a lot more
11 finite commodity than we think it's going to
12 be.

13 I mean, the Pacific Ocean is off
14 the coast of California out there and has a
15 lot of water in it. But the water seems to be
16 coming out of Nevada for California. But
17 that's an issue for another day I know. But
18 I just want to have you elaborate -- or
19 anybody else on this panel -- elaborate, if
20 you would, how this water situation is going
21 to work out because it appears to me that this
22 project is going to require in drilling new
23 wells -- a lot of new wells and drawing from

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1 the land water, which means that the cattle
2 and the people may suffer irreparable harm
3 here. And I just wish someone would, if they
4 feel comfortable with it, speak to that issue.
5 I see the Mayor -- I see some movement from
6 the Mayor over here. Maybe he has something
7 to say.

8 MAYOR GOODMAN: Mr. Chairman, in
9 response to the Commissioner's question, I
10 could answer the question but I don't want it
11 to be considered a waiver of our position.
12 I'm always afraid when we start talking about
13 litigation and compensation that we will be
14 deviating from our course, which is committed
15 to stopping the nuclear site from taking
16 place.

17 So, with that condition, basically
18 there are serious water issues that confront
19 us, particularly in southern Nevada. The
20 water that we get in southern Nevada basically
21 comes from the Colorado River. And the
22 snow -- if it snows on the western side of the
23 Continental Divide provides the water runoff

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1 and the Colorado becomes full and various
2 lakes along the way -- Powell, Lake Mead --
3 they're full.

4 We've drawn the bad hand at least
5 since I've been the Mayor. For the past at
6 least eight to ten years there's been a
7 drought and the snows falls on the east side
8 of the Continental Divide and we don't get any
9 of that water. So all you have to do is look
10 at our lake here and you'll see that it's down
11 to the point where we have to spend hundreds
12 of millions of dollars in order to drill
13 another pipeline into the center of the lake
14 to get some of the cleaner water -- or potable
15 water from the bottom of the lake.

16 Tremendous efforts have been made
17 by the Southern Nevada Water Authority to
18 acquire the groundwater from the very parts of
19 the state that are represented by these
20 gentlemen. It's been very contentious
21 because, once again, to take water from them
22 deprives them of the water that they need in
23 order to have their ranches and their farms be

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1 successful.

2 And many folks have made the
3 decision along the way that they'll sell their
4 farm and they won't be farmers anymore. And
5 they'll put a buck in their pocket and the
6 water will come down to Las Vegas. So this is
7 certainly a real concern -- a real issue if,
8 in fact, water is an element of this puzzle.

9 DR. BAUGHMAN: Mr. Commissioner,
10 if I might just elaborate on how this project
11 will specifically affect the grazing and the
12 ranching that you were talking about. As you
13 mentioned, there are going to be numerous
14 wells drilled by DOE. They're going to need
15 that water for construction -- very little
16 water for operations but primarily for
17 construction as we understand it.

18 There have been concerns raised
19 about where those wells are located -- whether
20 they will, in fact, impact existing water
21 sources that are used by the ranching
22 community out there right now, whether it be
23 a drilled well, a soft water well, whether it

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1 be a spring.

2 I think various parties have
3 suggested to this Board that you do require
4 some conditions that would result in
5 monitoring of the effects of those wells on
6 existing sources to make sure that there are
7 not unanticipated consequences or draw downs
8 where we know that there will be an impact or
9 an impact is observed.

10 Water is critical to these
11 operators out there being able to get
12 authority from the federal government to run
13 these livestock. In fact, in an extreme case
14 you can demonstrate commensurability by simply
15 having water rights. Rather than private land
16 holdings you can have adequate water to water
17 the livestock to be on the public land. You
18 can demonstrate your legal commensurability to
19 be there.

20 So what we have suggested is --
21 and you may wish to consider this as a
22 condition -- is that the applicant be required
23 to basically, to the extent allowed by law, to

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1 allow for those wells that are drilled by the
2 Department of Energy to be made available to
3 the public land users -- the permittees that
4 are out there -- to substitute for other water
5 resources or access to forage that may have
6 been disrupted by construction of this
7 project. And we think that is one avenue of
8 getting in some of the mitigation we've talked
9 about.

10 MR. BUTTREY: Would that include
11 the requirement that they run meters on all
12 those wells?

13 DR. BAUGHMAN: I would --

14 MR. BUTTREY: Some sites require
15 metering on every single well.

16 DR. BAUGHMAN: Yes. I would
17 assume that if --

18 MR. BUTTREY: There's a vast
19 difference.

20 DR. BAUGHMAN: -- that if the
21 state engineer approves any water for the
22 Department of Energy for these wells for
23 construction that they probably will require

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1 that those wells be metered in terms of their
2 production.

3 MR. BUTTREY: Thank you.

4 MR. BRAGER: If I could just for a
5 moment in regards to the water, as the Mayor
6 was stating for a number of years now new
7 construction can only have desert landscaping.
8 And this time of the year we're only allowed
9 to water one day a week. So it is very, very
10 serious in southern California with the
11 drought and the drop in the lake and having to
12 do new intakes and spend multi-millions of
13 dollars to make sure that there's water now
14 and in the future. So it has been taken very
15 serious and it would compromise the situation
16 in our valley.

17 MR. NOTTINGHAM: Thank you,
18 Commissioner. Further questions for this
19 panel?

20 MR. MULVEY: No. Thank you.

21 MR. NOTTINGHAM: Hearing none, we
22 will thank this panel and dismiss you. Thank
23 you again for being here. Mayor, best wishes

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1 to you --

2 MAYOR GOODMAN: Thank you.

3 MR. NOTTINGHAM: -- Commissioners,
4 other witnesses. We will now do a little
5 housekeeping. We will call forward our next
6 panel, Panel I(D), more government officials.
7 Representing the city of Caliente, the Mayor,
8 Kevin Phillips. From the city of Henderson,
9 Mayor James Gibson and also Councilwoman Gerri
10 Schroder. And also from the N4 State Grazing
11 Board, E. Edwin Higbee, Board member. And
12 Jeremy Drew, an additional witness for N4.

13 As they come forward I will do a
14 little housekeeping and announce now -- would
15 indicate that at the conclusion of this next
16 panel we will take a 30-minute break. And
17 then we'll resume promptly and finish up the
18 rest of the panels. And just wanted to give
19 the audience a heads up to that so you can
20 plan your afternoon. We appreciate everyone's
21 patience as we've got a full day today.

22 (Pause.)

23 MR. NOTTINGHAM: Mayor, are you

1 over there? I'm sorry; I couldn't -- I didn't
2 see your name.

3 MAYOR PHILLIPS: I'm here.

4 MR. NOTTINGHAM: Well, welcome.
5 And if the monitor is helping you, feel free
6 to use it. If not you can -- I've found it's
7 mobile too. But, anyway, please, whenever
8 you're ready we will start with you.

9 MAYOR PHILLIPS: Thank you very
10 much. It's a pleasure to be here. I'm a
11 fourth generation Nevadan.

12 MR. NOTTINGHAM: Oh, Mayor, it
13 might be necessary for you to move one desk
14 over to table 2, if that works for you. I'm
15 pretty sure table 2 to your -- oh, table 4.
16 I'm sorry. Oh, we've got a seat for you right
17 here. There we go. Sorry about the
18 confusion.

19 MAYOR PHILLIPS: I'll try that
20 again. Does that work?

21 MR. NOTTINGHAM: That works.
22 Thank you.

23 MAYOR PHILLIPS: Thank you very

1 much. I'm going to try something here that I
2 hope will work. I have a little dog-and-pony
3 show that will be of interest and break the
4 boredom somewhat.

5 I'm Mayor Kevin Phillips of the
6 city of Caliente. I'm a fourth generation
7 Nevadan and I'm in my sixteenth year serving
8 as the mayor there. I kind of smiled. I've
9 got to poke a little fun at Honorable
10 Congresswoman Berkley and my good friend Mayor
11 Goodman.

12 The comment was, Well, the famous
13 ad of Las Vegas is What happens in Las Vegas
14 stays in Las Vegas. And, yet, in all my years
15 and generations I really haven't found any
16 wholesome family recreation opportunities.
17 The inference isn't there, anyway.

18 Okay. This is Caliente right here
19 in the olden days. My point of this little
20 display is to show you that we have always
21 been a railroad town from its inception, and
22 I think it will prove interesting to you if it
23 works.

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1 I'll just signal to you and you
2 bring it up.

3 This is City Hall, which is the
4 old railroad depot. We today have all kinds
5 of shipments of material right through
6 Caliente. What goes through us comes right
7 through Las Vegas: 2,200 shipments on average
8 per day of hazardous materials through my
9 little town on to Las Vegas to go through.

10 This is an old map of the
11 original. Look down at the bottom -- San
12 Pedro, Los Angeles, and Salt Lake Railroad.
13 This shows all the locations on there,
14 including Caliente about dead center with a
15 branch line going up to the mining town of
16 Pioche.

17 The first
18 central Nevada Railroad was built in 1870.
19 Locally it was called the Pioche Bougainville,
20 which hauled ore from the mines in Pioche to
21 a mill near Panaca for crushing. This route
22 went through Condor Canyon, which shows some
23 of the grades and things there, to Pioche --

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1 the old Pioche depot in 1907 this photograph
2 was taken. You can see the ore cars behind
3 there. Next.

4 Caliente began in those early
5 days -- really became a community because of
6 the railroad. And this shows early stages of
7 the community's development. Notice on the
8 very bottom where the rail cars sit -- this is
9 the point of origin of the Pioche branch line,
10 which will be the same point of origin where
11 the Caliente line begins. Next.

12 This just shows again a little
13 later a picture on -- right here below us at
14 the bottom right of the picture is the bridge
15 where -- by the rails. You can still see them
16 in place there. They're not there now. But
17 that went right up the Pioche branch line and
18 right past the County Hot Springs Motel and on
19 up to Pioche, which now goes across the middle
20 of the state when this is built. Next.

21 When I was a boy we crossed this
22 bridge. These are the pylons that there were.
23 Next.

1 We walked across this bridge to go
2 swimming. Next.

3 At the County Hot Springs Motel --
4 because we felt pretty fancy. Otherwise it
5 was a dip in the Panaca Spring or Ash Spring
6 near Alamo, Nevada. Next.

7 The community build was much
8 transportation of railroad things. Next
9 please.

10 Continued assets -- you see old
11 company row. And if any of you come up to
12 Caliente those old houses are still there.
13 They're better than a hundred years old --
14 privately owned now. Next.

15 So you can just see the community
16 continue to develop. Next.

17 A roundhouse is that building --
18 the square building -- rectangular brick in
19 the background. Next.

20 Shows how it worked. Now, this
21 was in the days of steam engines. And the
22 grade from Caliente up over the lip of the
23 Great Basin is fairly steep in a short

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1 distance. And so the trains would come to
2 here from Las Vegas. Another engine or two
3 would hook on to push the trains up over the
4 lip of the Great Basin and on toward Salt Lake
5 City. When the steam engine era died out to
6 become diesel locomotive all this stuff was
7 taken away. Next.

8 We had a huge rail yard in town --
9 12 tracks at one time. Next.

10 Showing the old days of rails --
11 some passenger service. Next.

12 Now, someone asked a question
13 about what Las Vegas used to look like. This
14 is it right here. This is an original photo
15 of the Rancho Las Vegas, which at the time was
16 the very southern end of Lincoln County. Next
17 photo.

18 You're standing right at Fremont
19 Street. And on the far end center is the
20 first new Union Pacific depot at the head of
21 Fremont Street -- a tent city, et cetera, and
22 so forth. So now you see what it used to look
23 like. Next.

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1 Now in Caliente -- the middle
2 left -- the roundhouse is gone because of the
3 diesel electric advent. No longer the
4 distance is difficult to do, and the engines
5 have enough power to get up over the hill.
6 And so this is the case now. Next.

7 Not many of you come to Caliente.
8 We haven't changed much. If you like a little
9 dinner, we'll finish some fresh meat at the
10 Coverwell Meat Market. Come on up and we'll
11 entertain you.

12 We have always been a railroad
13 town. There has always been in our existence
14 a branch line going from Caliente to Pioche.
15 And so, frankly, for us it seems like renewal;
16 we're anxious for the renewal. We very much
17 support the DOE's decision and the RCRA's
18 decision to rebuild for us this rail line. We
19 look forward to the opportunities that come on
20 that because of this.

21 We showed you a picture of some of
22 the rail cars, and I noted the shipments that
23 come through there. The city's done a study

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1 relative to risk, and I think it would be well
2 for us to keep risk in perspective.

3 We founded our little volunteer
4 fire department. We're well equipped, as good
5 as any of them are, and we're well trained.
6 We spent time at the Test Site in radiological
7 and HAZMAT training. But, still, right now we
8 don't have the ability to respond quickly or
9 even well to any of the hazardous shipments
10 that come through our town right now.

11 We found that with the small
12 incremental increase of radiological shipments
13 due to the spent fuel, but coupled with a
14 component of emergency management capability
15 and training we actually lower our overall
16 risk in town relative to hazardous materials
17 with those accompanying components. Next
18 please.

19 Mr. Lux indicated -- Mr. Lux --
20 excuse me. Bob, I'm sorry. I keep thinking
21 of Bob Lux instead of Bob Halstead. Mr.
22 Halstead always talks about the difficulty of
23 those three or four passes from Caliente and

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1 midway across. I just thought I'd throw these
2 in so he could see. This is the UP going over
3 the Continental Divide -- looks a little
4 difficult, but that's a 2.6 percent grade --
5 certainly engineered, and they're doing it all
6 the time. Next.

7 This is a steam engine going along
8 the Columbia River Basin -- kind of everyday
9 occurrence. Next.

10 This is the Tehachapi Loop --
11 Tehachapi, California, down to Bakersfield.
12 It's not very far distance -- I don't know --
13 30 or 40 miles -- a drop of 3,500 feet. You
14 can maybe see by this that this train actually
15 snakes around itself. There's a continuous
16 grade of 2.2 percent from Caliente,
17 California, to Tehachapi Pass up on the top.
18 These things certainly are engineering
19 capable. Next.

20 This is just an actual diagram on
21 the computer of what that Tehachapi Loop looks
22 like. Bottom line, there are no impediments
23 to engineering a railroad from Caliente

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1 across. In fact, it's a cakewalk compared to
2 some of these situations right here, and I
3 wanted to highlight that. Appreciate that
4 very much.

5 So for 80-some-odd years we had
6 trains roll down the line from Pioche to
7 Caliente, all laden with oil -- very heavy
8 moving material. And the economy boomed in
9 the days of the railroad and the days of the
10 mines. And when those things dried up that
11 possibility went away.

12 We're in support of this project
13 for a whole host of reasons. I wish to
14 comment about the Department of Energy and
15 how, frankly, good and cooperative they have
16 been to work with. I've been involved in this
17 thing for many, many years since the original
18 date that Nevada's General Attorney sued me
19 for having a varying opinion on this issue
20 relative to Yucca Mountain and the whole
21 business; a lawsuit that did not succeed, by
22 the way. But there was a desire to remove me
23 from office because I varied from the

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1 traditional party stance.

2 I'm an advocate of the truth, and
3 I haven't found a lot of that, frankly, in
4 many of the arguments the state puts forward.

5 Okay. Risk and perspective. I
6 traveled 300 miles today to come to this very
7 hearing -- 150 down and back. There's no more
8 risk associated with that in terms of my life
9 than there would to be the maximally exposed
10 individual sitting alongside this railroad for
11 50 years of its action. I just had more risk
12 occur to me today because of the statistics
13 and numbers in driving. We should carefully
14 keep those things in perspective.

15 A couple of notes in terms of
16 relative risk -- the maximally exposed
17 individual resident along the path right
18 alongside the railroad gets 3 millirem a year.
19 At a stop it's a little higher than that. 1.4
20 cigarettes -- no offense to any of us who
21 chose to smoke or do smoke. That's as much
22 risk in risking 1.4 cigarettes as living
23 within 20 miles for 50 years of an operating

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1 a nuclear power plant.

2 A single body CT scan using
3 radiological technology is 1,200 millirem. A
4 single chest x-ray is 10. Background radiation
5 in Caliente is 320. Round-trip flight, New
6 York to Tokyo, is 15 millirem. We deal with
7 risk, we deal with exposure all our life. The
8 risks associated with the transport in terms
9 of exposure are not great in terms this whole
10 project. I don't know how my timing is doing.

11 MR. NOTTINGHAM: Hey, you're right
12 on time. If you could just wrap up in the
13 next -- take 30 seconds and wrap up.

14 MAYOR PHILLIPS: Well, I want you
15 to understand a couple of things. One, we
16 support this probably, including the Yucca
17 Mountain project, including the rail
18 transportation -- my community does.
19 Secondly, it's not a new thing for us.
20 Thirdly, the risk is certain manageable -- it
21 is being managed safely and well.

22 And we view this as a lot of
23 opportunity and actually some enhancements.

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1 I'll be happy to answer questions later on.

2 Thank you very much.

3 MR. NOTTINGHAM: Thank you, Mayor.

4 Next we will hear from Gerri Schroder,
5 Councilwoman from the city of Henderson.

6 MS. SCHRODER: Thank you very
7 much. And thank you for the opportunity to
8 comment on the Department of Energy's
9 application for a Certificate of Public
10 Convenience and Necessity to construct and
11 operate a rail line to the Yucca Mountain.

12 The use of any rail line to
13 transport high-level nuclear waste and spent
14 nuclear fuel to Yucca Mountain is of great
15 concern to the city of Henderson. By way of
16 background, Henderson is Nevada's second
17 largest city with a population of
18 approximately 270,000 residents located in the
19 southeast portion of the Las Vegas Valley.

20 The city of Henderson has
21 consistently passed resolutions in opposition
22 of this repository and transportation to it.
23 On May 11, 1999, the City Council passed a

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1 resolution opposing the transportation of
2 radioactive and/or hazardous waste through or
3 near Henderson. That position includes rail
4 transportation of high-level nuclear waste and
5 spent nuclear fuel which we feel could be
6 detrimental to the residents of Henderson.
7 The city of Henderson is, therefore, opposed
8 to the Certificate being granted for STB
9 Docket Number 35106.

10 Final transportation routes have
11 not been identified. By the year 2020, which
12 is generally accepted as the best achievable
13 date for repository operations, the city of
14 Henderson is projected to have a population in
15 excess of 524,000 people.

16 Transporting more than 70,000
17 metric tons of high-level radioactive waste
18 past our schools, hospitals, parks, and homes
19 for more than 50 years is not in the best
20 interest of Henderson's citizens. The risk
21 related to routine operations and the
22 inevitable accidents are unacceptable.

23 Contamination that could result

1 from an act of terrorism is another risk we
2 are unwilling to accept. We would like to see
3 the DOE develop a more comprehensive threat
4 assessment to determine the likelihood of a
5 terrorist attack against high-level nuclear
6 waste shipments.

7 Other concerns about rail
8 transportation include stop times in populated
9 areas, stopping and switching areas in
10 proximity to population locations, preparation
11 of radiological emergency evacuation plans,
12 emergency response resources, and rail and
13 non-rail related radiological emergencies.

14 The Department of Energy is a
15 shipper that intends to build a railroad to
16 serve its own facility. In spite of the
17 application Section 10501, it is unclear
18 whether that proposed rail line would, in
19 fact, provide common carrier service to the
20 general public.

21 And, if so, what services and
22 standards would be offered? We are concerned
23 that a shared-use rail line will increase rail

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1 traffic, resulting in air quality, sound
2 pollution, and emergency response issues.
3 Congressional funding is uncertain, making the
4 likelihood of expensive common carrier rail
5 construction questionable.

6 The DOE has failed to adequately
7 consider all alternatives to the Caliente
8 route, rail security, and public safety
9 management. We believe there is a strong
10 likelihood of truck transportation through
11 Henderson and other parts of southern Nevada.
12 Although the DOE has stated a preference for
13 mostly rail transportation no feasible
14 alternative to the Caliente rail route has
15 been designated in the EIS.

16 If the Caliente Rail Line were not
17 built truck transport would be the only
18 alternative for shipping. Truck
19 transportation of high-level radioactive waste
20 could leave the city of Henderson vulnerable
21 to economic, health, security, and emergency
22 management impacts. In addition, no design
23 approval currently exists for TAD canisters,

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1 further adding to the prospect of adverse
2 consequences to truck transportation.

3 Henderson is also home to a number
4 of premier resorts with an average occupancy
5 of 81 percent. Our city hosts nearly a half-
6 million visitors annually, generating more
7 than \$307 million for our economy. Many of
8 our hotels are near major transportation
9 routes, including Railroad Pass, Hawthorne
10 Inn, the Fiesta Hotel and Casino, Hilton
11 Suites, and the Green Valley Ranch Resort.

12 The Department of Energy has
13 acknowledged the potential negative impacts of
14 public perception if a radiological accident
15 should occur anywhere in the Las Vegas Valley
16 during a shipping campaign. Even route
17 operations of visually conspicuous shipments
18 through communities produce social risks.

19 To quote a National Academies of
20 Science, Engineering, and Medicine report,
21 These activities may have direct impacts on
22 quality of life, property values, and/or
23 business activities, especially if they

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1 persist over extended periods of time.

2 We believe the resulting stigma
3 from a shipping campaign, particularly if an
4 accident occurred, would seriously impact our
5 local economy. Studies conducted by Clark
6 County indicate significant residential,
7 commercial, and industrial property value
8 losses if a transportation accident were to
9 occur in or near Henderson. Additional cost
10 of fire, police, and emergency management
11 public safety agencies would be in excess of
12 a million dollars by conservative estimates.

13 In conclusion, the city's priority
14 is to protect the interests, health, and
15 safety of our residents. Given the abundant
16 and significant socioeconomic health and
17 public safety dangers outlined we oppose the
18 proposed repository. We oppose the DOE
19 application for a Certificate of Public
20 Convenience and Necessity. And we support
21 onsite storage of spent nuclear fuel at
22 existing power plant locations. Thank you.

23 MR. NOTTINGHAM: Thank you,

1 Councilwoman. We will now hear from Mr. E.
2 Edwin Higbee, board member of the N4 State
3 Grazing Board.

4 MR. HIGBEE: For the record, my
5 name is Edwin Higbee, Jr., and I am a member
6 of that grazing board that Commissioner Rowe
7 was speaking of. And I've got one thing to
8 say about water in Nevada. The great author
9 Mark Twain said that in Nevada whiskey's for
10 drinking and water's for fighting over, and we
11 hold to that statement.

12 Mr. Chairman and members of the
13 Board, I would like to thank you for your time
14 today and for the opportunity to discuss the
15 proposed Yucca Mountain rail corridor. With
16 me today is Mr. Jeremy Drew, a resource
17 specialist with Resource Concept, RCI of
18 Carson City. RCI has been the Board's
19 technical consultant for this project for
20 several years now, and Mr. Drew is here today
21 to answer any questions you may have.

22 The N4 Grazing Board is a
23 recognized political subdivision of the state

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1 of Nevada. We represent the public land
2 ranchers within the Bureau of Land
3 Management's Ely district. The district
4 includes White Pine, Lincoln, and portions of
5 Eureka and Nye Counties.

6 The Board has a great deal of
7 interest with this project as it relates to
8 public land ranching. We have been active
9 participants in the NEPA process, providing
10 extensive input throughout development of the
11 rail Environmental Impact Statements.

12 The N4 Grazing Board has twice
13 requested cooperating agency status in order
14 to help better identify the potential impacts
15 and needed mitigations for this project. Both
16 times the Department of Energy has denied that
17 request.

18 That being said, I would like to
19 reemphasize that the N4 Grazing Board is
20 committed to staying engaged and working with
21 the DOE, STB, and BLM in all phases of this
22 project to ensure that those impacted are
23 allowed to continue their ranching operations

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1 and way of life.

2 In the final rail EIS the DOE
3 states that they are committed to working with
4 impacted parties and ranchers in order to
5 mitigate the impacts associated with
6 construction and operation of the Caliente
7 Rail Corridor.

8 We would like to reiterate the
9 importance of this statement in order to
10 maintain the public land ranching operations
11 that will be impacted by this project. It is
12 essential that the impacted ranchers are
13 provided the resources and access to
14 appropriate representatives at all phases of
15 the project, including design, construction,
16 operations, and follow-up monitoring.

17 The people on the ground are those
18 who can most readily accurately identify the
19 impacts of the projects and develop mitigation
20 alternatives that will allow them operate
21 effectively. Some, but not all, of these
22 impacts and mitigation measures were
23 incorporated in the final EIS.

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1 The Record of Decision that the
2 DOE issued for the rail EIS stated that the
3 preliminary best management practice, BMPs,
4 and mitigation measures will further develop
5 and detail through a regulatory compliance
6 process, such as the DOE's application of
7 Certificate of Public Convenience and
8 Necessity to the Surface Transportation Board.

9 As such, we request that the STB
10 exercise its authority to provide further
11 detail and accountability for proper impact,
12 identification, mitigation, monitoring, and
13 compliance inspection during the life of the
14 project.

15 We would ask that the Board
16 include a condition to their Certificate
17 requiring that DOE execute all BMPs,
18 mitigation actions, and processes identified
19 in Chapter 7 of the rail EIS. We would also
20 request that the STB require the DOE's full
21 compliance with any and all stipulations
22 attached to the right of way grant issued by
23 the BLM.

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1 There are several other items that
2 were not included in the rail EIS that we
3 would request the STB to consider as
4 additional conditions. Within the final EIS
5 the DOE proposed a system where affected
6 parties can request mitigation actions, but
7 the DOE will determine the feasibility of that
8 request. The N4 Board sees a potential
9 impasse in the process between what the
10 permittee deems as practical mitigation and
11 what the DOE considers as suitable mitigation
12 measures.

13 To remedy this potential the N4
14 Board suggests that a mitigation target could
15 be set to allow permittees to continue to
16 operate at existing stock levels. This will
17 require the development of end-term and long-
18 term allotment management plans prior to the
19 start of construction. We would ask that the
20 STB consider a condition to this effect with
21 the goal of allowing public land grazing
22 allotments to continue operations at current
23 stock levels.

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1 Additionally, the process
2 suggested by DOE will likely be expensive and
3 time consuming for our ranchers. It is
4 imperative that the DOE provide sufficient
5 funding for each affected rancher to hire a
6 range scientist to assist in developing
7 required mitigation actions for their
8 allotment if they desire.

9 The entire corridor is located
10 within the Great Basin of the Mojave Desert
11 Ecosystems. These ecosystems are some of the
12 most fragile in the world, primarily as a
13 result of the unpredictable and adverse
14 weather conditions and delicate soils. Plant
15 communities have adapted to temperatures that
16 range from freezing to well over 100 degrees
17 and unpredictable rainfall that in some areas
18 average less than two inches annually.

19 In fact, a protocol for successful
20 revegetation has simply not been developed for
21 many of the areas that the corridor will
22 cross. In these cases research will have to
23 be conducted in order to develop applicable

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1 restoration plans. Any disturbed land will
2 require the use of every available tool. This
3 includes the use of temporary irrigation and
4 adaptive plant species to outcompete weeds and
5 stabilize soils until maybe vegetation can be
6 established.

7 The commitment to develop research
8 through entities such as the USDA's
9 Agriculture Research Service or the local
10 universities in order to develop site specific
11 recommendation plans is a must. Use of
12 temporary irrigation and adaptive plants
13 species is also essential in order to promote
14 desired vegetation while controlling invasive
15 and noxious weeds.

16 However, these tools are not
17 within DOE's list of best management
18 practices. As such, the N4 Grazing Board
19 requests the STB to include a condition that
20 DOE develop restoration plans in conjunction
21 with experts familiar with restoration of
22 these ecosystems, including university
23 researchers and agriculture research services.

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1 Further, that the DOE adds the use
2 of adaptive plant species and temporary
3 irrigation to the list of restoration BMPs.
4 The absolute best management practice is for
5 the DOE to limit their construction
6 disturbance to the smallest practical extent
7 across the entire corridor. These limits
8 should be mapped during design and marked in
9 the field and surveyed to aid in compliance
10 and inspection. We would request a condition
11 for this and emphasize the need for compliance
12 inspection of limits of disturbances
13 throughout the construction of the corridor.

14 It is our understanding that
15 allowing commercial train traffic within the
16 corridor will result in both increased traffic
17 and increased train speeds. Lincoln County is
18 one of the most rural counties in the entire
19 United States, and the proposed corridor will
20 cross some of the most remote regions of the
21 county -- of the country.

22 Those who reside in, recreate in,
23 and make a living in or simply visit these

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1 areas seek -- to seek solitude and tranquility
2 they now provide. In addition, an overall
3 increase in train traffic -- the increase in
4 train traffic and train speeds will result in
5 increased probability of fire starts,
6 increased direct loss of livestock, wildlife,
7 wild horses, and more restricted movement of
8 these animals, reduce safe access to public
9 lands and private holdings. Wildfire
10 resulting in long-term loss of wildlife
11 habitat and livestock forage can be crippling
12 to herds in public land grazing operations.

13 The DOE and appropriate commercial
14 carriers should be responsible creating and
15 funding pre-fire resource management, fire
16 suppression, and post-fire stabilization due
17 to fire starts as a result of construction or
18 operation of the rail.

19 Increased train traffic speeds
20 will increase the direct loss of wildlife,
21 wild horses, and livestock due to collisions
22 with trains. The loss of livestock can
23 partially be compensated through direct

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1 payment to livestock operators for their loss.
2 However, livestock in these areas have adapted
3 to their surroundings, and replacing livestock
4 in a desert ranching operation is by no means
5 a one-on-one correlation.

6 Furthermore, the presence of the
7 corridor itself will alter the livestock, wild
8 horses, and wildlife movement, particularly in
9 areas of cut-and-fill. This includes daily
10 movement to and from critical forage and water
11 sources, as well as seasonal movement and
12 migration.

13 As such, it is necessary that
14 design considerations take into account proper
15 fencing of the rail in some locations, as well
16 as provisions for livestock, wild horses, and
17 wildlife underpasses at grade crossings.

18 We ask the STB to condition that
19 the location and design of livestock, wild
20 horses, and wildlife crossings be developed
21 during design of the rail, input from public
22 land grazing permittees, BLM, and state
23 wildlife officials. We also ask that these

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1 parties work collectively to establish maximum
2 train speeds throughout the corridor in order
3 to mitigate these impacts.

4 Maintaining access to the public
5 land and private land holdings along the rail
6 are crucial. Lincoln County has recently
7 experienced access restrictions along the
8 existing rail line as a result of Homeland
9 Security and liability concerns.

10 The DOE has committed to
11 maintaining public access to and across the
12 corridor. But given the nature of the
13 shipments along the rail there is a great
14 concern that their commitment to full public
15 access could be overridden at some point in
16 the future.

17 The N4 Grazing Board asks the STB
18 to condition that the DOE develop a protocol
19 to quickly address these problems. Is that
20 good enough?

21 MR. NOTTINGHAM: That's good.
22 You're right on time, Mr. Higbee. If you need
23 30 seconds to wrap up or if Mr. Drew needs to

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1 chime in -- but time is up. But go ahead and
2 wrap up if you need to.

3 MR. HIGBEE: I just want to say
4 that what's very important to us as grazers
5 through this corridor is that we have a seat
6 at the table when these decisions are made to
7 mitigate these actions because it's of great
8 importance to us that these things are done
9 right. And we can help because we are the
10 ones on the ground. I live there -- I live in
11 this area and I do ranch. And we thank you
12 very much.

13 MR. NOTTINGHAM: Thank you. Vice
14 Chairman Mulvey, any questions for this panel?

15 MR. MULVEY: Just a few. You
16 mentioned the threat to wildlife and to
17 livestock, et cetera. But isn't that true of
18 any infrastructure -- transportation
19 infrastructure investment project -- if you
20 build a highway, you build a road, or you
21 build any other kind of a line. This kind of
22 rail line aside, virtually anything is going
23 to have threats to existing wildlife and

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1 existing conditions. Isn't that true?

2 MR. HIGBEE: I believe you're
3 right, Mr. Vice Chairman.

4 MR. MULVEY: So the -- do you have
5 something?

6 MR. NOTTINGHAM: Mr. Drew?

7 MR. DREW: Yes, if I could answer
8 that. And I just want to give you guys a
9 little bit of background. Resource Concepts
10 represents the N4 Grazing Board, and we have
11 been involved in this project since 2005 when
12 the Bureau of Land Management actually asked
13 us to approach each of the grazing permittees
14 affected by this project. We did that, and we
15 basically gave them the hypothetical if this
16 rail were built what would the impacts be and
17 what mitigations would you need to stay in
18 business. So we've been involved since that
19 point.

20 Some of the permittees said --
21 would give us a set of mitigations that they
22 felt were appropriate to their allotment.
23 Others said there's no amount of mitigation

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1 that could be implemented that would keep us
2 in business, quite frankly.

3 Mr. Buttrey, you had mentioned
4 that you were familiar with ranching and
5 agriculture in your background. And I believe
6 you're from Tennessee, if I'm not mistaken.
7 Imagine the challenges --

8 MR. BUTTREY: We make whiskey
9 there too.

10 MR. DREW: That's right.

11 VOICE: But you don't fight over
12 it, do you?

13 MR. DREW: That's that stuff Mark
14 Twain was talking about, I think. But you
15 understand the challenges that face our
16 agricultural community. Imagine the
17 challenges that face these folks in an area
18 that gets two inches of precipitation a year,
19 and oftentimes that's in one storm.

20 Back to your question more
21 specifically, Vice Chairman: Yes, that's true
22 that any infrastructure improvement would
23 result in those sorts of impacts, but you have

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1 to understand the nature of the area we're
2 talking about. We're talking about hundreds
3 if miles of contiguous undisturbed habitat and
4 the solitude that provides. The only
5 infrastructure that currently exists in some
6 of that is dirt and gravel roads with a
7 maximum safe speed of maybe 50 miles an hour.

8 So one of the big concerns was the
9 direct loss of livestock on the rail. Some of
10 the permittees felt that fencing was
11 appropriate. Some felt that it was not. But
12 in almost all instances they felt that the
13 train speed would dictate that, and we simply
14 were not provided that information from the
15 Department of Energy, so we could not do a
16 full analysis on that.

17 MR. MULVEY: I appreciate your
18 concerns. I did spend some time -- quite a
19 bit of time actually in the Mojave area when
20 I lived in California working for the State
21 Division of Mines and Geology, so I became
22 fairly familiar with the area. And I
23 appreciate your concerns about the beauty, the

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1 nature, and the solitude of the area.

2 Another question along the same
3 lines -- and you can address this as well, Ms.
4 Schroder. And that is that some of the issues
5 that are raised about the threats to property
6 values and to the quality of life, et cetera,
7 are also made about the construction of
8 nuclear power plants in general, and, yet,
9 this country does seem to be committed towards
10 including more nuclear power plants in our mix
11 of power generating capability.

12 Could you address how the movement
13 of the spent waste in these casks differs from
14 the casks actually being there -- being at
15 these power plants? Wouldn't both of those
16 affect property values and quality of life and
17 all that? And so it's a matter of whether
18 it's going to spread around the country -- 105
19 right now, but perhaps 120 or 130 sites versus
20 centralizing it in one particular site?

21 MS. SCHRODER: Well, one of the
22 things that I know that Congress is working on
23 right now is the study of our natural

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1 resources -- using our sun, the solar, the
2 geothermal in place of nuclear plants. The
3 something that we want to get away from is
4 using nuclear power. When we have natural
5 resources that we can use why can't we use the
6 money -- instead of using it for Yucca
7 Mountain use that for our natural resources so
8 that way we could be more energy independent?

9 So that's something that I think
10 would be a lot more when we're going green --
11 you know, a lot more beneficial for us rather
12 than producing something that's going to be
13 harmful for everybody's health.

14 MR. MULVEY: Well, according to
15 some environmentalists nuclear is the new
16 green -- that nuclear is green because it
17 doesn't produce greenhouse gas, et cetera,
18 which is now the concern. Nuclear, which is
19 an available technology and can produce
20 substantial amounts of energy.

21 There is a proposal to produce a
22 lot more of our energy through nuclear power.
23 So I'm sure -- that's an argument for another

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1 day.

2 Are you also suggesting that there
3 may be a need to set up a mediation or an
4 arbitration board to adjudicate issues between
5 ranchers and the DOE over time?

6 MR. DREW: I think that's one
7 possibility to approach this. Again, our
8 concern was a lot of the ranchers may come
9 forward with mitigation actions that the DOE
10 may deem inappropriate. And our question is
11 who goes about resolving those issues. So
12 that would definitely be one alternative to
13 that.

14 MR. MULVEY: Mayor Phillips, I
15 want to make sure I heard you correctly. You
16 said that today there are 2,200 carloads of
17 HAZMAT moving through your town today?

18 MAYOR PHILLIPS: 2,200
19 shipments --

20 MR. MULVEY: Shipments.

21 MAYOR PHILLIPS: Sometimes
22 multiple shipments --

23 MR. MULVEY: In a carload.

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1 MAYOR PHILLIPS: -- you know, in a
2 single carload.

3 MR. MULVEY: oh, okay. Thank you.
4 That's all.

5 MR. NOTTINGHAM: Commissioner
6 Buttrey, any questions for this panel?

7 MR. BUTTREY: No further
8 questions.

9 MR. NOTTINGHAM: Mayor Phillips,
10 thank you for providing a little bit of the
11 history lesson. It was very interested in
12 seeing that. So many of our communities in
13 this country were founded originally to be
14 basically railroad-related service
15 communities. So many of them have grown and
16 changed, and a lot of them -- what we find out
17 in our work many citizens don't remember the
18 history or choose to not remember it when they
19 come to us to ask for more regulation to be
20 imposed or re-routings and stuff. So it's
21 refreshing to hear from a community where you
22 know your history and you share it with us
23 straight up. We appreciate that.

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1 I have to ask. You mentioned
2 being sued because of having an unpopular
3 opinion in some quarters. It's not really
4 relevant to this proceeding, but I've got to
5 ask. As a lawyer I'm just scratching my head.
6 How does somebody get sued for --

7 MAYOR PHILLIPS: I thought that
8 might pique your interest. It's a long story.
9 But you've heard by many of those here
10 speaking on behalf of our governmental elected
11 officials that there's a certain stance now
12 relative to Yucca Mountain and, hence,
13 transportation that was different before.

14 For instance, in 1975 the state of
15 Nevada's Legislature, with the backing of the
16 Governor, passed a resolution, AJR 15, which
17 called for the things that are actually
18 happening today. They cited the tremendous
19 safety record at the Nevada Test Site, the
20 tremendous facilities, the expertise in
21 handling nuclear material, and then passed
22 this resolution that the state of Nevada
23 strongly urges the forerunner of DOE to cite

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1 for storage the Nevada Test Site for nuclear
2 materials, et cetera, et cetera.

3 There was a day when that was
4 totally difference, but now it's not. And so
5 I've been one to speak up for nuclear energy
6 and nuclear power. I think it's a solution.
7 I would be so bold as to say as a Nevadan
8 we're missing the boat.

9 What we really need to do is
10 create Yucca II where we move the material to
11 the Test Site, develop a recycling
12 technologies that are 30 years away from
13 production right at that spot -- as Nevada
14 generate electricity, as Nevada benefit, and
15 diversify our economy which is so tourist
16 oriented and we're vulnerable. That would be
17 the greatest thing that could happen, in my
18 opinion.

19 MR. NOTTINGHAM: Now, as a
20 starting point for this proposed new line
21 right here -- right in your town, Caliente,
22 arguably that's where there might be some
23 switching and some trains coming in and being

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1 prepared and organized to then head towards
2 this proposed facility.

3 Arguably under that theory --
4 under that scenario your town would face more
5 potential risks than any town given that when
6 you sort trains and switch them and all that
7 that's often -- if there are to be accidents
8 that's frequently, you know, the type of place
9 it happens. So you're aware of this. I'm not
10 telling you anything that you don't know.

11 MAYOR PHILLIPS: Well, true. But
12 in the operation and design thus far on paper
13 the, quote, staging yard where trains that
14 would run to the mountain from the Caliente
15 area, are north of the community. The train
16 would simply come in, hang a right, and head
17 up to the staging yard, which is several miles
18 outside of the community in a totally open
19 space.

20 MR. NOTTINGHAM: Okay.
21 Councilwoman Schroder, you mentioned something
22 that we've seen in the record, which is some
23 concern that the Department of Energy might

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1 not seriously be planning on operating a
2 common carrier -- or I think they use the
3 phrase that's a little less used by us --
4 shared use line -- that perhaps it might not
5 be a common carrier, so anyone who's
6 interested in the common carrier attributes of
7 the line ought not to get their hopes up if I
8 understood the -- your testimony.

9 I do want to assure you that the
10 DOE is on record requesting us to approve a
11 common carrier line. It wasn't always the
12 case -- they weren't always on record clearly
13 stating that throughout the entire pendency of
14 this proceeding, but they are on record now.

15 And we do have -- as an agency we
16 have the regulatory ability to enforce that.
17 And they can't just wake up a year or ten
18 years from now and decide that they're -- that
19 if this were to be approved -- hypothetical --
20 were to, you know, no longer be a common
21 carrier line.

22 And we can respond to complaints.
23 We can initiate inquiries. We can convene

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1 show cause proceedings. We can also actually
2 direct service or put another railroad
3 operator in place to serve shippers. So we
4 take that -- that kind of goes to the heart of
5 what one of the reasons why we even exist as
6 an agency.

7 I just wanted to make sure you
8 knew that that is not just a minor matter to
9 us, if we were ever to approve this, we
10 wouldn't just, you know, be walking away and
11 not keeping an eye on that.

12 MS. SCHRODER: Well, I appreciate
13 that. And if I could just make a small
14 comment about some history in Henderson.
15 Henderson has already experienced a major
16 disaster. Twenty years ago there was a rocket
17 fuel plant in Henderson. And I don't know if
18 you've ever seen the video footage of this.
19 All you have to do is go on Google to
20 Pepcon -- look up Pepcon.

21 And in May of 1988 this
22 corporation that produced rocket fuel had
23 exploded. Now, back then the only things that

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1 were in that particular area was Pepcon and
2 the Kid Marshmallow Factory. And then a
3 little bit to the east was Thatcher. Today if
4 you look at the area it is dramatically
5 expanded and it's a very densely population
6 area.

7 So all I'm saying is that it just
8 takes one time to have a major disaster. This
9 disaster with Pepcon and the ripple effect
10 that had gone out to the neighborhoods that
11 were miles away -- I've seen the damage to the
12 houses. I used to work for an insurance
13 company and I happened to find some pictures
14 from some claims. The damages to the homes,
15 the damages to the roads, the injuries to
16 people -- if you watch the video of the
17 explosion itself you will see a car going down
18 Lake Mead Drive at the time and how that
19 ripple effect went right over his car.
20 Luckily he survived that and luckily -- or
21 unfortunately two people had -- were killed
22 from that explosion.

23 Can you imagine if something was

1 to happen today -- the ripple effect of that.
2 And how populated our area is right now as
3 opposed to what it used to be even 20 years
4 ago. When I first moved to Henderson in 1991
5 the population was 60,000. Now we're at more
6 than 270,000. That's just in ten years.

7 And, again, in the future we're
8 looking at more than 520,000 as far as the
9 population. So please take that into
10 consideration that -- it's not just what
11 happens at the time, but it's the future too.
12 You know, how are we going to repair
13 everybody's homes, everybody's lives if
14 they're affected by this in the future --
15 their health, their -- you know, cancer.

16 Right now there are people who
17 worked at the Nevada Test Site when we were
18 testing the atomic bombs that are ill with
19 cancer. And the -- and the federal government
20 has no money to help them out with that. So
21 if you could please think about the future of
22 the health of people too.

23 MR. NOTTINGHAM: Thank you,

1 Councilwoman. Any further questions for this
2 panel?

3 MR. MULVEY: I just wanted to ask,
4 what happened to that rocket fuel plant? Was
5 that closed down?

6 MS. SCHRODER: Well, it blew up.

7 MR. MULVEY: Oh, it blew it.

8 MS. SCHRODER: It's gone.

9 MR. MULVEY: They didn't replace
10 it.

11 MS. SCHRODER: It's absolutely
12 gone. And I moved out here to the southern
13 Nevada area in 1989 -- January 1989, so this
14 is less than a year later. And I went to go
15 look for it and it was just -- there's nothing
16 there.

17 MR. MULVEY: There's not.

18 MS. SCHRODER: So it was just
19 gone.

20 MAYOR PHILLIPS: And, hence, the
21 technology moved to Utah because they
22 supported and built a great big plant and it's
23 an extremely thriving industry over there

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1 that's providing tremendous jobs and benefits
2 to southern Utah now instead of southern
3 Nevada.

4 MS. SCHRODER: But it did create a
5 huge disaster for the city of Henderson and
6 the Las Vegas area.

7 MR. MULVEY: Thank you.

8 MR. BUTTREY: Mr. Chairman, I
9 would just ask Ms. Schroder. Has anyone
10 ever -- do you have any information dealing
11 with the issue of if that had been a nuclear
12 accident instead of just a explosion -- I
13 started to say a mere explosion -- there's
14 nothing mere about an explosion. But it's
15 significantly different from a nuclear
16 event -- or incident.

17 I haven't heard any estimates
18 about when people can go out and start
19 building houses at the Nuclear Test Site.
20 Have you?

21 MS. SCHRODER: No, I have not
22 heard anything like that.

23 MR. BUTTREY: Okay.

1 MS. SCHRODER: But a disaster is a
2 disaster no matter --

3 MR. BUTTREY: Yes, I would --

4 MS. SCHRODER: -- if it's nuclear
5 or not.

6 MR. BUTTREY: I submit to you that
7 it's not hundreds of years, maybe thousands.
8 I'm not sure. I don't know that. But I'm
9 going to get the answer to that or I'm going
10 to get no answer to that -- whichever. But
11 I'd like to know the answer to that question.

12 MS. SCHRODER: I don't have the
13 answer to that question.

14 MR. BUTTREY: Thank you.

15 MR. NOTTINGHAM: Thank you panel.
16 You will be dismissed now. We appreciate your
17 testimony. And we will now break for 30
18 minutes and return at 12:52 for those keeping
19 score -- or as close to there as possible.
20 And we will start with Panel II representing
21 Native American interests.

22 (Whereupon, a short recess was
23 taken.)

1 MR. NOTTINGHAM: We will start
2 with Panel II, representing Native American
3 interests. From the Western Shoshone National
4 Council Mr. Ian Zabarte, Secretary of State
5 for the Western Shoshone National Council. I
6 understand he'll also be joined by Mr. Phil
7 Swain. We also will call forward Margene
8 Bullcreek, President of the Native Community
9 Action Council, and Mr. Joe Kennedy, Chairman
10 of the Timbisha Shoshone Tribe.

11 If any and all of those witnesses
12 could come forward and take a position. We've
13 got some nameplates up on these desks.
14 (Pause.) Welcome. Mr. -- is it Zabarte?

15 MR. ZABARTE: Zabarte, yes.

16 MR. NOTTINGHAM: Zabarte.
17 Welcome. And we'll start with you.

18 MR. ZABARTE: Thank you. My name
19 is Ian Zabarte. I am the Secretary of State
20 for the Western Shoshone National Council and
21 the principal man for foreign affairs.

22 I'm here to defend the basic human
23 rights and territorial sovereignty of Newe

1 Sogobia, the Western Shoshone Nation. The
2 Western Shoshone National Council is the
3 original traditional self-determined
4 government de jure of the Western Shoshone
5 Nation. Our spiritual beliefs, culture, and
6 customs in relation to our country determine
7 who we are as a people.

8 Who we are collectively as a
9 distinct people matters most and is what makes
10 us feel useful as citizens in our own nation.
11 We hold on to our beliefs and values because
12 they are real, authentic, and a part of our
13 culture. Also a part of our culture is an
14 oral tradition.

15 We appreciate this opportunity to
16 provide oral testimony in the hope that the
17 United States will wake up from the dream of
18 indifference in environmental degradation.

19 The Western Shoshone National
20 Council is opposed to the Department of Energy
21 application for a Certificate of Public
22 Convenience and Necessity, Finance Document
23 Number 35106 now before the Board. The

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1 Western Shoshone Nation challenges the basic
2 assumptions of the U.S. assertion of ownership
3 to the entire 300-mile-long Caliente Rail
4 Corridor set forth in Department of Energy
5 application.

6 The Treaty of Ruby Valley is a
7 fact of international law and defines the
8 intercourse between the United States and the
9 Western Shoshone Nation. Treaties are the
10 accepted manner of foreign relations practiced
11 between sovereign governments. The Treaty of
12 Ruby Valley is in full force and effect.
13 American patriots understand that treaties are
14 the supreme law of the land under Article VI
15 of the United States Constitution.

16 The Department of Energy
17 misidentifies the ownership status of the land
18 within the proposed rail corridor. By and
19 through the Treaty of Ruby Valley the Western
20 Shoshone Nation asserts original and
21 continuing ownership to the lands that
22 constitute the 300-mile proposed rail
23 corridor.

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1 In 1863 the United States agreed
2 to purchase specific interests sought by the
3 treaty, then failed to fulfill the payment
4 schedule in Article VII, a substantial breach
5 of the purchase agreement clause. Our
6 government's position is that the status of
7 the land returned to the status quo ante the
8 treaty.

9 Our government is willing to
10 consider United States claims under the Treaty
11 of Ruby Valley. The Western Shoshone Nation
12 seeks implementation of Article VI creating a
13 reservation from within the boundaries
14 described in Article V. Some of the suitable
15 lands sought for implementing Article V are
16 within the proposed corridor.

17 Unfortunately we have had no word
18 from Washington and, instead, suffer the
19 crippling legacy of injustice and
20 environmental racism as institutions of the
21 United States Government we trust to keep us
22 safe fail to do so. The United States fails
23 to restrain acts that violate the Treaty of

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1 Ruby Valley, giving no justification for
2 violations of our borders, sovereignty, and
3 well being of the peaceful Western Shoshone
4 people.

5 The Western Shoshone people are
6 already burdened by risk for U.S. nuclear
7 development from 928 explosions that released
8 radioactive fallout and adversely affecting
9 the health and quality of life of our people
10 and land.

11 Each social, cultural, and
12 political issues are at the core of the
13 Western Shoshone Nation's opposition to the
14 Department of Energy application for a
15 railroad construction certificate. The scars
16 of Western Shoshone abuse as victims of the
17 United States are not healed and not addressed
18 by the Department of Energy application.

19 The Western Shoshone perspective
20 views the United States Government as making
21 a practice of abuse one government institution
22 after another. On the one hand, agencies
23 selectively target the most prominent Western

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1 Shoshone nationals for abuse, such as Carrie
2 Dan, Western Shoshone National Council
3 representative, and former chief -- Western
4 Shoshone National Council Chief Raymond
5 Yowell, both of whom are engaged in the
6 peaceful expression and display of property
7 ownership rights contemplated by the treaty as
8 hunters or herdsman.

9 On the other hand, physical harm
10 has resulted by the willful negligence of the
11 United States to disregard the health and well
12 being of the Western Shoshone people in the
13 testing of weapons of mass destruction.
14 Willful negligence is the common theme united
15 the past United States legacy with the current
16 proposal to transport and store high-level
17 nuclear waste at Yucca Mountain within Newe
18 Sogobia.

19 The Board is hereby formerly
20 noticed that any actions certifying the
21 Department of Energy application without a
22 claim under the Treaty of Ruby Valley is
23 manifest of willful intent by the Board to

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1 commit crimes against the humanity and dignity
2 of the Western Shoshone people.

3 Our country's occupied today by
4 belligerent United States institutions that
5 claim our title was extinguished by
6 proceedings in the Indian Claims Commission
7 and the Supreme Court in the case United
8 States v. Dann. The Supreme Court ruled in
9 error. Gradual encroachment -- acts the
10 United States claims constitute a taking in
11 the Indian Claims Commission proceeding were
12 allowed under the terms of the Treaty of Ruby
13 Valley and could not effect a title transfer
14 or extinguishment except within the terms of
15 the Treaty of Ruby Valley.

16 The Treaty of Ruby Valley is the
17 legal fact the Department of Energy continues
18 to ignore. Further, the Indian Claims
19 Commission never completed its statutorily
20 required final report to Congress in Docket
21 326-K and was disbanded in 1978.

22 The final report to Congress did
23 not cease to be a condition of finality when

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1 the Indian Claims Commission was terminated by
2 Congress in 1978. Thus, since the Indian
3 Claims Commission no longer exists to file the
4 necessary report it is now too late for the
5 United States to ever achieve finality in the
6 Western Shoshone case within the framework --
7 the statutory framework of the Indian Claims
8 Commission Act.

9 No reference to the assertion by
10 the Department of Energy in the application
11 that Western Shoshone title to Nevada land has
12 gradually been extinguished exists. Such
13 misrepresentations do not -- such
14 misrepresentations do a disservice to the
15 Board and the public. What law authorizes
16 gradual encroachment? There is none.

17 Consider the 1861 act of Congress
18 organizing the territory of Nevada -- Provided
19 further that nothing in this Act contained
20 shall be construed to impair the rights of
21 person or property now pertaining to the
22 Indians in said territory so long as such
23 rights shall remain unextinguished by treaty

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1 between the United States and such Indians or
2 to include any territory which by treaty with
3 any Indian tribe is not without the consent of
4 said tribe to be included within the
5 territorial limits or jurisdiction of any
6 state or territory. But all such territory
7 shall be accepted out of the boundaries and
8 constitute no part of the territory of Nevada
9 until said tribes shall signify their assent
10 to the President of the United States to be
11 included within said territory.

12 The rights of the Western Shoshone
13 Nation continue to this day and beyond. The
14 strength of the United States case for title
15 to the lands at issue in the Department of
16 Energy application is that of a belligerent
17 trespasser at best.

18 Title to the territorial
19 sovereignty of the Western Shoshone Nation
20 rests upon the vestative facts that
21 international law recognizes as creating title
22 the Treaty of Ruby Valley. The United States
23 willingly consented to the Treaty of Ruby

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1 Valley, recognizing the legal right,
2 privileges, powers, and immunities that are
3 true of Western Shoshone nationals that are
4 not conferred upon others.

5 Possession of the land is a root
6 and practice of the Western Shoshone concept
7 of property ownership in privity with other
8 Western Shoshone nationals. Our nationality
9 is Western Shoshone. Our allegiance is to the
10 Western Shoshone Nation and a unique way of
11 life that has been practiced within Newe
12 Sogobia for a thousand generations.

13 We oppose the Department of Energy
14 application for a Certificate of Public
15 Convenience and Necessity because it is a
16 crime against humanity and not convenient or
17 necessary for the United States Department of
18 Energy, with the assistance of the Board, to
19 destroy social, cultural, and political fabric
20 of the Western Shoshone Nation by creating
21 trackage within Newe Sogobia. Thank you.

22 MR. NOTTINGHAM: Thank you. We
23 will now hear from Mr. Phil Swain.

1 MR. SWAIN: Yes. Thank you. As
2 you noticed, I was looking around for my
3 paperwork. I must have misplaced it somewhere
4 and it's not in here, but I will let it go.

5 I want to thank you for giving me
6 the opportunity to speak. It was a last
7 moment thing. And when it comes to nuclear
8 and the effects it may have on my homeland
9 it's necessary for me to come and speak up.

10 What we're talking about here
11 today is the shipment of nuclear waste by rail
12 across the state of Nevada. But it is part of
13 our ancestral land. Yes, we rode that area
14 years and years before the white men ever
15 came.

16 And in our culture the way we did
17 things -- one of the things that stands out to
18 me when we look at building a railroad across
19 our ancestral land, we never had cemeteries in
20 our time way before the white man came. And
21 so when we buried our dead, you know, we
22 buried them in caves or crevices close by.

23 So if the rail goes across mounds

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1 and placed like this the question I would
2 impose or ask is what's going to happen, you
3 know, if you run into something like that, you
4 know. If we find a remain in every -- in
5 those mountain ranges what are we going to do
6 if we run into something? Are we going to
7 have a zig-zag rail going across the state of
8 Nevada trying to pacify us?

9 And like Mr. Ian said, you know,
10 the federal government has a trust
11 responsibility to us. And with the NAGPRA
12 Act, every time you run onto a body, an Indian
13 tribe has to be consulted on what are we going
14 to do with that. So there you're talking
15 about delays in building the railroad across
16 our land.

17 I was under the impression that we
18 kind of put a hold on this repository, but
19 it's kind of like putting the cart before the
20 horse. Maybe you guys know more than I know
21 about this, but with the new elected
22 President -- you know, if he's 100 percent for
23 it I haven't heard anything like that. So

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1 that's one of the main problems I have and the
2 astronomical cost that it's going to cost to
3 build this thing.

4 If you look at the route going
5 across the state of Nevada it kind of like
6 goes around Area 51. Although it's not
7 indicated on your map that says it's Area 51,
8 but if you were to take that route and just go
9 straight across Area 51 you would save
10 yourself billions and billions of dollars.
11 But, again, that's a political thing, you
12 know, because Area 51, you know, is where our
13 other forms of life supposedly are kept. But
14 we don't know that for a fact, but it's just
15 rumors.

16 But the thing that I look at,
17 because it's my homeland and the Western
18 Shoshone's -- you know, we fought over that
19 homeland -- that territory that they've given
20 us as a line. But in years we traded together
21 we went looking for pine nuts, we went hunting
22 for deer in that area. So it was our
23 ancestral where we hunted and fished.

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1 And if, like one of the gentlemen
2 talked about Las Vegas -- how it looked before
3 it became Las Vegas, you know -- if you can
4 imagine, you know, the meadows, the water, and
5 the places where the Indians camped. And, you
6 know, they didn't want for a lot because the
7 land gave it to them.

8 And that's what we looked for and
9 that's what we're trying to protect -- is to
10 make sure that they resources that we're
11 trying to protect as the stewards of this
12 land -- we're saying if the rail goes across
13 how is it going to affect not only our
14 ancestral lands but people that are living in
15 that area?

16 Water is another critical issue.
17 Where are you going to get the water? If
18 you're going to talk about water then you have
19 to talk about the Southern Nevada Water
20 Authority. And I don't know if you all
21 know -- it sounds like most of you guys are
22 not from here and are not familiar with the
23 state -- but we're trying to bring water from

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1 northern Nevada to southern Nevada in an
2 eight-foot pipe.

3 Now, I can walk or job down that
4 pipe for miles and, you know, I'd never hit my
5 head on the top. So they're trying to bring
6 water down. And if you're going to use water,
7 you know, for building the rail, which I'm
8 sure you're going to need, you know, I'm not
9 sure the Southern Nevada Water Authority is
10 going to give you that permission to use that
11 water.

12 And because of that that becomes
13 another issue. Because we're talking about
14 taking water from our tribe. And if you look
15 at the map -- I always tell people from the
16 Water Authority, you know, if I could make
17 that water run upstream I think we'd have a
18 deal here. But, I said, I can't. It still
19 flows downstream and I can't control that.

20 So when the water flows it flows
21 underground, surfaces, then flows underground
22 again, and then ends up in Lake Mead. Now, if
23 you ever go out to the northern tip of Lake

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1 Mead, you know -- I mean, talk about storage
2 and trying to create jobs for people. You
3 need to look at the northern end of Lake Mead
4 and your heart will cry because all there is
5 is a little stream about four feet wide that
6 used to hold gallons and gallons of water up
7 in the northern end. It still runs, but it's
8 not as much.

9 So, you know, the water may -- you
10 may drinking here in the future may be from
11 the Wapiti Reservation because we are located
12 about 50 miles from here and one of those
13 streams flows through our reservation. So if
14 there was any type of pollution or seepage of
15 the nuclear waste into our ground waters I
16 have a very serious concern with that.

17 At this point I don't know who to
18 believe.

19 And you gentlemen here are from the Surface
20 Transportation Board. I appreciate your
21 concern in how you're going to transport.
22 But, you know, when I look at the route of the
23 railroad I think about my tribe which is

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1 located 50 miles from here. And we're
2 probably I believe the fourth largest
3 landholder here in southern Nevada besides the
4 federal government and several -- maybe Harvey
5 out there in Coyote Springs.

6 But we control a lot of land. And
7 we're trying to preserve it for our children.
8 We talk about the seventh generation, and
9 that's who we're trying to preserve it for.

10 So when we look at what the
11 government is doing to our land, you know, we
12 have to take second thoughts and think about
13 it because, like the Mayor said earlier, you
14 know, we used to go outside. We'd take the
15 early morning period and we'd all be excused
16 and we'd go outside and would wait for the
17 atomic blasting to take place. So we would
18 ooh and ah and watch it.

19 And, like he said, you know, the
20 government said, Oh, it's not going to harm
21 you. You're okay. But most of our people who
22 we call downwinders -- not only Indians, but
23 others are dying from cancer-related deaths

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1 and illnesses.

2 So -- and the government came and
3 said like he said -- you know, take a shower
4 and wash yourself off, and if it falls into
5 your eyes, you know, take a shower and you'll
6 be okay. But who's not to say if it hadn't
7 already filtered into the water system. So
8 you're taking a shower with the thing already,
9 you know, seeping into your body again
10 although you thought you washed it off.

11 So that's what the government is
12 saying. And the government is also saying
13 that, well, we're going to compensate you. I
14 don't know of anyone in southern Nevada in the
15 Clark County area, which has now been
16 considered a part of that, has been
17 compensated. So although the government is
18 admitting that it could create these things
19 they're a long time in paying up.

20 So those are some of the little
21 stories that I have about this whole process.
22 And when I think about the rail system -- and
23 somebody said, Well, it comes through Las

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1 Vegas -- well, they're not really sure, but I
2 think it does.

3 But then again they say, Well, the
4 nuclear plants in foreign countries take care
5 of their own waste. Well, the rumor I heard
6 was that they ship it to the United States.
7 It's transported by rail across the United
8 States to either Hanford for your nuclear
9 plants or for the nuclear sub waste to
10 somewhere I believe in New Jersey or New
11 Hampshire where they store their nuclear
12 waste.

13 So I wonder how we're going to
14 protect ourselves, especially as a small
15 tribe. We have 350 members, and if they were
16 ever affected by the downwind fallouts and
17 whatever, if a cask broke or whatever, then we
18 would be in a world of hurt.

19 And so my thing is -- and because
20 I live out there and I have contact with
21 engineers and people that worked at Yucca
22 Mountain or Nevada Test Site where they were
23 doing the testing in the early sixties and

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1 seventies. Many of them have come to me and
2 said, Phil, you know, the government is crazy
3 because they're building it on a fault. And
4 I'm saying, Well, that's not what they're
5 telling me. They say it's safe and sound.

6 So I don't know who to believe
7 anymore. But if you're going to do something,
8 to me it's like you've got to study these
9 issues. And when I talked about -- it's not
10 just a Nevada issue because the rail comes
11 across the United States and it crosses miles
12 and miles of Indian land. And we don't know
13 how to deal with that yet. The Indian tribes
14 have tried -- have sought this money so they
15 can create their own emergency response teams,
16 but it's a hard time in coming.

17 My neighbor here -- she has tried
18 to get an affected status tribe, and it's been
19 a long time in coming. But you can go to
20 rural town USA and you can get beaucoup bucks
21 and you can do those kind of studies.

22 And this is my reason I think --
23 and I'm not sure why -- many of our people

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1 couldn't come here today because they live in
2 the outlying areas and it's hard for them to
3 buy the gas to get here. Now, if we were one
4 of those so-called affected tribes then we
5 would get some of that money, but I doubt that
6 very seriously because we've tried and we've
7 tried and we've tried, and we haven't been
8 able to get it.

9 So these are some of the problems
10 associated with the transportation of nuclear
11 waste across the state of Nevada, and more so
12 across the United States. And I'm not sure if
13 the general public understands that this thing
14 is already being shipped. I mean, I don't
15 think there's a big sign that says, Beware,
16 nuclear chemicals, you know. They try to push
17 it through as quietly as possible. But --

18 MR. NOTTINGHAM: Mr. Swain, if you
19 could wrap up because we want to hear from
20 President Bullcreek too. But just --

21 MR. SWAIN: All right.

22 MR. NOTTINGHAM: Thank you.

23 MR. SWAIN: All right. I'll wrap

1 it up. I appreciate the time. But, anyway,
2 I just want to thank you and say that, you
3 know, these are my very serious concerns. And
4 what more can I say.

5 MR. NOTTINGHAM: Thank you, Mr.
6 Swain.

7 MR. SWAIN: Thank you.

8 MR. NOTTINGHAM: We'll now hear
9 from Margene Bullcreek, President of the
10 Native Community Action Council.

11 MS. BULLCREEK: [Speaking in
12 Shoshone.] What I do when I speak before
13 you -- I've been before you before. I'll
14 mention that later. But I try to speak in our
15 Shoshone language to start out my speech. And
16 what I'm saying is that it's a good day, and
17 we're here to understand and to be understood
18 and that we can say what we have to say in a
19 good way.

20 My name is Margene Bullcreek. I
21 am a Goshute Shoshone, from Skull Valley band
22 of Goshutes located in Utah, about 70 miles
23 from Salt Lake City. I am also the President

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1 of the Native Community Action Council. I
2 would like to thank you for allowing me your
3 time to hear me speak.

4 The proposed Caliente Line is a
5 300-mile rail line that would connect on
6 existing Union Pacific Railroad Company line
7 near Caliente, Nevada. In reference to that,
8 the Native Community Action Council consists
9 of 12 Board members from various communities
10 in Nevada and Utah: Moapa, Timbisha,
11 Duckwater, Ely; Cedar City, Utah, and Skull
12 Valley, Utah.

13 The tribes are Paiute, Shoshone,
14 and Owens Valley Paiute, Shoshone Native
15 Americans. These communities have already had
16 health effects from the Nevada testing
17 conducted in the '50s, '60s, and to the
18 present.

19 The Native American has cancers,
20 thyroid, et cetera. Many have died from these
21 poisonous effects from the Test Site fallouts.
22 Today many youths are suffering from thyroid
23 health problems. The Native Community Action

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1 Committee studied and has written data
2 resources on the radiation effects of their
3 communities.

4 The indigenous people have always
5 been caretakers of their Mother Earth. They
6 have respected all living creatures and their
7 livelihood. What plant and medicine present
8 in this day and age are still very much part
9 of their culture and tradition.

10 The U.S. Department of Energy
11 works to protect important cultural resources
12 at the site. Department scientists protect
13 these resources through Yucca Mountain
14 Projects Cultural Resources Program, which
15 makes the Nuclear Waste Policy Act
16 requirements that important resources of Yucca
17 Mountain be protected during the
18 characterizing -- characterization; I'm sorry.

19 The program complies with numerous
20 federal laws addressing Native American issues
21 and cultural resources, including the American
22 Indian Religious Freedom Act and the National
23 Historic Preservation Act.

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1 The 300-mile construction of rail
2 line within the corner of the Western Shoshone
3 homeland would cause irreversible destruction
4 of values of cultural and traditional plants,
5 medicine, and plant food, as well as living
6 creatures -- some are distinctive.

7 There are well understood
8 definitions and references in this indigenous
9 way of life called sacredness. The sacredness
10 could be referred to as homeopathic medicine
11 or organic gardening by the non-Indians.

12 This proposed rail line would
13 disturb all issues I have mentioned. This
14 construction should not happen. The
15 communities will be -- this -- communities
16 will be affected by a nuclear mishap. There
17 are no emergency responders trained to protect
18 communities. This is just not 300 miles of
19 proposal but thousands of miles of
20 transportation transporting high-level nuclear
21 waste to an unsettled repository site that has
22 lots of EIS problems; this site, Yucca
23 Mountain, that is part of the Shoshone

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1 homeland of cultural and traditional
2 indigenous people. We demand justice not
3 genocide for our indigenous people.

4 The EIS works with tribe and they
5 should be provided in the environmental
6 training. Because of the struggles of the
7 self-determination at different geopolitical
8 and scales in the politics of environment
9 justice, tribal sovereignty, and American
10 Indian identities within a racist white
11 society and communities of color,
12 environmental racism needs clarification
13 regarding important issues of internal power
14 structures identity, politics, and ideological
15 disparities that confront communities of
16 color.

17 Plus the Shoshone nation Paiutes
18 have been excluded from decision making Indian
19 rights to production, siting, and management
20 of radioactive waste.

21 I also want to be able to talk a
22 little about the dark history of Native
23 Americans. Native Americans had never -- can

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1 never have their land back. Their own
2 ancestral land that belonged to them --
3 American history -- United States history and
4 the Native American history -- the treatment
5 of Native Americans is unjust, but a legal
6 status and political status is there. And
7 this had happened to most of the Indian tribes
8 in America.

9 Native Indians were made citizens
10 of the United States by the Act of Congress in
11 1924. Some obtained citizenship through
12 treaties and special statutes of the Congress
13 of the United States.

14 United States of America
15 negotiated treaties to open up land for
16 settlement. Some tribes had millions of acres
17 of land. U.S. decided that tribes didn't have
18 that many people to live on -- in terms of
19 necessity to make a living by the utilization
20 of the land. The United States saw that it
21 would be reduced in size and still sustain
22 Indian people.

23 Treaties were a formal way of

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1 sequestering American Indians, treaties of the
2 United States Constitution, the supreme law of
3 land. The President of the United States
4 would send out commissioners to meet with
5 native people. There was force and treaty was
6 signed. The ceding gave large portions of
7 their acres and was located on reservations.
8 And in return of giving up the land, there
9 were terms to promise our nation.

10 The terms were to protect and take
11 care of our homeland so there were no -- so
12 that there would be no intrusion or no
13 molestation and provide education assistance,
14 active cultural assistance, and health care,
15 and provide the community treaty rights to
16 hunt, religion, history of taking Native
17 lands. American Indians bargained for this
18 right after giving up massive amount of land
19 for it.

20 The non-Indian has benefitted from
21 it. The United States has benefitted from it.
22 And the occupied lands of the United States --
23 they should be able to exercise their treaty

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1 rights.

2 And so what I'm saying is that the
3 Native Americans should be allowed to be who
4 they are and to protect their homeland. And
5 this disturbing of building a rail line would
6 do so, and it will have an irreversible effect
7 on our medicine plants.

8 I -- like I mentioned, I'm from
9 Skull Valley, Utah, and our tribe had wanted
10 to bring a temporary storage to our
11 reservation -- biofuel storage, and we formed
12 organization to stop it.

13 And with our allies, the state of
14 Utah and the senators and the Interior, made
15 a decision to not allow this to happen from
16 where we live because of our homeland, because
17 of our culture and our traditions that we
18 believe in. That would affect who we are by
19 having this economic development come about.

20 And this is all I have to say.
21 Thank you.

22 MR. NOTTINGHAM: Thank you,
23 President Bullcreek. I thank all the

1 panelists.

2 Mr. Swain, you did a very
3 effective job with no notes. I commend you.

4 MR. SWAIN: Thank you.

5 MR. NOTTINGHAM: Maybe it's
6 further evidence of the oral history that Mr.
7 Zabarte talked to us about that comes from
8 your people. Thank you for being here with
9 us. You did touch on some of the confusion
10 that some of your constituents and neighbors
11 might feel as to, you know, what's going on
12 here.

13 This is -- we are a fairly small
14 agency based in Washington and all of a sudden
15 we're here in town talking about a new
16 proposed line of railroad that might very
17 well -- in fact, is being proposed to serve a
18 potential Yucca Mountain nuclear waste
19 repository. And, you know, how does it all,
20 you know, fit in.

21 And just so you understand where
22 we -- where we're coming from procedurally.
23 We have a legal responsibility to review rail

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1 construction applications, which is in our
2 little world -- corner of the world that's
3 what this is. It's a big and controversial
4 one, but it is a application to construct a
5 300 -- approximately 300-mile new line of
6 railroad.

7 And it would -- the railroad is
8 proposed to be used to serve common carriage,
9 meaning any shipper, upon reasonable request,
10 can get service on that line if it were to be
11 approved and built.

12 And so that's really what brings
13 us here. We generally try to act on those
14 applications in a fairly timely manner. It's
15 permissive though -- of course, were we to
16 approve, or approve with conditions, this
17 application is not the determining factor as
18 to whether or not such a rail line would ever
19 get built. That's obviously going to be
20 dependent on whether this Yucca Mountain
21 facility ever gets licensed and built.

22 And so it is -- several witnesses
23 today have I think expressed some concern of

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1 why are we doing this now, does this lock in
2 place -- will require something to happen that
3 might not even been needed -- wouldn't that be
4 a waste of money.

5 And it does not lock anything in.
6 It just says if all the other approvals come
7 through -- if we were to approve this the
8 Department of Energy would have the ability to
9 build the line.

10 So we're not locking anything in
11 no matter what we do here. But I do
12 understand it's confusing. It was confusing
13 to me when I first began learning about this
14 a couple of years ago. And so I just wanted
15 to try to help clarify a little bit
16 procedurally.

17 Vice Chairman Mulvey, anything
18 you'd like to add?

19 MR. MULVEY: A couple of
20 questions. This is about the Supreme Court
21 ruling. Do you have any ways of rearguing
22 that case in the future? Can that case be
23 reopened -- your claims against the Government

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1 for the occupation of the Shoshone land?

2 MR. ZABARTE: Well, as a sovereign
3 nation that may not be the appropriate
4 approach. We don't like going into the United
5 States courts because that leaves the United
6 States in control of making determinations,
7 and it hasn't been very good at ruling justly.

8 And so I think the most
9 appropriate course is for us to demonstrate
10 our foreign sovereign immunity. And I
11 mentioned the Nevada Organizing Act as a way
12 of showing that our country, which was defined
13 by the treaty, is not to be included in the
14 boundaries of jurisdiction if any state or
15 territory.

16 Now, the problem is that that
17 territorial act also authorized a Nevada
18 Surveyor General. That Nevada Surveyor
19 General did not identify the boundaries of the
20 Shoshone nation by the treaty and left the
21 rest to the imagination. And you know how the
22 American imagination is -- it's called
23 Manifest Destiny.

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1 MR. MULVEY: Uh-huh.

2 MR. ZABARTE: Well, the fact is
3 the treaty's in full force and effect and
4 we've gone and brought our case -- the Dan
5 case itself was viewed by the Organization of
6 American States, and the Organization of
7 American States ruled that the United States
8 violated the Shoshone rights to due process,
9 rights to property ownership, and basic human
10 rights.

11 And we are -- presented the same
12 cases at the United Nations Commission on
13 Human Rights, and the United States thus far
14 has failed to respond to the Commission's
15 request for information about these matters.

16 And, as I said, you know, we're --
17 you know -- and we've been victimized for a
18 long time. We're trying to be reasonable,
19 we're trying to -- we prefer negotiations. We
20 want to talk and discuss these matters. There
21 just seems to be a lot of trouble from the
22 Americans letting go to some of the thoughts.

23 MR. MULVEY: So you have the venue

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1 of international courts. I ask you because my
2 brother recently -- well, for about 20 years
3 he was representing New York Indians against
4 the state of New York. And this goes back to
5 agreements and treaties that predated actually
6 the American Revolution.

7 And I can't discuss the outcome of
8 that, but to some extent they were quite
9 successful in rearguing these property rights
10 and the fact that these treaties were still in
11 force, even though they were a hundred years
12 before the creation of the state of Nevada.

13 The lands that the Shoshones are
14 interested in and argue about, are those lands
15 today all occupied by the BLM or some of them
16 occupied also by private ranchers?

17 MR. ZABARTE: Well, largely
18 they're occupied by no one. You know, the
19 vast majority of the land is unoccupied. And,
20 you know, the United States claims that our
21 lands were taken. And if you look out there
22 you'll see that they're still there.

23 The BLM controls -- and this is

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1 where the abuse comes in -- and they violate
2 us because we haven't had the capacity to
3 defend ourselves legally. When we signed the
4 Treaty of Peace of Friendship we allied
5 ourselves with the Union that allowed for the
6 transport of gold across our country during
7 the Civil War. And that allowed the Union to
8 finance this war against the South.

9 And we laid down our arms and
10 didn't have any other way to defend ourselves.
11 Our people didn't speak English, we didn't
12 have, you know, legal training. And we're
13 starting to get those things. And we're
14 confident that now we can defend our sovereign
15 immunity in the courts of the United States.

16 So that is our course as far as
17 the courts go, as well as there are
18 international venues and other foreign
19 relations with governments around the world.

20 MR. MULVEY: One other question on
21 the remains. When the STB does any
22 environmental impact analysis of any new
23 construction one of the things we do consult

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1 with are Native Americans -- first Americans
2 first nations to find out if, indeed, they're
3 going over any grounds that are the property
4 of or affected by Indian cultural artifacts
5 and the like -- and I believe that includes
6 remains.

7 Is there any approach that could
8 be taken by the railroad if it's constructed
9 so that any time it does run over -- run into
10 remains they could be re-interred or moved and
11 placed elsewhere within the culture of the
12 Native American people? Or can they be moved
13 to -- must they stay where they are?

14 VOICE: That's for you, Mr. Swain?

15 MR. SWAIN: Who are you
16 addressing?

17 MR. MULVEY: You. I'm sorry.

18 MR. SWAIN: Me?

19 MR. MULVEY: Yes, sir.

20 MR. SWAIN: Oh, I'm sorry. That's
21 the big question. That's really the big
22 question because when we work with government
23 agencies -- I'll give you an example. The

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1 Grand Canyon -- that was our ancestral land
2 too. So every now and then they'll discover
3 a remain and they'll give us a call and say,
4 Well, what do you want us to do with this
5 remain.

6 Well, in our culture it wasn't
7 kosher for us to go and dig up a remain and
8 move it to some other place. Once we put a
9 person away we put the person away. So it's
10 like coming up with new thoughts -- new ideas
11 on how we're going to handle that.

12 If anything we would like to leave
13 the body there, you know, so it won't be
14 disturbed. And we're very spiritual as
15 people. So we say, Well, we don't want to
16 bother that. We'll just leave it where it is.

17 But because of other things that
18 enter into the play they may say, Well, cost
19 wise it's not going to be effective for us to
20 leave it there so we've got to move it, you
21 know. So we're saying, Well, what do we do,
22 you know. And that's the big \$64,000
23 question. We're not sure what we're supposed

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1 to do.

2 And, like I say, being spiritual,
3 we like to leave things alone as they were.
4 And, like I said earlier in my testimony, that
5 we didn't have cemeteries so we did the next
6 best thing. We took that person out and we
7 buried him, you know, in a cave or a crevice
8 or something like that and covered the person
9 up.

10 And so we like to stay away from
11 that. But we do have -- like the Native
12 Graves Repatriation Act -- I think that's
13 it -- you've got to realize I have -- I spoke
14 the Indian language before English came as a
15 second language. Sometimes I have a hard time
16 pronouncing some words. But, anyway --

17 MR. MULVEY: Your English is
18 better than my Shoshone.

19 MR. SWAIN: So that's -- you know,
20 that's what I'm saying. We -- I guess we're
21 willing to, you know, sit down and talk about
22 these issues. And I'm not going to say that
23 the Government hasn't been doing that. They

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1 have been meeting with us. We've had some
2 people out there already walking, you know,
3 the areas and looking it over. So we're
4 preparing for that if it ever does happen. So
5 that's all I can say with that because we're
6 not really sure in our culture how we address
7 those issues.

8 MR. MULVEY: Just one question for
9 Ms. Bullcreek. You mentioned the suffering
10 that Native Americans felt from the nuclear
11 blast, et cetera. And I was just wondering,
12 was any epidemiological data collected --
13 survey data collected as to how much more
14 often Indians in the area have been afflicted
15 with cancers and the like than the population
16 in general?

17 MS. BULLCREEK: We have come up
18 with some doses that they have received. And
19 maybe Ian will want to say something about
20 that. But I do have some brochures I could
21 leave with you that --

22 MR. MULVEY: Okay. Thank you very
23 much. I appreciate that. Thank you.

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1 MR. NOTTINGHAM: Commissioner
2 Buttrey, any questions for this panel?

3 MR. BUTTREY: Thank you, Mr.
4 Chairman. I'd like to ask any member of the
5 panel actually to respond to this. The Paiute
6 nation was mentioned a lot in the
7 Environmental Impact Statement -- the Draft
8 Environmental Impact Statement.

9 And I was wondering whether we are
10 to assume that you are speaking for the Paiute
11 nation in any shape or fashion with respect to
12 your comments today or are they not included
13 in your comments and we should just simply
14 wait until we hear from them or just take what
15 they've given us so far and go with that?

16 MR. SWAIN: Well, as the Chairman
17 from our -- for our tribe -- as the elected
18 official who represents them in areas of
19 environmental, judicial legal issues, water
20 issues, whether it's the Nevada Water
21 Authority, I think I can speak for my tribe.

22 But also I want to make this
23 clear -- is that -- and I'm hoping that this

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1 is just one of many hearings you're going to
2 have across the United States because we have
3 tribes all along the rail line that are going
4 to be affected by the shipment of nuclear
5 waste.

6 So we have 26 tribes in the state
7 of Nevada and we have four or five down in our
8 area. Like our said, our land base is just 30
9 miles north of here and we occupy 70,000
10 acres. And then you go up into Caliente and
11 those areas, we have scattered bands or
12 scattered groups living up in those area.

13 They're not really officially
14 recognized by the tribe, although they're
15 related to us and we're related to Bishop --
16 people in Bishop and other places like that up
17 to the Goshute Reservation. And the southern
18 Paiutes encompass California, Nevada, Utah,
19 Arizona, and parts of Oregon.

20 So we are a big, big tribe. But I
21 would truthfully like to say I'd like to speak
22 on behalf of the other 520 tribes if this is
23 the only hearing you're going to have. But,

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1 you know, we need to be included in the
2 negotiation of these things, you know.

3 And so if you're going to make a
4 statement saying that you're going to go
5 across the country where the Navaho tribe will
6 be able to sit in on the negotiation, because
7 they were one of the first -- when we went to
8 a meeting in El Paso that said, you know, what
9 are we going to do -- we've got 200 miles of
10 rail. Do you have the authority -- the
11 jurisdiction to go into Indian reservation --
12 I don't think so, you know.

13 So these are the issues that we
14 face, and we've got 20 miles of rail just
15 right outside of Las Vegas here. So I can't
16 say that I represent them, but I think I
17 represent them in the cultural and spiritual
18 way of how we all feel in our reverence for
19 the law.

20 MR. ZABARTE: If I could clarify,
21 Chairman Swain is Southern Paiute, and, you
22 know, for Western Shoshone all Western
23 Shoshone are related. I'm sure it's similar

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1 for Southern Paiutes. And I do represent the
2 Shoshone population that is displaced
3 economically, politically within -- outside of
4 our territory.

5 MR. BUTTREY: Thank you. This is
6 a little bit off the subject, but I was just
7 curious. Have you followed the success of the
8 Alaska Native claims in the Court of Claims
9 case in Washington where they were able to get
10 a huge settlement regarding issues in Alaska?
11 And I was wondering whether you had followed
12 that or not or whether you intend to pursue
13 anything similar to that.

14 MR. SWAIN: Well, way back a
15 little history: We followed that, but the
16 Government decided they were only going to pay
17 us 28 cents an acre -- not what the land is
18 worth today but what it was, you know, worth
19 back then. So we didn't get a heck of a lot
20 for the land where under the treaties they
21 said they took that right from us, and that's
22 what we've been fighting ever since.

23 They're still under a treaty

1 saying that, you know, they're not going to
2 accept the 28 cents or whatever it is now --
3 maybe it's 30 cents -- we don't know. But,
4 you know, they're saying, you know, their land
5 is worth more.

6 We took it because of our economic
7 situation on the reservations where we don't
8 have jobs, we don't have, you know,
9 manufacturing. In fact, an official from
10 Vegas said, Do you have any building codes,
11 Phil? I looked at him and I kind of chuckled
12 because I said, What are we going to have
13 codes for? We don't even have buildings out
14 there, you know.

15 MR. BUTTREY: Uh-huh.

16 MR. SWAIN: So I said, you know --
17 we followed that to a certain extent and I
18 think that put us on the right track. So
19 without really boasting a lot, you know, we do
20 have a piece of the rock.

21 MR. ZABARTE: Some years ago I did
22 have conversation with Ramsay Clark, who was
23 a part of the Alaska Native Claim Settlement

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1 Commission at that time I believe. And he
2 said that they were doing the best that they
3 can. The Alaska Natives were on a piece of
4 ice that was shrinking with development coming
5 in there, and so they did the best they can to
6 keep that from shrinking.

7 I don't think it correlates well
8 with our situation. Our treaty is one of the
9 few treaties that does not cede land to the
10 United States. And, again, that was because
11 of our relationship at the time of the Civil
12 War. Just three years prior to that gold was
13 shipped from San Francisco -- out of the
14 Comstock -- the gold fields of the Sierras
15 down to San Francisco on steamship to Panama
16 and over.

17 And in September of 1857 21 tons
18 of gold bullion was lost off of the coast of
19 North Carolina, which a month later resulted
20 in the first major stock market crash and
21 depression in the United States. And three
22 years later the Civil War came along. In
23 order to certify to the European governments

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1 that were supplying armaments and resources to
2 the Union they needed to show by treaty that
3 they could get that gold and pay for those
4 resources that they needed to prosecute the
5 war against the South.

6 So that's our relationship. And,
7 like I said, we've trusted the United States.
8 And that trust has been violated. And we're
9 to the point where we realize that the United
10 States must be -- the treaty must be enforced
11 against the United States. We're still open
12 and willing to negotiate, but we're going to
13 go to the point of demonstrating our foreign
14 sovereign immunity as needed in the course of
15 the United States. That's what must be done.

16 And it's actually asserting our
17 rights and demonstrating that the United
18 States does not have jurisdiction over our
19 nationals exercising our freedoms within our
20 country.

21 MR. BUTTREY: Thank you very much.

22 MR. NOTTINGHAM: Any further
23 questions for this panel?

1 MR. MULVEY: No. Thank you very
2 much.

3 MR. NOTTINGHAM: Thank you very
4 much. We will dismiss this panel. We very
5 much appreciate your participate today and
6 your testimony. And your complete statements
7 will be taken in the record. Ms. Marvin can
8 take I think statements.

9 We will now call the next panel
10 up, Panel III. It is our custom in
11 proceedings where we're looking at the merits
12 and demerits of an application for
13 construction of a new line that we hear from
14 the applicant.

15 And there's been much said today
16 about the applicant, which is the Department
17 of Energy. But we're pleased to actually have
18 the Department with us to speak for themselves
19 and so we can hear directly from the
20 applicant.

21 We have Mary Neumayr, Deputy
22 General Counsel for Environment and Nuclear
23 Programs -- and we've given her a little extra

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1 time -- 15 minutes -- considering that she
2 represents the applicant and that DOE has been
3 mentioned often today. And so we welcome you,
4 Ms. Neumayr, and we will turn it over to you.

5 MS. NEUMAYR: Thank you very much,
6 and good afternoon. The Department very much
7 appreciates the opportunity to appear before
8 the Board today to comment on its application
9 to construct and operate an approximately 300-
10 mile rail line in Nevada to be known as the
11 Caliente Rail Line.

12 DOE has proposed to construct and
13 operate this rail line in order to fulfill its
14 responsibilities under the Nuclear Waste
15 Policy Act of 1982 to dispose of the nation's
16 spent nuclear fuel and high-level radioactive
17 waste.

18 The rail line would connect the
19 existing Union Pacific main line in the city
20 of Caliente to the Yucca Mountain Repository
21 and would be used to transport spent nuclear
22 fuel, high-level radioactive waste, and
23 construction materials to the repository site.

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1 The rail line would also promote
2 economic development in rural communities in
3 Nevada along the rail corridor by being
4 available for common carrier rail service by
5 commercial shippers.

6 The Caliente Rail Line is
7 consistent with the public convenience and
8 necessity and DOE respectfully urges that the
9 Board approve DOE's requested certificate.

10 As an initial matter, the
11 Department notes the following developments
12 that have occurred since DOE filed its
13 application. First, in July 2008 DOE issued
14 two documents prepared pursuant to the
15 National Environmental Policy Act. In
16 particular, DOE issued its final Nevada Rail
17 Corridor SERS and its final rail alignment EIS
18 for the proposed Nevada rail line to the Yucca
19 Mountain Repository.

20 MR. NOTTINGHAM: Ms. Neumayr, I
21 hate to interrupt. If you could just back a
22 little away from the mike -- we're getting
23 some feedback up here. It's working too well.

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1 I'm sorry.

2 MS. NEUMAYR: All right. Thank
3 you. DOE filed copies of both the final
4 Nevada Rail Corridor SERS and the final Rail
5 Alignment EIS in this proceeding on August 14,
6 2008.

7 Second, in October 2008 DOE issued
8 its Record of Decision selecting a rail
9 alignment within the Caliente Corridor. DOE
10 filed this Record of Decision with the Board
11 on October 9, 2008.

12 As stated in the Record of
13 Decision, DOE has decided to construct and
14 operate a railroad along the rail alignment
15 within the Caliente Corridor and to allow
16 shipments of general freight on the rail line,
17 also known as the shared use option, subject
18 to obtaining a Certificate of Public
19 Convenience and Necessity from this Board and
20 to obtaining any other necessary regulatory
21 approvals.

22 The Board's consideration of DOE's
23 application is governed by 49 USC, Section

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1 10901. That statute mandates issuance of a
2 Certificate of Public Convenience and
3 Necessity unless the Board makes an express
4 determination that the proposed rail line is
5 inconsistent with the public convenience and
6 necessity. That statute creates a presumption
7 that applications for new lines and new rail
8 operations are to be approved.

9 DOE respectfully submits that the
10 Caliente Rail Line is consistent with the
11 public convenience and necessity. The three
12 factors or criteria that guide the Board's
13 public convenience and necessity determination
14 support that conclusion.

15 In particular, with respect to the
16 financial ability criterion, the Caliente Rail
17 Line is expected to cost approximately 2.6
18 billion in 2008 dollars. The source of those
19 funds will be the Nuclear Waste Fund, which
20 was established pursuant to the Nuclear Waste
21 Policy Act to provide funds to cover DOE's
22 costs associated with the management and
23 disposal of spent nuclear fuel and high-level

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1 radioactive waste. The value of the Nuclear
2 Waste Fund at the beginning of this fiscal
3 year was approximately 24 billion.

4 With respect to the public demand
5 criterion, DOE will use the Caliente Rail Line
6 to transport spent nuclear fuel, high-level
7 radioactive waste, and construction materials
8 to the Yucca Mountain Repository site. That
9 use satisfies the public demand criterion of
10 the public convenience and necessity
11 determination.

12 As set forth in the ROD, DOE will
13 also hold out the Caliente Rail Line for
14 commercial use. And DOE estimates that there
15 could be approximately eight train shipments
16 per week of commercial freight demand along
17 the Caliente Rail Line.

18 Finally, with respect to the
19 public interest and harm to existing surface
20 criterion, the Board has declared that the
21 rail construction is presumed to be in the
22 public interest. The Caliente Rail Line will
23 enable DOE to fulfill its responsibilities

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1 under the Nuclear Waste Policy Act and,
2 accordingly, satisfies the public interest
3 requirement.

4 In addition, there are currently
5 no existing no rail services in the part of
6 Nevada that the Caliente Rail Line will
7 service. The Caliente Rail Line, therefore,
8 will not harm any existing rail services.

9 In sum, there are clear and
10 undisputed grounds establishing that the
11 Caliente Rail Line is consistent with the
12 public convenience and necessity, and,
13 accordingly, the Board should grant DOE its
14 requested certificate.

15 In preparing its final Nevada Rail
16 Corridor SERS and final Rail Alignment EIS, as
17 well as the Record of Decision, DOE has
18 undertaken extensive public outreach
19 activities among interested parties, agencies,
20 states, localities, tribes, organizations, and
21 the general public.

22 Those activities have provided
23 interested persons the opportunity to be

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1 informed about the proposed rail line, to
2 identify issues, and provide written and oral
3 comments to DOE, both as part of the NEPA
4 process and in this proceeding.

5 Those comments have addressed a
6 wide variety of topics. DOE has provided
7 extensive responses to those comments in the
8 Nevada Rail Corridor SERS and Rail Alignment
9 EIS, as well as in its reply to comments on
10 its pending application. The following
11 addresses the major issues that have raised by
12 interested parties.

13 First, a number of comments have
14 related to safety and security issues. As
15 discussed in Congressional testimony on
16 September 24, 2008, by the director of DOE's
17 Office of Civilian Radioactive Waste
18 Management -- and a copy of this testimony is
19 attached to our written statement -- it is
20 well established that spent nuclear fuel and
21 high-level radioactive waste can be shipped
22 safely by rail.

23 Since the early 1960s more than

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1 3,000 shipments of spent nuclear fuel have
2 been conducted safely and securely in the
3 United States, having traveled more than 1.7
4 million miles. There has never been spent
5 nuclear fuel transportation accident that has
6 resulted in any release of radioactive
7 material harmful to the public or the
8 environment.

9 The National Academy of Sciences
10 has determined that each spent nuclear
11 shipment is thousands of times less risky than
12 shipments of other commonly transported
13 hazardous materials. Even when the Yucca
14 Mountain Repository is operational there will
15 be far fewer shipments of spent nuclear fuel
16 and high-level radioactive waste than
17 shipments of these other hazardous materials.

18 This demonstrated safety record is
19 a consequence of both the use of robust casks
20 certified by the Nuclear Regulatory Commission
21 to transport spent nuclear fuel and the strict
22 regulatory standards that apply to every
23 aspect of the logistics for that

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1 transportation, including material,
2 characterization, packing, loading, marking,
3 and equipment inspections, routing, training,
4 security, and shipment monitoring.

5 The National Academy of Sciences
6 has concluded that, from a technical
7 viewpoint, shipments of spent nuclear fuel
8 present, quote, A low radiological risk
9 activity with manageable safety, health, and
10 environmental consequences when conducted with
11 strict adherence to existing regulations.

12 DOE places the highest priority on
13 the protection of spent nuclear fuel and high-
14 level radioactive waste in transit and will
15 implement appropriate measures to safeguard
16 the transit of these materials to the
17 repository. The use of these measures will
18 ensure the safe and secure shipment of spent
19 nuclear fuel and high-level radioactive waste
20 to the repository. DOE is and will continue
21 to coordinate our planning closely with the
22 NRC, the Department of Transportation, and the
23 Department of Homeland Security.

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1 Other commenters have focused on
2 potential mitigation measures relating to the
3 proposed rail line. DOE has committed to
4 implementing measures to avoid or minimize
5 impacts related to shipments of spent nuclear
6 fuel and high-level radioactive waste,
7 including implementation of best management
8 practices and measures during construction and
9 operation of the railroad.

10 DOE further proposes to constitute
11 one or more mitigation advisory boards to
12 assist DOE in developing, implementing, and
13 monitoring those best management practices and
14 mitigation measures.

15 DOE also has committed to consult
16 with parties directly affected by the rail
17 line, such as the state of Nevada, Native
18 American tribes, local governments, utilities,
19 the transportation industry, and grazing
20 permittees in a cooperative manner to develop
21 and implement mitigation measures. More
22 information concerning mitigation measures is
23 provided in our written statement, as well as

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1 in the ROD, the Rail Alignment EIS, and our
2 response to comments on the application.

3 DOE has also received comments
4 relating to the city earthworks sculpture
5 located on private land in Garden Valley,
6 Nevada. DOE has addressed those comments by
7 selecting an alignment segment in Garden
8 Valley that is farthest from the sculpture to
9 reduce any potential noise or aesthetic
10 impacts to those visiting the sculpture.

11 In its draft Rail Alignment EIS
12 DOE indicated that its preferred alignment for
13 the rail line will pass within approximately
14 one mile of the city sculpture. In response
15 to comments, however, DOE selected an
16 alternative route that is about four times
17 farther than the preferred alignment in the
18 draft Rail Alignment EIS. Other more distant
19 routes were analyzed, but they were not
20 reasonably feasible.

21 Finally, participants in this
22 proceeding have commented that the Board
23 should require DOE to use dedicated trains for

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1 the shipment of spent nuclear fuel and high-
2 level radioactive waste nationwide. As
3 discussed in its response to comments and in
4 pleadings in this proceeding, the Board should
5 not impose such a condition.

6 Prior administrative proceedings
7 have already addressed and rejected carrier
8 attempts to impose mandatory special train
9 restrictions on shipments of spent nuclear
10 fuel, and DOE has cited to those relevant
11 decisions in case authorities in its filings
12 with the Board.

13 As discussed in those filings, DOE
14 has adopted a policy to use dedicated trains
15 as its usual mode of rail transportation for
16 spent nuclear fuel and high-level radioactive
17 waste shipments to the repository. In
18 adopting this policy, however, DOE has
19 recognized that such material can be shipped
20 safely, regardless of mode or type of service,
21 primarily due to the stringent regulations in
22 place and the robust nature of the transport
23 packages involved.

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1 DOE additionally has identified
2 that the primary benefit of using dedicated
3 trains is a significant cost savings over the
4 lifetime of the Yucca Mountain project,
5 including greater operational flexibility and
6 efficiency.

7 A condition mandating the use of
8 dedicated trains by DOE in all instances
9 nationwide would impede DOE's ability to
10 pursue an alternate approach when the use of
11 dedicated trains would not advance such cost
12 savings and/or would interfere with DOE's
13 operational flexibility and efficiency for
14 shipments to the Yucca Mountain repository.

15 In closing, DOE requests that its
16 application be approved. DOE appreciates the
17 opportunity to appear before the Board and
18 requests that a copy of its full written
19 statement be entered into the record. Thank
20 you.

21 MR. NOTTINGHAM: Thank you, Ms.
22 Neumayr. And, of course, we will include your
23 entire statement in the record. I have a

1 couple of questions. You I'm sure were here
2 this morning, and there was much discussion by
3 some witnesses about the concerns about the
4 lack of specificity regarding the actual
5 containers that would be used on the trains to
6 transport the spent nuclear waste. Can you
7 try to shed some light on that for us as to,
8 you know, why we shouldn't be concerned with
9 the purported lack of information about those
10 containers?

11 MS. NEUMAYR: Yes. The earlier
12 witnesses were referring to the transportation
13 aging and disposal canisters which DOE
14 anticipates using for the majority of the
15 spent fuel that is disposed of in the
16 repository. These containers are comparable
17 to existing canisters that are used for spent
18 fuel and which have been certified by the NRC.
19 And the TAD canisters which will be developed
20 will also be certified by the NRC and will be
21 comparable to those existing canisters which
22 have been in use for some time.

23 MR. NOTTINGHAM: There was also

1 reference to a -- I guess one of the original
2 earlier plans -- or maybe it's still the
3 current DOE plan -- that there actually be two
4 disposal geologically appropriate spent
5 nuclear waste disposal facilities. There's
6 reference to Yucca Mountain being the first,
7 and then a second one planned to come on line
8 in the future. And there were some statements
9 earlier by witnesses that said DOE may have
10 changed its position on the necessity or
11 worthiness of having a second facility. Can
12 you shed any light on that. It just was a
13 little bit confusing to me.

14 MS. NEUMAYR: Yes. Under the
15 Nuclear Waste Policy Act the Department is
16 directed to pursue the Yucca Mountain
17 Repository as the nation's first repository
18 for the disposal of spent nuclear fuel and
19 high-level radioactive waste. Under the
20 Nuclear Waste Policy Act the Department is
21 required to report to the President and to
22 Congress on the need for a second repository,
23 and they're required to report on that need at

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1 some time after -- I think it's the beginning
2 of 2007 and sometime before 2010.

3 And the Department does anticipate
4 sending such a report to the Congress, and the
5 recommendation in that report we anticipate
6 will be consistent with legislation which has
7 been in the past proposed by the Department to
8 expand the capacity for Yucca Mountain. Under
9 the Nuclear Waste Policy Act there is a
10 statutory -- an arbitrary statutory cap on the
11 amount of fuel that can be disposed at Yucca
12 Mountain before a second repository is in
13 operation -- and that amount is 70,000 metric
14 tons.

15 In our legislation submitted to
16 the Congress I believe last year we
17 recommended that that cap be lifted because
18 the 70,000 metric tons is a arbitrary amount
19 limitation. And under the existing law we
20 would not be able to dispose more than 70,000
21 metric tons unless or until a second
22 repository was in operation.

23 MR. NOTTINGHAM: And when you say

1 lifted -- open ended lifted or lifted to
2 another capped number?

3 MS. NEUMAYR: Well, I think that
4 would be up to the Congress. The
5 recommendation is that from a technical
6 standpoint the repository has significantly
7 greater capacity than 70,000 metric tons.

8 MR. NOTTINGHAM: It occurs to me
9 in your line of work you're probably familiar
10 with the general state of play around the
11 country as it relates to the movement
12 currently of spent nuclear waste on occasion,
13 whether it be by truck or by rail.

14 Can you give us a little bit of a
15 snapshot of what the current status quo is?
16 My understanding is there are movements of
17 spent nuclear waste and fuel by rail
18 currently. Some of that goes -- much of it on
19 Class 1 system often through major urban
20 areas. We don't typically hear a lot about
21 individual movements -- thank goodness.
22 That's probably because there hasn't been an
23 accident or problems. But can you elaborate

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1 a little bit more on what the current state of
2 transportation practice is as it relates to
3 spent nuclear fuel?

4 MS. NEUMAYR: Well, I would
5 comment that such materials are transported
6 safely throughout the country. And, as stated
7 in our testimony, it's been done for many
8 decades now and it's been done safely and
9 securely. It is done with significant
10 coordination with state and local authorities
11 as appropriate. And, as noted in our
12 testimony, it's been done without any accident
13 resulting in any kind of release that has been
14 harmful to the environment or the public.

15 MR. NOTTINGHAM: Your testimony
16 was quite clear on the Department's
17 preference -- strong preference to not be
18 required to only move spent nuclear fuel in
19 dedicated trains -- meaning only in trains
20 that don't have other types of cargo and rail
21 cars attached to them. Yet, the -- some of
22 the Class 1 railroads seem to feel strongly
23 that the materials should only move -- and be

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1 only allowed to move in dedicated trains. Why
2 do you think the railroad, who seem to have a
3 lot of experience in the safe movement of all
4 kinds of hazardous and other material, would
5 feel so strongly about wanting dedicated
6 trains versus not?

7 MS. NEUMAYR: Well, I believe --
8 this area has been an area of significant
9 litigation in the past. And I think the
10 predecessor agency to the Surface
11 Transportation Board dealt with a number of
12 cases involving this issue.

13 But I think that the issue does
14 have an impact on rates and, accordingly, that
15 may be a contributing factor. As stated in
16 our testimony, it is our policy that dedicated
17 trains will be the usual mode of
18 transportation of spent nuclear fuel shipments
19 to the repository.

20 MR. NOTTINGHAM: So if I may read
21 into your answer a little bit, perhaps there's
22 a business -- which wouldn't be surprising
23 since they are businesses -- Class 1

1 railroads -- a business motive of wanting for
2 negotiating and rate-setting purposes to be
3 able to say, Hey -- to their customers or
4 potential customers who would like to ship
5 spent nuclear waste -- Hey, we can't just
6 serve you every day on all of our trains and
7 just hook up your spent nuclear material cars
8 to any one of our cars as we are somewhat
9 obligated to deal with -- in common carriage.
10 We've got to schedule this based on dedicated
11 trains. There are only a limited number of
12 those, and that's a more expensive kind of a
13 service. And perhaps they could then have
14 less complicated service requirements and also
15 be able to charge more rates. Is that
16 possibly what's going on here?

17 MS. NEUMAYR: I think you would
18 have to ask the carriers, but I am aware that
19 it has been a subject of litigation in the
20 past, and there are economic considerations
21 associated with the issue.

22 MR. NOTTINGHAM: Okay. Does the
23 Department have any thoughts yet about -- my

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1 understanding is the Department of Energy is
2 not a seasoned rail operator. And who's going
3 to operate these trains? Are you going to see
4 the Secretary of Energy working the brake
5 or -- presumably you're going to need a
6 contract that's out I suppose or --

7 MS. NEUMAYR: Well, I will say
8 just as a preliminary matter, we do on -- at
9 DOE sites have rail spurs and we do transport
10 material by rail at some of our sites.

11 As with other DOE projects the way
12 that we would approach this is that we would
13 go through a formal procurement process and
14 issue RFPs and conduct a very thorough and
15 formal procurement process in order to
16 identify and select an operator for the rail
17 line.

18 And we would be subject as part of
19 that to very rigorous requirements under the
20 procurement statutes and regulations, which
21 ensure that we will conduct a very thorough
22 and rigorous search for appropriate candidates
23 to operate the rail line.

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1 MR. NOTTINGHAM: Would the
2 eventual operator be protected by the Price-
3 Anderson Acts liability provisions? One thing
4 that's unique to the movement of nuclear
5 materials is there is some special liability
6 provisions that are separate and distinct from
7 that that applies to the regular movement of
8 toxic materials -- toxic inhalants and
9 HAZMAT -- that happens every day around the
10 country that greatly concerns the rail
11 industry because they feel they have a lot of
12 exposure there.

13 But would the movements on behalf
14 of the DOE -- on this proposed line -- would
15 they be -- would they fall under the Price-
16 Anderson regime?

17 MS. NEUMAYR: I'm probably not
18 prepared to address that issue today. But my
19 understanding would be that the Price-Anderson
20 Act would apply in a regime similar to -- or
21 it would apply as would many of our other
22 contractors. So that would be my expectation
23 that, yes, the Price-Anderson Act would be

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1 implemented or applied to this particular
2 contracting arrangement.

3 MR. NOTTINGHAM: Okay. Vice
4 Chairman Mulvey? (Pause.) Vice Chairman
5 Mulvey, do you have any questions?

6 MR. MULVEY: Yes, thank you.
7 We've heard a lot about this potential -- the
8 routes other than Caliente, including this
9 through route through Jean -- the Jean route
10 being better because not only does it avoid
11 moving the materials through Las Vegas, the
12 most populated area, and I guess Henderson
13 also. Also it's more in line with the shared
14 use or common carrier obligation and that a
15 dead heading route at Yucca Mountain really
16 isn't going to capture much of the traffic
17 except for the movement of spent nuclear
18 materials, whereas a through route that went
19 through Jean and came up to Yucca Mountain
20 from the south would be more appropriate. Can
21 you comment on why a route such as that was
22 abandoned in favor of a route that dead heads
23 in Yucca Mountain?

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1 MS. NEUMAYR: My understanding is
2 that use of the -- in order to avoid Las Vegas
3 we would require both the Jean Corridor and
4 the Caliente Corridor. It would not eliminate
5 the transportation through Las Vegas.

6 But my further understanding is
7 that -- well, I'll just leave it at that I
8 guess. But we could provide additional
9 information if you would concerning the Jean
10 Corridor. I believe it's addressed in our EIS
11 documents.

12 MR. MULVEY: It is. And some of
13 the discussions on some of the alternative
14 routes seem to be -- I don't want to say given
15 short shrift, but are not as convincing as you
16 would like to see why it is a particularly
17 better route -- why Caliente is so much
18 better. And we've heard a lot of evidence --
19 a lot of testimony today that maybe there are
20 alternatives that are more productive,
21 especially given the supposed shared use or
22 common carrier nature of this route.

23 Can you tell me what some of the

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1 other materials that are expected to be -- you
2 said eight trains a day, but what would you
3 expect to be moved on this -- I know the area
4 a little bit. I'm just trying to imagine what
5 would be moving along this route -- eight
6 trains a day.

7 MS. NEUMAYR: Well, in our
8 application -- I believe at Appendix J we have
9 a study which identifies materials that we
10 would anticipate. And they include minerals,
11 petrochemicals, and other non-radiological
12 waste materials and other commodities. And I
13 believe there's some additional detail in the
14 study, but primarily minerals and
15 petrochemicals I believe.

16 MR. MULVEY: Okay. Then I'll go
17 back and take a look at Appendix J. You know,
18 we have these little submissions here, but I
19 do have also several feet of submissions on
20 this.

21 On this question of the casks,
22 there's confusing testimony as to that also.
23 Some people say that these casks that are

1 going to be used that are theoretically so
2 safe and the ones that are shown in the
3 presentations have not yet been built or
4 tested, and that you're saying they will be
5 built and tested. And I guess they would be
6 superior to what's being used now.

7 But have they been built and
8 tested at all? And should there be delays
9 until these are shown to be practical before
10 we go ahead?

11 MS. NEUMAYR: The Department would
12 not take that view. These canisters are in
13 the process of being designed. They will be
14 very robust. They will need to be certified
15 by the NRC, so they will be subject to the
16 NRC's review and testing and thorough
17 consideration. And they are very robust.

18 MR. MULVEY: And how long --
19 approximately how long will that take?

20 MS. NEUMAYR: I believe that the
21 process will occur over the next couple of
22 years.

23 MR. MULVEY: You said that the

1 Department did not want to limit itself to
2 dedicated trains, and that for the most part
3 that would be your preferred mode of movement,
4 but there will be times when dedicated trains
5 would not be appropriate.

6 Will the Department be amenable
7 though to any kind of restrictions on the
8 kinds of trains that move -- for example, the
9 trains in which these materials were included
10 could not have other HAZMATs on the train. So
11 a train that was comprised of general
12 merchandise or a unit train with double sacks
13 heading back to Los Angeles, whatever, that
14 would be okay. But a train that also had on
15 it anhydrous ammonia or chlorine would not be
16 acceptable. Would the Department be amenable
17 to a restriction like that, do you think?

18 MS. NEUMAYR: I think we would
19 have to see the restriction, but I anticipate
20 that we would be amenable to reasonable
21 restrictions of that nature.

22 MR. MULVEY: Okay. Also, about
23 safeguarding and training employees, that

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1 railroad engineers and others who work on the
2 railroads -- conductors and the like -- are
3 not going to get any kind of special
4 protection or special training, et cetera, so
5 that they would be more at risk of being
6 harmed by the carriers because they
7 wouldn't be trained. Does the Department have
8 a program for training the engineers and
9 others when they're handling this? Or is that
10 to be left to the railroads? Or do you have
11 a program for that?

12 MS. NEUMAYR: Well, the Department
13 under the -- well, the Department is committed
14 to working with the Department of
15 Transportation, with the state authorities,
16 local authorities in connection with the
17 transit of these materials, as it does
18 currently.

19 The Department also has
20 responsibility under the Nuclear Waste Policy
21 Act to provide training to emergency response
22 officials and, in fact, has issued a policy
23 relating to that. It's referred to frequently

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1 as the 180(c) policy -- Section 180(c) of the
2 Nuclear Waste Policy Act.

3 MR. MULVEY: Would that cover
4 local engineers that conduct this? Because
5 they're not usually considered to be EMS
6 emergency response people. So it will include
7 those?

8 MS. NEUMAYR: I don't believe that
9 it applies to those individuals, but the
10 Department would be committed to working with
11 the operators of the rail line.

12 MR. MULVEY: And in a more general
13 sense, it was stated earlier on that why are
14 we moving all of these -- if these cases --
15 these casks are so attack proof, so safe, et
16 cetera, why don't we just leave things where
17 they are rather than transport them across
18 thousands of miles of track and put all of
19 this in one large storage facility?

20 My understanding, no matter even
21 if you went to 130,000 tons, 20 or 30 years
22 from now it would be full and you still would
23 have more materials out there from more

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1 nuclear power plants. So why not just leave
2 it all in situ and leave it protected in these
3 casks? Why transport it across the country?

4 MS. NEUMAYR: Well, I think the
5 consensus of the scientific community has long
6 been that deep geologic disposal is the safest
7 and most appropriate means for disposing of
8 these materials over the long term; that while
9 the material is safely stored in pools and in
10 dry casks on site, ultimately it is in the
11 interest of the public and it is the national
12 policy that ultimately we ought to be
13 disposing of this underground not storing it
14 indefinitely in metropolitan areas.

15 MR. MULVEY: I could make you very
16 popular in some -- unpopular in some part of
17 the country and ask you to speculate on where
18 else would you find an underground facility
19 where you could store spent nuclear waste.
20 You want to identify another state or --

21 MS. NEUMAYR: Well, I won't
22 identify another state. What I can say is
23 that in connection with selecting the Yucca

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1 Mountain site there was a very extensive
2 program undertaken to identify potential
3 sites, and sites were located throughout the
4 country initially. I believe there were nine
5 sites that were selected for study. And, as
6 one of the other witnesses stated, it was
7 narrowed to three sites and ultimately to
8 Yucca Mountain.

9 MR. MULVEY: My understanding was
10 that before the Yucca was full you have to
11 identify another site, but now you want to
12 change that and make Yucca handle more
13 materials before you have to find a second
14 site? Is that what's being proposed right
15 now -- that you expand Yucca's capacity to
16 130,000 tons before you have to identify a
17 second site?

18 MS. NEUMAYR: Well, that was the
19 recommendation in the administration's
20 legislation. And the report has not yet been
21 issued on the need for a second repository.
22 But that is one potential approach that the
23 Congress could take in order to defer the need

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1 for a second repository.

2 MR. MULVEY: Thank you.

3 MR. NOTTINGHAM: Commissioner
4 Buttrey, questions?

5 MR. BUTTREY: Thank you, Mr.
6 Chairman. I appreciate the statement of the
7 witness. Would you agree that other than
8 fully active new fuel rods spent nuclear
9 material is the most dangerous commodity known
10 to man?

11 MS. NEUMAYR: I would agree that
12 it is referred to as one of the most dangerous
13 known to man.

14 MR. BUTTREY: Okay. This morning
15 we had the city attorney for the city of Las
16 Vegas here, and he spoke extensively on this
17 issue that's before us now. And he made the
18 unequivocal -- or what I think was unequivocal
19 statement that in his view the decision to put
20 all this nuclear fuel in one place -- being
21 transported over the railroads and being put
22 in this one place at Yucca Mountain -- I think
23 the words he used was the dumbest thing he

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1 ever -- that the U.S. Government has ever
2 proposed to do.

3 I'd just be interested in knowing,
4 you know, what your response would be. He's
5 not here now, but what your response to that
6 would be.

7 MS. NEUMAYR: Well, the Nuclear
8 Waste Policy Act sets forth the nation's
9 policy with respect to the management and
10 disposal of spent nuclear fuel. And it
11 contemplates that we will have a repository
12 that we will dispose of the material in a
13 permanent repository.

14 And that has been the national
15 policy for many decades. It has not been
16 changed by the Congress. And it has been a
17 consensus view of the international community
18 that it's an appropriate approach to follow.

19 MR. BUTTREY: I don't know whether
20 you were in the room or not, a few minutes ago
21 we had a panel before us of Native American --
22 Native American tribes. And the implication
23 I think of what was said -- or at least my

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1 takeaway of what was said by the three
2 witnesses we had was that I think they believe
3 that one of the reasons this site was chosen
4 was because it is on what was originally
5 Native American land.

6 And it was because of that that
7 they thought they had the least ability to
8 fight back, if you will -- according to them,
9 anyway -- I'm not here as an advocate for
10 them -- I'm just telling you what my takeaway
11 was -- is that they seem to believe that one
12 of the reasons this particular site was chosen
13 was because the people who have cultural,
14 historical, traditional interests in this land
15 were in the least best position to fight back,
16 if you will, and that they had sort of
17 consistency lost their efforts to maintain
18 their traditional and cultural control over
19 that territory. Do you have any response to
20 that whatsoever?

21 MS. NEUMAYR: Well, I think we
22 would reject that view. The site is one of
23 the most studied locations on earth -- it's

1 often said to be that. And the reasons for
2 selecting the site are set forth in our site
3 recommendation and have everything to do with
4 the location and nature of the -- the remote
5 location and nature and characteristics of the
6 site and not considerations relating to
7 whether or not it might be Native American
8 lands.

9 And I am not sure, and I am not --
10 we can supplement the record, but with respect
11 to the tribes that were testifying, I am not
12 sure that these were, in fact, their lands but
13 rather a land grant subsequently given to them
14 in very recent times.

15 MR. BUTTREY: Well, it is -- isn't
16 it illogical to assume that -- I mean, isn't
17 it logical to assume that they were here
18 first?

19 MS. NEUMAYR: In the United
20 States.

21 MR. BUTTREY: In the -- well, yes,
22 in the United States.

23 MS. NEUMAYR: But what I would say

1 is that the site has been selected for
2 geographic -- or geologic characteristics of
3 the site and the climate conditions and all of
4 the reasons that have been set forth in the
5 site recommendation.

6 MR. BUTTREY: Thank you, Mr.
7 Chairman.

8 MR. NOTTINGHAM: Ms. Neumayr,
9 there was some testimony earlier today that --
10 I believe from the city of Las Vegas, in
11 particular, that they estimate that at least
12 40 percent of all the future rail traffic that
13 would go to Yucca Mountain would actually pass
14 through downtown Las Vegas. Is that your
15 position today? And, if not, could you
16 elaborate on what the Department's position is
17 on how much rail traffic with spent nuclear
18 fuel would be expected to be going through
19 downtown Las Vegas?

20 MS. NEUMAYR: My understanding is
21 that the estimated number of rail casks that
22 would be traveling through Las Vegas would be
23 approximately 755 rail casks of the estimated

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1 9,495 casks. So it would be approximately 8
2 percent of the overall rail shipments.

3 MR. NOTTINGHAM: And do you have
4 any estimate how many casks would be on a
5 given train? Is there a formula that you look
6 at --

7 MS. NEUMAYR: I believe that we
8 anticipate three to five in a shipment.

9 MR. NOTTINGHAM: Okay. It's
10 probably beyond our jurisdiction -- I know it
11 is actually about -- it's not this Board's
12 lawful ability or position to speak to or to
13 try to determine energy policy or nuclear
14 energy or waste policy. Congress has weighed
15 in a major way on that. The Department of
16 Energy has the lead in administering those
17 policies.

18 There has been some testimony
19 though earlier today on whether or not this
20 whole -- you know, are we as an agency, you
21 know, wasting our time, wasting taxpayer money
22 because this whole enterprise of building out
23 a facility at Yucca Mountain is on the verge

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1 of disappearing or being cancelled? Would it
2 take an act of Congress at this point -- an
3 affirmative act of Congress to change the
4 direction that the Department of Energy is
5 currently on as it relates to the Yucca
6 Mountain facility?

7 MS. NEUMAYR: Well, under the
8 Nuclear Waste Policy Act, which has been the
9 law of the land since 1982, the Department is
10 obligated by statute to pursue a repository.
11 And pursuant to that Act and the joint
12 resolution that was passed in 2002 the
13 Department is obligated to pursue a repository
14 at Yucca Mountain. And so under current law
15 that is the obligation of the Department of
16 Energy.

17 MR. NOTTINGHAM: Vice Chairman
18 Mulvey, any questions?

19 MR. MULVEY: Just to follow up on
20 that, the Department of Energy then would be
21 legally bound to continue this unless Congress
22 enacted a repeal of the Act of 1982; is that
23 your view?

1 MS. NEUMAYR: Congress has
2 directed the Department to pursue the Yucca
3 Mountain Repository.

4 MR. MULVEY: Right. And I guess
5 my question then would be, well, what if the
6 Secretary of Energy decided that you were not
7 going to pursue this. Are we just going to
8 set it aside -- that Congress was not
9 appropriating funds for it? What would be the
10 result? Would somebody have to go and file
11 suit to have the Department of Energy to,
12 quote, unquote, do its job? Or what would
13 happen at that point if the new Secretary
14 decided he wasn't going to follow this under,
15 say, new public policy, new energy policy? I
16 know that's a very difficult question, but,
17 you know, is that a possibility that it could
18 just --

19 MS. NEUMAYR: Well, under the
20 Nuclear Waste Policy Act we are obligated
21 to -- we have responsibility for disposal of
22 the nation's spent nuclear fuel and high-level
23 radioactive waste. We are -- we were

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1 obligated to open the repository in 1998 under
2 existing law, and the Department has been sued
3 by utilities, and there are large number of
4 lawsuits which --

5 MR. MULVEY: Well, that's my
6 question I guess. So it would be utilities
7 that might bring a case before the courts
8 saying that the Department is not following
9 the law and it would be utilities that would
10 argue that they would have to move forward
11 then.

12 MS. NEUMAYR: I wouldn't want to
13 speculate but --

14 MR. MULVEY: But that's -- exactly
15 it would be them -- that's all I'm saying.

16 MS. NEUMAYR: There is pending
17 litigation relating to the delays associated
18 with the opening of Yucca Mountain.

19 MR. MULVEY: Okay. Thank you.

20 MR. NOTTINGHAM: We're familiar
21 with I'll say legal capabilities of the
22 electric utility industry. They're a frequent
23 stakeholder of ours in rate disputes, so I can

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1 in some ways sympathize with what it's like to
2 be under the threat of constant lawsuit from
3 those folks. It's certainly I'm sure is
4 something for you to be keeping your eye on in
5 your job.

6 Let's see. Do we have any other
7 questions for this witness?

8 MR. MULVEY: No.

9 MR. NOTTINGHAM: Mr. Buttrey?

10 MR. BUTTREY: No.

11 MR. NOTTINGHAM: We will thank you
12 now for your testimony. We appreciate your
13 coming all this way. I think it's very
14 important that the Department is represented
15 today. And we thank you and will now dismiss
16 you.

17 MS. NEUMAYR: Thank you.

18 MR. NOTTINGHAM: And we'll call up
19 the next panel, Panel IV. The Nuclear Energy
20 Institute, Paul Seidler, Senior Director,
21 Nevada, and Everett Redmond II, Senior Project
22 Manager. (Pause.) Welcome, Mr. Seidler and
23 Mr. Redmond. The floor is yours now for a

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1 combined ten minutes. Thank you.

2 MR. SEIDLER: We will be brief.
3 Thank you. My name is Paul Seidler. I'm the
4 senior director for the Nuclear Energy
5 Institute. Thank you for hearing our
6 testimony and coming to Nevada to hear the
7 many diverse opinions concerning this issue.

8 I'm joined today by Dr. Everett
9 Redmond. He will briefly discuss the
10 technical issues associated with the
11 transportation of used fuel.

12 Our comments today are a bit
13 shorter than our written comments -- and they
14 are outside the door for anybody in the
15 audience to get if they would like our more
16 detailed comments concerning this matter. And
17 our July 15 comment letter to the Board is
18 also available to the public. And that's a
19 much more detailed statement.

20 The NEI is the policy organization
21 of the nuclear energy and technologies
22 industry and participates in both the national
23 and global policy making process. It's more

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1 than 300 members include operators of nuclear
2 power plants, companies involved in nuclear
3 medicine and nuclear industrial applications,
4 radionuclides and radiopharmaceutical
5 companies, universities, and research
6 laboratories, and labor unions.

7 80 percent of -- nuclear presently
8 provides 80 percent of our greenhouse gas free
9 electricity in the United States. As was
10 mentioned earlier roughly 20 percent of the
11 electricity in the United States is nuclear.

12 Nevada is a big importer of
13 electricity. We don't have nuclear reactors
14 in the state, but we generally received about
15 2-1/2 percent of our electricity in Nevada
16 from nuclear energy.

17 NEI members have a direct interest
18 in the construction of the proposed rail line.
19 Used nuclear fuel from our plants would be
20 transported along the proposed rail line and
21 disposed of at the Yucca Mountain Repository
22 if the site is licensed. Transportation and
23 disposal of used nuclear fuel in this manner

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1 would further the integrated three-prong
2 strategy which NEI supports for the safe and
3 efficient management of such fuel.

4 Fuel management strategy involves
5 centralized internal storage of used nuclear
6 fuel at power plants or central facilities
7 until recycling or permanent disposal are
8 available. Research into the development and
9 demonstration of advanced recycling
10 technologies to close the nuclear fuel cycle
11 and development of a permanent disposal
12 facility for used fuel or residual waste from
13 recycling.

14 A major component of this
15 strategy, disposal in an approved geologic
16 repository, would be realized by the Yucca
17 Mountain project. DOE's application helps
18 achieve that goal by providing the groundwork
19 for the rail transportation of used nuclear
20 fuel to Yucca Mountain.

21 At NEI I am responsible for
22 activities in Nevada. I've been a Nevada
23 resident for the past 20 years and have had

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1 the good fortune of working on the used fuel
2 management issue from an industry as well as
3 a local, state, and federal government
4 outlook.

5 I hold a master's degree from the
6 University of Chicago in public policy with a
7 focus on public health issues. And I started
8 my career working for the Illinois Department
9 of Nuclear Safety where I assisted in the
10 development of its world class programs for
11 managing the transportation of used fuel,
12 including programs for inspecting and
13 escorting all shipments through the state.

14 These model programs resulted in a
15 high degree of public confidence in the safety
16 of the many used fuel shipments that traversed
17 major population centers of Illinois. I also
18 had hands-on experience escorting used fuel.

19 Later I worked on the issue at the
20 federal level, where I directly engaged local
21 officials and the public in evaluating routes
22 to Yucca Mountain. I led the effort that
23 ultimately resulted in DOE adopting the

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1 concept of sharing the railroad with others
2 for local economic development.

3 Even though shipments would surely
4 go through other major population centers of
5 the U.S. federal policy makers decided that
6 the cumulative impact of transporting and
7 disposing of used nuclear fuel and defense
8 waste material at Yucca Mountain justified
9 evaluating less direct and more costly options
10 that would avoid large population centers in
11 Nevada.

12 The options included the Caliente
13 route, which was determined to be eminently
14 buildable, albeit less direct and more costly
15 than others. While there may be scenarios
16 that require a small number of shipments
17 through heavily populated areas of southern
18 Nevada the Caliente route goes a very long way
19 towards alleviating the need to ship through
20 populated areas.

21 I would also add that the state
22 has the opportunity to designate alternative
23 routes for highway shipments of radioactive

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1 material. I believe under HM 164, Department
2 of Transportation regulations, the state has
3 the opportunity to designate alternative
4 routes.

5 The comments submitted by NEI on
6 July 15, 2008, provides a detailed discussion
7 of the considerations that were strongly in
8 favor of approval of this application. In
9 summary, we find that DOE's FEIS satisfied the
10 Board's obligation under NEPA and provide
11 ample satisfaction of NEPA requirements for
12 discussion of environmental mitigation and
13 provide an adequate basis for any
14 environmental mitigation imposed by the Board.

15 The Board should adopt the FEISs
16 and close the environmental record. DOE's
17 application clearly meets the statutory
18 standard and the Board's requirement for
19 approval. And a full record and all relevant
20 environmental issues has been prepared and
21 completed.

22 Regarding the routing issue, we
23 concur with previous Board findings that the

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1 role of the Board is not to reshape or develop
2 the proposal, but rather to determine if the
3 proposal submitted meets the statutory
4 criteria. Its duty is not to second-guess
5 applicants or to choose between alternatives,
6 end of quote.

7 Therefore, while some parties may
8 prefer changes in the proposal and we respect
9 their economic development intentions, it is
10 neither necessary nor appropriate for the
11 Board to attempt to determine whether
12 variations of the proposed project might, in
13 the view of some, better serve the public
14 interest. The Board's real decision is
15 whether DOE's application as submitted meets
16 the statutory requirements for approval.

17 NEI, therefore, respectfully
18 requests the Board grant DOE's application so
19 that the rail line will be available for
20 receipt of used fuel once the repository is
21 licensed by NRC and further requests the Board
22 do so expeditiously so that the rail line can
23 be used for the construction of the repository

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1 and local communities can begin to realize the
2 economic benefits of the proposed line as soon
3 as possible.

4 The U.S. and international safety
5 record associated with shipping used nuclear
6 fuel speaks for itself. The DOE's shipping
7 campaign to WIPP also speaks to DOE's
8 capability to develop a safe, well-planned,
9 large-scale transportation program.

10 We commend DOE's effort concerning
11 rail routing. The construction of the
12 Caliente Railroad plays an important role in
13 the integrated used fuel management strategy.
14 Dr. Redmond will now testify regarding the
15 technical aspects of the transportation
16 system. We look forward to addressing your
17 questions. Thank you.

18 DR. REDMOND: I am Everett
19 Redmond, Senior Project Manager, Used Fuel
20 Storage and Transportation at NEI. Before I
21 begin I would like to thank the Board for
22 permitting us to provide testimony on the
23 Department of Energy's application.

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1 My educational background is in
2 nuclear engineering and I hold a Ph.D. from
3 MIT. Prior to joining NEI in October of 2006
4 I was employed by Holtec International, a dry
5 fuel storage and transportation cask supplier.

6 Transportation casks for used
7 nuclear fuel, which by the way is a solid
8 ceramic material that will not leak or
9 explode, are constructed of many layers of
10 steel, lead, and other materials. There are
11 approximately four tons of shielding for every
12 ton of used nuclear fuel inside the casks.

13 Used nuclear fuel will be shipped
14 to Yucca Mountain using both rail and truck,
15 with the majority of the transport occurring
16 by rail. Casks that are shipped by rail are
17 typically larger, weighing up to 250,000
18 pounds, and hold up to 32 pressurized water
19 reactor fuel assemblies, compared to truck
20 casks, which weigh approximately 50,000
21 pounds, and hold up to four fuel assemblies.

22 The large capacity rail casks that
23 will be used for transportation to Yucca

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1 Mountain are not hypothetical. Numerous casks
2 have been constructed and licensed for both
3 storage and transportation and are currently
4 in use storing fuel on site at nuclear power
5 plants.

6 Used nuclear fuel has been safely
7 transported by decades in both the United
8 States and abroad. Over the last 40 years
9 there have been more than 3,000 used nuclear
10 fuel shipments in the United States covering
11 more than 1.7 million miles. Outside the
12 United States there have been tens of
13 thousands of shipments of used fuel.

14 Within the United States each
15 transportation cask design for radioactive
16 material is licensed by the Nuclear Regulatory
17 Commission and must meet stringent safety
18 requirements. Designs must be able to safely
19 contain their radioactive contents under
20 various normal conditions and hypothetical
21 accident conditions as defined in 10 CFR 71.

22 These hypothetical accident
23 conditions, which are analyzed in sequence,

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1 are a 30-foot drop onto an unyielding surface,
2 followed by a 40-inch drop onto a six-inch
3 diameter steel rod, followed by a 30-minute
4 exposure to a fully engulfing fire at 1,475
5 degree Fahrenheit.

6 In addition, a package containing
7 used fuel must be designed so that it can
8 withstand a water pressure greater than a
9 depth of 600 feet for one hour without
10 collapsing, buckling, or in leakage of water.
11 For comparison, Sandia National Laboratory has
12 shown that the 30-foot drop onto an unyielding
13 surface encompasses a cask being struck by a
14 train traveling 60 miles per hour.

15 In addition to the regulatory
16 design criteria the NRC requires the
17 establishment and implementation of a security
18 plan to ship used nuclear fuel before
19 shipments begin. The NRC must review and
20 approve the plan and procedures to protect
21 against radiological sabotage or theft in
22 advance. After the plan is developed and
23 approved the shipper will then track and

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1 monitor these shipments carefully over the
2 entire route.

3 Since 1971 there have been nine
4 accidents involving commercial used nuclear
5 fuel containers in the U.S., four on highways
6 and five during rail transport. Approximately
7 half of these accidents involved empty
8 containers and none of these accidents
9 resulted in breach of the container or any
10 release of its radioactive cargo.

11 In 2001 a train carrying non-
12 nuclear hazardous material derailed and caught
13 fire inside the Howard Street Railroad Tunnel
14 in Baltimore. The NRC analyzed the fire and
15 determined that the regulatory dose limits for
16 accident conditions would not have been
17 exceeded for the two rail casks and one legal
18 white cask analyzed.

19 In addition to the normal and the
20 hypothetical accident conditions that must be
21 designed for, a transportation cask must be
22 designed so that they exposure from direct
23 radiation is less than two millirem per hour

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1 to any individual on the train and less than
2 ten millirem per hour at 6-1/2 feet from the
3 edge of the transport vehicle. Typically the
4 dose rates are much considerably lower than
5 that.

6 And to put these number in
7 perspective an average citizen in the U.S.
8 receives approximately 300 millirem in a year
9 for normal activities, and I received
10 approximately one to two millirem from my
11 flight from Washington to Las Vegas as a
12 result of cosmic radiation.

13 In conclusion, the nuclear
14 industry and the federal government take the
15 transportation of the used fuel very
16 seriously, and transportation of used fuel has
17 been and will continue to be done safely and
18 securely. Thank you for your attention and
19 for permitting me to run a minute or two over.

20 MR. NOTTINGHAM: Thank you, Dr.
21 Redmond and Mr. Seidler. Vice Chairman
22 Mulvey, would you like to start off with
23 questions?

1 MR. MULVEY: Starting with an
2 issue I raised earlier -- that this problem of
3 moving all this nuclear materials to a special
4 repository in the United States seems to be I
5 wouldn't say unique, but seems to be focusing
6 on the United States where we have the most
7 plants, but not the greatest portion of our
8 energy created by nuclear power.

9 The French reprocess it and it's
10 been suggested that the United States ought to
11 adopt another way of handling the materials so
12 they could be reprocessed. And I know the
13 final outcome is even more serious, but it's
14 less material and it can be stored in glass or
15 what have you. Can you explain how the French
16 system is different and why -- I know it's
17 more expensive but why it's not simply what we
18 would want to pursue rather than moving all
19 this material around?

20 DR. REDMOND: The French do
21 reprocess at La Hague. They send all of their
22 used fuel from the plants to La Hague -- ship
23 it to La Hague where it is reprocessed. The

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1 byproducts -- radioactive byproducts are
2 stored on site and will eventually be put in
3 a deep geologic repository.

4 We are in the United States
5 beginning to explore reprocessing as well. It
6 hasn't -- it's not currently done here, but
7 that is something we are looking at.

8 MR. MULVEY: Is it mostly a cost
9 issue?

10 DR. REDMOND: Cost is certainly
11 one of the factors that comes into it.

12 MR. MULVEY: We've been told that
13 compared to in situ storage the reason why we
14 agreed to move the materials to Yucca Mountain
15 for final storage in a geologic site is that,
16 one, it's the law, and, two, that it is the
17 consensus of the scientific community. Could
18 you briefly explain why storing it at Yucca
19 Mountain is superior to in situ storage?

20 DR. REDMOND: Long-term geologic
21 disposal is the appropriate way to
22 environmentally isolate the material. And
23 while we can store the fuel on site, we have

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1 a responsibility to ultimately dispose of this
2 material, and that's why we are in support of
3 the Yucca Mountain project and feel that that
4 is the most appropriate way to ultimately
5 dispose of the material.

6 MR. MULVEY: Although --

7 MR. SEIDLER: If I could just
8 say -- I'm sorry. If I could just say -- add
9 to that, that's an international scientific
10 consensus and the approach other countries are
11 taking as well.

12 MR. MULVEY: That's an important
13 element. Let's see here. You mentioned
14 about -- we were talking about the amount of
15 material that's going to be coming into
16 Nevada, and a lot of it's going to be
17 passing -- try to avoid going through Las
18 Vegas, but it still will be going to Caliente
19 and then coming down to Yucca Mountain.

20 People today were complaining
21 about the fact that it's going to be passing
22 through many cities around the country, and so
23 it's a nationwide problem, not simply a Nevada

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1 problem. Are you suggesting that this is not
2 really a problem -- that this is -- these
3 fears are somewhat irrational and that, to
4 some extent, it's -- I guess the popular term
5 today is it's some sort of NIMBYism. Do you
6 feel that these fears are irrational -- that
7 it's the same as people are afraid of nuclear
8 power plants -- that it has the word nuclear
9 and, therefore, it's frightening?

10 MR. SEIDLER: No, I respect the
11 views of other people. I guess our only point
12 is is that the material has been routinely and
13 safely shipped through the intra-metropolitan
14 cities in the United States. And in Illinois
15 we were very concerned about that and we took
16 very proactive approach, inspecting all
17 shipments at the border of the state and
18 escorting all shipments.

19 That was both technical experts
20 from the Department of Nuclear Safety, the
21 state police, as well as the Commerce
22 Commission. The state would actually escort
23 all shipments through the state. And we also

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1 had mobile radiological labs -- mobile
2 community centers to assure the safety of the
3 shipments. It's a concern.

4 MR. MULVEY: So this is guarded
5 all the way through on dedicated trains with
6 basically troops all around it and safely
7 moving it. Is that --

8 MR. SEIDLER: No, the system would
9 involve one or more individuals actually being
10 on the train in radio contact with staff --
11 both technical staff and state troopers who
12 follow the shipment through the state, stay
13 close to the railroad so that they could
14 respond quickly -- but always being in radio
15 contact with the individuals on the train.

16 And now, of course, technology has
17 evolved a great deal since then and I'm
18 sure -- that was my personal experience. But
19 I'm sure the system will involve considerable
20 technology as well. One of the beauties, of
21 course, of radioactive material is how easy it
22 is to detect it, unlike other hazardous
23 materials that aren't so easily measured.

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1 MR. MULVEY: And some of them
2 odorless, for example, and you don't know how
3 bad it is until you strike a match. But there
4 is a concern -- I am aware of the numbers that
5 there's never been a spill in all the stuff
6 that's moved through the United States over
7 the last 20, 30 years or so. There's never
8 been an accident that's involved a spill.

9 But the concerns that are being
10 raised here is that we're now dealing with an
11 order of magnitude -- that most of the
12 movements have been fairly short and we
13 haven't had that many movements, even though
14 you're talking about 1.7 movements -- miles or
15 what have you.

16 But now we're talking about 70-,
17 80-, 130,000 tons, each moving -- much of it
18 moving a couple of thousand miles. So this is
19 many, many, many orders of magnitude. And I
20 know it's impossible to extrapolate from zero
21 and get a positive number. But is there any
22 way you can tell these people that even though
23 we're going to be carrying far, far, far more

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1 than we ever have before we are still going to
2 keep it at zero? It is going to be safe given
3 the four tons of shielding for every ton of
4 material that's involved in these casks?

5 MR. SEIDLER: Certainly we can't
6 promise that there won't be accidents. If we
7 look at the combination of the record in the
8 United States and the international record,
9 which gives us an enormous number of shipments
10 to look at, the record has been very
11 impressive. That doesn't mean that there
12 won't be an accident in the future.

13 And that's why we rely so heavily
14 on the integrity of these containers. And I
15 would add that the shipments in the U.S. --
16 many of those shipments were very long in
17 nature. For instance, I participated in
18 shipments -- we had a facility in Illinois --
19 at Morris, Illinois, that was actually a
20 recycling facility that was almost complete.
21 It was stopped due to economic and political
22 and technical considerations. Several
23 different considerations stopped construction.

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1 But as a result G.E. actually --
2 instead of selling the fuel leased the fuel to
3 the reactors that owned the fuel. And so we
4 had to accept the fuel from all over the
5 country back at that facility. So those were
6 very long shipments, as well as -- of course,
7 the Naval fuel shipments, which presently are
8 stored at Idaho -- and a great number of
9 shipments of Naval reactor fuel go to Idaho
10 from the ports.

11 MR. MULVEY: Uh-huh.

12 MR. SEIDLER: And those are just
13 some examples. So we have very extensive
14 experience with large-scale shipping campaigns
15 going great distances and very excellent
16 safety record.

17 MR. MULVEY: And Idaho, like
18 Nevada here, is a mecca for tourism, et
19 cetera. And there are some concerns expressed
20 that there could be negative consequences for
21 tourism if, indeed, these kinds of facilities
22 are located nearby or there's these trains are
23 moving nearby.

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1 And we've had this issue come up
2 in other contexts, which I'm not going to get
3 into right now. But have you looked at --
4 have there been any studies of economic
5 impacts or developmental impacts on areas
6 where such things as nuclear power plants or
7 other nuclear storage facilities, et cetera,
8 are sited? Or is it really sort of a red
9 herring?

10 MR. SEIDLER: Yes, there have been
11 studies of that nature. We have to keep in
12 mind -- I think the number's on the order of
13 150 million Americans live within 75 miles of
14 our nuclear plants in the United States right
15 now. In this case we're talking about a plant
16 that's much -- it doesn't involve all the
17 mechanical processes of a nuclear plant.
18 We're talking about a storage facility that's
19 roughly 90 miles away Las Vegas.

20 That doesn't mean that you can
21 completely disregard stigma issues and things
22 to that effect. But it hasn't -- there hasn't
23 been that sort of situation. For example, in

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1 Illinois 50 percent of our electricity is from
2 nuclear, and the city of Chicago is run by
3 nuclear reactors. And, in fact, the local
4 communities -- the reason they're so
5 supportive of those facilities is because of
6 the positive economic impact that it actually
7 has on the people who are closest to those
8 facilities.

9 And we find generally -- and the
10 same is true with Yucca Mountain -- that the
11 support for the project actually is closer to
12 the site than further away. I think there's
13 a number of reasons for that, but one is, of
14 course, that they will reap the most economic
15 benefit from the project.

16 But there certainly has been a lot
17 of economic study, including study of the
18 Yucca Mountain project, conducted by the local
19 university. And you'll find different
20 opinions. I can show you as to, you know, the
21 stigma effects and what that might mean. But
22 the experience certainly has been very
23 positive.

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1 MR. MULVEY: Dr. Redmond, you want
2 to expand on that any?

3 DR. REDMOND: I agree with what
4 Paul said. The economic benefits around
5 nuclear power plants has been quite
6 noticeable, and there are communities out
7 there that are trying to get more nuclear
8 plants that are very supportive of it. So
9 there is a positive economic benefit
10 associated with it.

11 MR. MULVEY: Thank you.

12 MR. NOTTINGHAM: Commissioner
13 Buttrey, any questions for this panel?

14 MR. BUTTREY: Thank you, Mr.
15 Chairman. Mr. Redmond, I've been looking
16 forward to having a nuclear expert here all
17 day long. You've just about convinced me that
18 these casks are pretty good -- I say just
19 about.

20 DR. REDMOND: Okay.

21 MR. BUTTREY: And pretty good.
22 But you don't seem to be saying that they are
23 impregnable.

1 DR. REDMOND: No. There's --

2 MR. BUTTREY: What is their
3 vulnerability if you could speak to that?

4 DR. REDMOND: I cannot really
5 speak to the vulnerability. I know the
6 Nuclear Regulatory Commission has done some
7 work in that area, and I cannot speak to it.
8 These casks are extremely robust. You're
9 looking at, for example, more than nine inches
10 of solid steel in some cases. In other cases
11 you may have depleted uranium inside, which is
12 extremely hard to penetrate. These are very
13 large physical systems, both the truck and the
14 rail, just of different magnitudes.

15 MR. BUTTREY: Did you say uranium
16 or titanium?

17 DR. REDMOND: No, depleted
18 uranium.

19 MR. BUTTREY: Depleted uranium.
20 Okay.

21 DR. REDMOND: Yes. Depleted
22 uranium has been used in some casks for
23 shielding material, and then also it provides

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1 some structural support. But you have a lot
2 of steel in there and other materials. So
3 they're very robust and very hard to
4 penetrate.

5 MR. BUTTREY: If they're that
6 good -- and I'm just taking your word for it
7 that they are -- why do we care where we store
8 them?

9 DR. REDMOND: Well, again, back to
10 what I said earlier -- we have a
11 responsibility to ultimately dispose of the
12 fuel -- of the used fuel. And leaving it on
13 site is not ultimate disposal. Currently the
14 decommission of --

15 MR. BUTTREY: I'm sorry. Is not?

16 DR. REDMOND: It's not ultimate --
17 leaving it on site is not ultimate disposal.
18 That's not a final solution.

19 MR. BUTTREY: Are you talking
20 about disposal, which, to me, means it goes
21 away, or do you mean storage? When you use
22 the term disposal you really mean storage, do
23 you not, in some what you believe secure site?

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1 DR. REDMOND: No. When I use the
2 word disposal I mean deep geologic repository.
3 Storage --

4 MR. BUTTREY: Okay.

5 DR. REDMOND: -- interim
6 storage --

7 MR. BUTTREY: Okay. That's like a
8 warehouse for spent nuclear fuel.

9 DR. REDMOND: Well, interim
10 storage --

11 MR. BUTTREY: That's not disposal.
12 You know, the word disposal to me means that
13 it ceases to exist. If I dispose of something
14 it doesn't exist anymore.

15 DR. REDMOND: Okay.

16 MR. BUTTREY: So let's get our
17 terminology -- see if we can get some
18 agreement of what our terminology is here.

19 DR. REDMOND: Sure. What we
20 currently do is we have interim storage at the
21 sites where the fuel is stored in spent fuel
22 pools and in dry cask storage systems. And at
23 some sites that have been decommissioned the

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1 fuel is still there at -- being stored on site
2 in an interim fashion -- and I mean interim
3 because it's not intended to be there forever.

4 MR. BUTTREY: Uh-huh.

5 DR. REDMOND: And that is stored
6 in casks. Then the fuel is supposed to be
7 shipped to a deep geologic repository where it
8 will be stored, if you will, forever. Does
9 that help answer your question?

10 MR. SEIDLER: I'll add the design
11 of the repository is, as you indicate, makes
12 for easy retrieval. I mean, the material will
13 be stored in such a way that it could be
14 removed because some estimate -- it depends
15 upon some final decisions, but certainly up to
16 300 years is the current thought process for
17 a period where it would be retrievable without
18 backfill -- anything to prevent retrieval.

19 MR. BUTTREY: Thank you. Mr.
20 Redmond, you're familiar with Nevada Test
21 Site?

22 DR. REDMOND: No, I'm not terribly
23 familiar with that.

1 MR. BUTTREY: Well, maybe you can
2 answer this question without being familiar
3 with it. I'm curious to know for the record
4 how many years it will be starting now if I've
5 got spent nuclear fuel that's no longer used
6 and after production of electricity or
7 whatever, and I'm going to put that in one of
8 those casks and I'm going to store it some
9 place. Does the fact that it's stored inside
10 this impregnable, quote, unquote, container
11 effect the half life of the material on the
12 inside or not? In other words, how many years
13 is it from that day until the time that it's
14 no longer harmful to come in contact with?

15 DR. REDMOND: The half life of the
16 material varies depending on the isotopes, and
17 you're talking many years before it decays
18 down.

19 MR. BUTTREY: Many -- can we
20 quantify many?

21 DR. REDMOND: The --

22 MR. BUTTREY: Is it a hundred
23 years? Is it a thousand years? Is it 10,000

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1 years? Is it 20,000 years?

2 DR. REDMOND: It's in the order of
3 thousands of years --

4 MR. BUTTREY: Thousands of years.

5 DR. REDMOND: -- depending on what
6 you're talking about as far as the material
7 that's in there.

8 MR. BUTTREY: Okay.

9 DR. REDMOND: The --

10 MR. BUTTREY: Well, let's take the
11 average -- let's just take the average cask.
12 Okay? Let's take the one -- let's just use
13 the one -- since you brought it up in your
14 testimony let's just use the one that's put on
15 the train as just a good example of what
16 you're talking about. What's -- how many
17 years -- how many thousands of years is it
18 before that material is no longer harmful to
19 come in contact with? You know, no worse than
20 a dental x-ray or whatever.

21 DR. REDMOND: No, I cannot give
22 you an exact number on that.

23 MR. BUTTREY: But it is a very

1 long time.

2 DR. REDMOND: Before you could
3 take it out of the cask, yes. But in the cask
4 it is very safe.

5 MR. BUTTREY: If we decide to take
6 it out of the cask how do we get it out?

7 DR. REDMOND: You would get it out
8 the same way you put it into the casks.
9 Currently they're loaded in spent fuel pools
10 at the sites. So the cask is placed into the
11 spent fuel pool, the fuel is transferred into
12 it, and then the cask is brought up and welded
13 closed. These are the types of casks -- by
14 the way, what I'm mentioning, they're the
15 canisters that would be used for this project.

16 MR. BUTTREY: So the cap goes on,
17 and the cap is welded shut.

18 DR. REDMOND: Yes. What you have
19 is a transportation cask, and then you have an
20 inner canister, which has been referenced here
21 today as a TAD canister, transportation agent
22 and disposal canister. That's very similar to
23 our dual purpose canisters that are currently

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1 in use at sites. So that inner canister has
2 a welded lid on it. So it is a welded
3 container. And the transportation agent
4 disposal canisters will go directly into Yucca
5 Mountain.

6 MR. BUTTREY: Is it -- would you
7 agree that most people are concerned about
8 their utility bill?

9 DR. REDMOND: Yes.

10 MR. BUTTREY: I am. Will you
11 agree that the cost of doing all of this which
12 is proposed here -- that there's a number out
13 there somewhere that represents the cost of
14 doing all this -- the loading, the welding,
15 the cask, the transportation, the storage,
16 armed guards, you know, GPS systems, RFID
17 tags -- I don't know.

18 It's just mind boggling when you
19 start thinking about it -- the cost of, you
20 know, testing to make sure that nothing's
21 leaking out of here, you know, either
22 underneath, around it, on top of it or
23 whatever. There's some cost associated with

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1 that.

2 Presumably, you know, in my world
3 the person who's going to pay for all that is
4 the rate payer -- eventually the rate payer --
5 the person who goes over and switches on the
6 light switch, and right as soon as that light
7 comes on they start paying. So the rate payer
8 is eventually going to be paying the bill.

9 DR. REDMOND: The rate payer is
10 currently paying the bill.

11 MR. BUTTREY: That's right, he is
12 currently paying the bill. But when he goes
13 over and switches that light switch on he
14 probably doesn't think -- you know, before he
15 starts cooking breakfast or something he
16 doesn't think, Oh, my goodness, I'm going to
17 have to pay for the storage of that spent
18 nuclear fuel.

19 DR. REDMOND: Right.

20 MR. BUTTREY: You know, you just
21 don't do that. I mean, most people just don't
22 do that. Actually I've been doing it a lot
23 here lately. When I turn on the lights I

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1 think of Yucca Mountain. I don't know why,
2 but it just happens. It's one of those
3 natural responses that you get. When you turn
4 on the lights for some reason I think of Yucca
5 Mountain. It's bizarre.

6 But my colleague here, Mr. Mulvey,
7 has consistently asked this question about,
8 you know, who's going to -- who pays for
9 this -- what's the cost of all this. You
10 know, wouldn't it be a good alternative just
11 leave it where it is? Put it, you know, where
12 it -- let the rate payer in Sheboygan pay for
13 the nuclear spent fuel storage in Sheboygan
14 and the people in Las Vegas, since we're here,
15 pay for the spent nuclear fuel that's produced
16 in Las Vegas.

17 Because, you know, I suspect at
18 some point people in Las Vegas are going --
19 the consumers in Las Vegas or anywhere else
20 around the country that has a nuclear power
21 plant providing electricity is going to turn
22 on that light switch and they're going to
23 start paying as soon as it comes on. And

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1 they're going to be paying for their storage,
2 not the people in Sheboygan or the people in
3 Hanford or Seattle, Washington, or the people
4 in Memphis, Tennessee, or the people in
5 Brooklyn, New York.

6 They're going to be paying for
7 their nuclear spent fuel cost instead of -- it
8 seems to me that if you don't have to add on
9 to what they would be paying under those
10 circumstances -- if you don't have to add on
11 to that number, whatever it is, the cost of
12 all of this other stuff that we've been
13 talking about today, including transportation
14 on rail to get it -- and transportation by
15 rail is expensive. It is the most
16 efficient -- it is absolutely the most
17 efficient, but it is expensive. And it's
18 going to be real expensive when you start
19 talking about hazardous materials -- all kinds
20 of hazardous materials, not just nuclear.

21 But when there's a chlorine
22 release or an anhydrous ammonia release or
23 some other kind of hazardous material inhalant

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1 release or something like that there's an
2 event. And it can be catastrophic or it can
3 be small. But if you have a nuclear event you
4 have an event of cataclysmic proportions. And
5 you know what? It lasts a thousand years.

6 Now, I don't know -- but nobody
7 can tell me -- nobody here yet today can tell
8 me when you're going to open up the Nevada
9 Test Site for golf courses and homes. But
10 being a golfer I'd be interested in knowing
11 the answer to that question.

12 But nobody has rendered an opinion
13 about when they're going to open up the Test
14 Site for human beings because right now you
15 can't go near that place. And that is true.
16 Correct? You can't get on the site because
17 it's not healthy to do that.

18 MR. SEIDLER: You can get on the
19 site and tour the site, and people and I have
20 routinely toured not only Yucca Mountain but
21 the Test Site. But you're right, the Site
22 will never be open for a resort or any sort of
23 public access. We detonated roughly 1,000

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1 nuclear weapons, 800 of those below ground,
2 200 above ground. And that area was set aside
3 for that purpose.

4 MR. BUTTREY: Right.

5 DR. REDMOND: If I may in regards
6 to the cost for a second, the -- currently the
7 rate -- currently the utilities are paying 1
8 mil per kilowatt hour into the Nuclear Waste
9 Fund, which is being paid for by the rate
10 payers.

11 That fund, as was mentioned
12 earlier, is sufficient to cover and will be to
13 cover the cost of Yucca Mountain, including
14 all of the transportation. So we are paying
15 for the ultimate storage of this --

16 MR. BUTTREY: When you say we who
17 are you talking about?

18 DR. REDMOND: We being the nuclear
19 industry and the associated rate payers. So
20 we are paying for it. And we're paying for it
21 for storage of that --

22 MR. BUTTREY: When you say nuclear
23 industry you're really just saying the rate

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1 payers.

2 DR. REDMOND: Yes.

3 MR. BUTTREY: You know, separating
4 out the utility companies from the rate
5 payers, to me anyway, unless you can convince
6 me otherwise, is sort of an unrealistic
7 distinction. It's a distinction without a
8 difference, so to speak.

9 DR. REDMOND: You're correct.

10 MR. BUTTREY: Because you're
11 really talking about the rate payer.

12 DR. REDMOND: Absolutely. You're
13 correct.

14 MR. BUTTREY: Either the public
15 utility is discounting the rates and the rate
16 payer is getting a discount or something and
17 it gets folded back into the later rate or
18 whatever.

19 The other interesting thing about
20 this whole situation to me is is that we still
21 have states regulating public utility rates in
22 the states. The public utility authorities in
23 the states -- maybe not all of them, but a lot

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1 of them -- a lot of them -- probably most of
2 them -- maybe all of them -- regulate the
3 rates that people pay for their utilities.

4 So you've got potentially a
5 situation where you've got a public -- you've
6 got a utility company who's using nuclear fuel
7 and they can't get a rate increase from their
8 regulatory commission in the state. And so
9 they can go four, five, six, seven years --
10 Maryland just did it for five years -- the
11 state of Maryland prevented the public utility
12 company in Maryland from raising the rates.

13 Now, I don't know how in the world
14 something like that can happen, but it did and
15 it is. And so you squeeze -- you keep
16 squeezing the public utility companies --
17 either publicly owned or privately owned
18 utility companies -- you squeeze them and
19 impinge upon their rates of return, their
20 ability to produce, their ability to
21 modernize, their ability to innovate and -- to
22 the point to where they're choked to death.
23 And they stop spending money on things that

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1 they probably ought to be spending money on,
2 one of which might be safety. That bothers
3 me. And it probably bothers a lot of
4 people -- not just me. I'm not unique in that
5 regard.

6 But, you know, this -- you know,
7 the more layers of the onion you peel off here
8 the more complex and the more troubling it is.
9 And this is not simply a matter of whether you
10 build a railroad or not. It's a lot more
11 complicated than that. It's a lot more
12 complicated than that.

13 And I just hope that this process
14 that we're going through is able to flush out
15 of the tall grass some of these things that we
16 need to be talking about that, frankly,
17 haven't been addressed in many regards here
18 today.

19 You've got a lot of people who are
20 against it, you've got a lot of people who are
21 for it. But, you know, you keep peeling away
22 the layers of the onion and you get down to
23 where, you know, it gets very complicated.

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1 And I appreciate, Mr. Redmond,
2 your being here today to answer some of these
3 questions because up until right now these
4 things have been, you know, bothering me and
5 I needed to get some answers and I needed to
6 get them on the record. This nice lady here
7 is writing all this down for us so that it's
8 on the record. And I really appreciate you
9 all being here today to tell us what the real
10 issue is here. And I appreciate it very much.
11 And I'm glad that there are people like you
12 out there who could help us. Thank you very
13 much.

14 DR. REDMOND: Thank you for the
15 opportunity.

16 MR. NOTTINGHAM: I believe there
17 was at least a question or two in there, and
18 it looked the witnesses leaned forward with an
19 interest in actually responding, and I wanted
20 to make sure you have a chance to do so. So
21 if you want to say anything that's been said
22 in the last five or ten minutes you want to
23 respond to, please go ahead.

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1 MR. SEIDLER: The only thing I
2 would add is just a clarification -- that
3 while the program is funded primarily by rate
4 payers tax dollars are also involved because
5 roughly 10 percent of the waste is related to
6 the national defense program, and so tax
7 dollars are also involved for roughly 10
8 percent of the cost of the program.

9 MR. BUTTREY: Because that fuel is
10 actually produced by the Department of
11 Defense. I mean, we use -- we have -- I don't
12 know -- the number that sticks in head is like
13 13, but it's probably more than 5 or 6 nuclear
14 powered submarines -- aircraft carriers and
15 probably at least that many nuclear submarines
16 at sea right now -- or could go to sea quickly
17 if they had to.

18 That nuclear power has to go
19 somewhere. I presume that's the power
20 you're -- the spent fuel you're talking about.

21 MR. SEIDLER: It's both spent fuel
22 from Naval reactors on board those ships, but
23 also waste from actually part of the whole

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1 defense mission and the defense process --
2 defense complex actually does reprocessing is
3 probably the weapons manufacturing process.
4 And that waste is then solidified in glass --
5 vitrified into glass and that's also a fairly
6 significant waste stream.

7 So it's that type of material that
8 we call high-level waste and then it's also
9 the spent fuel from the Naval reactors. Those
10 are examples of some of the federal waste
11 stream. Plus we have reactors -- research
12 reactors at universities and national
13 laboratories doing various research and
14 development -- also reactors at
15 radiopharmaceuticals and things like that.

16 MR. NOTTINGHAM: Again, thank you
17 very much. Appreciate it. I have a couple of
18 questions for this panel, if I could. The
19 panel -- and I think it was you, Mr. Seidler,
20 urged this Board's expeditious approval of the
21 application. And you mentioned the need to
22 actually move forward with the construction of
23 the Yucca Mountain facility and that the

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1 proposed rail line would facilitate the
2 construction because it could help bring in
3 materials presumably and -- do you know -- and
4 I probably should have asked this question to
5 DOE witness, but I'll go ahead and ask it to
6 you since I didn't to her. Can the
7 construction process begin without an NRC
8 license being granted?

9 MR. SEIDLER: No, sir.

10 MR. NOTTINGHAM: Okay. I knew the
11 operation couldn't begin, but I wasn't sure.
12 And is there a time line for that at this
13 point? Has NRC announced when they're going
14 to take this matter up or make a decision?

15 MR. SEIDLER: By law the NRC has
16 three years with one additional year. That
17 clock started fairly recently, so three to
18 four years to complete the licensing process.

19 DR. REDMOND: If I may add
20 something -- the construction of the
21 facility -- of the Yucca Mountain facility
22 cannot begin, but the construction of the
23 railroad can. So the construction of the

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1 railroad can begin before the application is
2 approved by NRC.

3 MR. NOTTINGHAM: Okay. I don't
4 have much -- I don't have any, I should say,
5 experience working with the NRC. This is
6 probably as close as I've ever gotten. You
7 seem to have some experience observing at
8 least and working with NRC. Are they likely
9 to be -- how important do you think it would
10 be to the NRC's deliberations what this agency
11 decides to do now, next month, next year
12 related to this application?

13 Is this a big factor to them
14 whether or not we've decided this -- how we've
15 decided it? I mean, is it -- are they looking
16 at other issues primarily?

17 DR. REDMOND: I don't want to
18 speak for the Agency since I'm not a
19 representative of the Agency. But this
20 decision here should not in my view have any
21 effect on the license application that is in
22 front of the Nuclear Regulatory Commission.
23 They will review it upon its own merits.

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1 MR. NOTTINGHAM: Okay. We've
2 heard a lot today about risk and we've
3 certainly understandably, given where we're
4 having this hearing and where the new line is
5 proposed to be sited and the new facility
6 built at Yucca Mountain -- we've heard mostly
7 today about risk -- potential risk to Nevada
8 and this area. We've also heard about
9 potential risks across the country.

10 We haven't heard so much today it
11 seems to me about current risks that are real
12 today under the status quo, which is my
13 understanding -- which includes nuclear
14 generating facilities scattered around the
15 country producing spent nuclear waste -- that
16 that is primarily kept on site at -- what? --
17 dozens of sites? Hundreds?

18 DR. REDMOND: There's 104
19 operating reactors at about -- well, the
20 number of sites for spent fuel storage is in
21 the thirties I think right now. I should know
22 that number off the top of my head, but I
23 apologize -- I don't.

1 MR. NOTTINGHAM: And we've heard
2 today about hundreds and thousands of
3 movements primarily by rail under current
4 practice of spent nuclear waste. So we're not
5 talking about a choice between no movement
6 today and future that might include a lot of
7 movement. We actually have movement by rail
8 today.

9 DR. REDMOND: Yes.

10 MR. NOTTINGHAM: What -- both of
11 you seem to have a lot of experience looking
12 at these issues. Compare the relative -- I
13 mean, obviously a lot of risk analysis went
14 into the development of the Yucca Mountain
15 project and concept -- a recognition I presume
16 that there was a fair amount of risk that our
17 nation as a whole, and especially the
18 communities that are in and around the current
19 nuclear generating facilities which are also
20 storage facilities face today and trying to
21 assess that risk and compare it with the -- of
22 course, everything's risky.

23 It's risky for you to get out of

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1 bed today and make your way here. I'm not
2 minimizing. Everything is almost -- you know,
3 everything -- every decision we make, every
4 step we take has a certain amount of risk.
5 But there is risk today -- real risk that is
6 impacting potentially real communities in
7 America. And then that's offset presumably
8 against the potential very real risk of
9 proceeding with this project -- this rail line
10 and ultimately with the Yucca Mountain
11 project.

12 Can you speak to how -- you know,
13 what the thinking is there and the relative
14 risk analysis -- that presumably folks did not
15 just come up with spending billions of dollars
16 and many decades trying to build a Yucca
17 Mountain facility and a railroad connecting to
18 it just to accomplish the difficult -- or just
19 to aggravate most of the people in Nevada.

20 I'm not that cynical to think
21 that's what's going on here. I believe that
22 there are actually -- I'd like to believe
23 there's some well intentioned smart people who

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1 actually think that it's less risky to
2 continue on the path that the Energy
3 Department's on than it is to not. But can
4 you speak to that?

5 DR. REDMOND: There have been
6 studies that have been done. The risk is
7 extremely low for transportation.

8 MR. NOTTINGHAM: Excuse me?

9 DR. REDMOND: Extremely low for
10 transportation of nuclear material. As I said
11 before these containers are extremely robust
12 and they're designed to contain the
13 radioactive material. So the risk is
14 extremely low. I cannot really give you any
15 additional information beyond that though. I
16 apologize.

17 MR. NOTTINGHAM: Well, help me
18 though. There's -- my understanding is
19 there's a very serious reason why the Energy
20 Department does not recommend going forward
21 with the status quo for the long term -- in
22 other words, keeping -- having disparate
23 storage facilities, temporary or interim, to

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1 use your vernacular, storage facilities at 30-
2 something locations -- whatever the number
3 is -- because that's a problem presumably.
4 Can you elaborate on that?

5 DR. REDMOND: It's not a safety
6 problem. It is safe to store the fuel where
7 it is. It is safe to transport the fuel, and
8 it is safe to store the fuel in Yucca
9 Mountain.

10 It is an issue of responsibility
11 and ultimate responsibility for moving the
12 fuel and disposing -- sorry -- storing it in
13 Yucca Mountain. It's not a safety issue. It
14 is safe where it is.

15 MR. SEIDLER: It's essentially a
16 policy call by the U.S. Government to take
17 responsibility for an issue now rather than
18 leave it to future generations, knowing that
19 the material has to be safely managed for a
20 very long period of time, a period of time
21 much longer than the operation of the
22 reactors.

23 And the concept is is that at a

1 central site you could have central security
2 forces, central safety capabilities, central
3 management capabilities. And so it's both --
4 it's the smarter way to do it from both an
5 economic standpoint and just an overall policy
6 standpoint.

7 I don't know that anybody has
8 looked at, you know, what you're trying to
9 describe of -- you have to keep in mind -- and
10 Everett could speak to what the regulatory
11 standards are at reactors versus Yucca
12 Mountain -- I don't know if that would help
13 possibly --

14 MR. NOTTINGHAM: I guess what I'm
15 getting at, I just assumed from a very basic
16 layman's perspective that the main reason why
17 the Energy Department was so keen on advancing
18 this very expensive, very controversial
19 project is to get to a safer outcome than what
20 will happen if we just go in the same path
21 we've been going, which is having -- I know
22 the electric utility, the nuclear power
23 industry, and its paid representatives who you

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1 apparently are -- and I don't say that with
2 any negativity to it -- you're not -- I'm not
3 asking you to say that the current situation
4 is dangerous or horrible or something.

5 But I don't want you on the
6 worldwide -- I think this is going to be -- if
7 it's not being transmitted right now will be
8 on to tell people with bad intentions to our
9 country's security exactly how to crack open
10 one of these caskets or how to do something.
11 I don't want that -- you know, I'm not asking
12 that on the record.

13 But is it not the case that one of
14 the main objectives of the long-range -- the
15 Department of Energy's long-range plans for
16 storage of spent nuclear waste is to get to a
17 more secure situation than what we will have
18 if we don't move in the direction such as a
19 consolidated one- or two-site geologic
20 facility -- just under the theory that if
21 you've got to monitor 30 facilities things
22 happen?

23 Earthquakes, fires, terrorist

1 attacks -- you know, and it's a little
2 trickier to guarantee the safe future of 30
3 place -- locations than it might be at one?

4 MR. SEIDLER: Yes, exactly. The
5 whole idea is that you have to duplicate,
6 albeit on a much smaller scale, a lot of the
7 same safety systems. And like many other
8 concepts it -- the decision by the federal
9 government was to do on a centralized basis.
10 That's not to suggest that it isn't safe where
11 it is at present because it is safe.

12 But, again, those plants will
13 operate -- they are originally licensed to
14 operate for 40 years. Many of those plants
15 are getting extensions for an additional 20
16 years. And that's a 60-year life. And then
17 after that the plants will be
18 decommissioned -- not all the plants are even
19 being re-licensed so -- in fact, there's a
20 need to decommission plants now.

21 And so you don't want to have to
22 maintain all of the infrastructure and all the
23 systems -- and security systems are very

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1 extensive -- at those plants that are closed
2 down or will be closed down in the future.
3 And, again, it was policy call to do it on a
4 centralized basis.

5 We support -- the industry
6 supports the idea of recycling the material to
7 significantly reduce the size of the waste
8 stream and the toxicity of the waste stream.
9 You know, we support the use of advanced
10 recycling technologies that are different from
11 the technologies that are being used today in
12 France and Japan and elsewhere. Those are
13 actually technologies that have a basis in
14 U.S. technology -- technology that was
15 developed here.

16 But we feel that we need to use a
17 technology that is more advanced and that
18 doesn't present the same sort of nuclear
19 proliferation concerns of the old technology
20 and to develop a central system rather than
21 having many, many of these types of facilities
22 around the country -- to have these facilities
23 on a fairly centralized basis.

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1 MR. NOTTINGHAM: One thing I think
2 it's important to note is just -- maybe it's
3 an interesting procedural to me, but I think
4 it's worth noting. We're here today having
5 this public hearing because there's a proposed
6 federal action that's been proposed for this
7 agency to take, which would be the
8 consideration and possible approval of an
9 application to build a new line of railroad.
10 So it's a proposed federal action that
11 triggers NEPA, triggers a process that we go
12 through to look at that -- and public
13 participation and comments are important.

14 It strikes me though -- and, of
15 course, the Department has gone through -- the
16 Department of Energy -- very extensive
17 environmental and public participation
18 processes for a period of years because of the
19 series of federal actions they are
20 contemplating taking.

21 And all that's important under the
22 National Environmental Policy Act, but it
23 occurs to me every day spent nuclear fuel

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1 moves -- or could move -- if not every day,
2 weekly -- across railroads and transportation
3 routes around the country. And there are no
4 public hearings about that. There are no
5 public comments that I'm aware of.

6 We certainly don't get involved
7 because it's not a new line of railroad. In
8 fact, if a railroad contracted tomorrow with
9 a lab or a facility to move a whole bunch of
10 spent nuclear fuel across the country to
11 another licensed facility I hazard to think we
12 wouldn't even know anything about it and
13 neither would the public that might be
14 interested in that.

15 Can you elaborate on that at all?
16 Is my description roughly accurate or --

17 MR. SEIDLER: Generally -- with
18 large campaigns there is extensive public
19 involvement on the front and -- of those
20 campaigns. But after, you know, that period
21 and after the shipping campaigns begin it
22 tends to become a fairly routine process.

23 And then, of course, there are

1 regulations affecting -- providing the public
2 with detailed information about specific
3 movements. That's -- that information is
4 provided to the governors of states and to
5 appropriate emergency response folks within
6 the states. But that is not a public process,
7 so once you're into a shipping campaign
8 there's not an extensive amount of public
9 communication about those campaigns. It's
10 really on the front end of the process.

11 MR. NOTTINGHAM: Okay.

12 MR. SEIDLER: The WIPP campaign is
13 a great example. The Waste Isolation Project
14 in New Mexico for the country's transuranic
15 waste -- it's actually our country's first
16 geologic repository for a different type of
17 material; very extensive involvement with the
18 Western Governors Association and with the
19 states along the transportation corridors on
20 the front end of that process -- training
21 programs and extensive interaction. And now
22 those shipments are, like I said, becoming
23 fairly routine as the facility's been open for

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1 a number of years.

2 MR. NOTTINGHAM: Okay. I'll loop
3 back -- maybe try to rephrase the question I
4 had a few minutes ago.

5 MR. SEIDLER: I'm sorry I
6 didn't --

7 MR. NOTTINGHAM: Is it -- no, it's
8 okay. This is my last question I promise for
9 this panel. Is it the nuclear power -- the
10 American nuclear power industry's position or
11 not that advancing the Energy Department's
12 spent nuclear fuel storage program, i.e.
13 largely focused on Yucca Mountain, is based in
14 large part on the objective of achieving a
15 more secure and safer and wiser policy
16 outcome? Or is it -- has nothing to do with
17 safety in getting us towards a more safety-
18 conscious and risk-based -- risk minimization
19 outcome?

20 DR. REDMOND: I would say that
21 it's -- we believe the fuel is safe stored
22 where it is. It's stored safely in Yucca
23 Mountain. And that ultimately the fuel should

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1 and needs to go to a geologic disposal.

2 MR. SEIDLER: But certainly the
3 concept of centralized geologic disposal is
4 viewed as a safety issue. That is -- I mean,
5 clearly the international consensus for
6 roughly 50 years that the idea of having it in
7 one place stored in an environment where
8 people wouldn't have access -- easy access to
9 it, including way off into the future -- is
10 safety based.

11 MR. NOTTINGHAM: Than you. Vice
12 Chairman Mulvey?

13 MR. MULVEY: Just quickly. You
14 also mentioned that there were some cost
15 advantages to centralizing it in a single
16 facility. Just to the quick and dirty here --
17 30 facilities have a staff of 50 guarding it
18 24/7. For the amount of money we're spending
19 on this railroad we could hire these people
20 for 1,000 years. That's about \$2-1/2 million
21 for 50 people and it's \$2.6 billion to build
22 the railroad. So it's a 1,000 years of
23 payroll for these 50 people per plant or about

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1 35 years for all the plants. Or you could
2 double the amount of people guarding it and
3 get 100 people guarding the plant and pay for
4 500 years of protection -- or about 17 years
5 for all the plants.

6 So I don't think the economics is
7 necessarily what's driving this. I think the
8 geological safety is probably a better good
9 rationale for it.

10 I have another question. That is,
11 you mentioned nuclear weapons and, of course,
12 nuclear waste or energy facility -- power
13 plants, some pharmaceutical research -- is
14 anything from nuclear medicine also going to
15 Yucca? Is that too low level radioactive
16 waste or also some nuclear medicine facilities
17 and hospitals, et cetera, would also be going
18 to Yucca Mountain?

19 MR. SEIDLER: The -- I believe
20 that the operating radiopharmaceutical
21 reactors are in Canada at present. I don't
22 believe we have -- I believe that's true. As
23 far as a reactor --

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1 MR. MULVEY: I meant the waste
2 from nuclear medicine -- is there any waste
3 from that that --

4 MR. SEIDLER: Absolutely. Yes,
5 certainly there's -- medicine generates a
6 fairly significant waste stream, and that
7 waste is low-level waste.

8 MR. MULVEY: So that would not be
9 going to Yucca Mountain then.

10 MR. SEIDLER: No, sir.

11 MR. MULVEY: Okay. Thank you.

12 MR. SEIDLER: And point of just
13 clarification because I want to make sure I
14 was clear. The safety -- the security force
15 is only one consideration in managing the
16 material at a site. There's infrastructure.
17 There are many other components, and the
18 security force is just one component.

19 MR. MULVEY: Thank you.

20 MR. NOTTINGHAM: Any further
21 questions for this panel? (No response.)
22 Thank you, panel. You've been very patient
23 and we appreciate your being here today. We

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1 will dismiss you now and we'll call forward
2 the next panel, which is a diverse group of
3 businesses.

4 Mr. John Huston of the Caliente
5 Hot Springs Resort, Mr. Robert Alan Kemp of
6 the Nevada Central Railroad, Mr. Gene Kolkman
7 of the Triple Aught business -- and if you
8 could please come forward now. And we will
9 start momentarily. We have some name tags --
10 place marks coming.

11 (Pause.)

12 MR. NOTTINGHAM: Mr. Huston,
13 whenever you're ready we will start with you.
14 Thank you for being here.

15 MR. HUSTON: Well, thank you, Mr.
16 Chairman and thank the Board for the
17 opportunity for me to speak with you today.

18 My name's John Huston. My wife,
19 Jan Cole, and I own the Caliente Hot Springs
20 Resort in Caliente, Nevada. I'm a geologist,
21 a water rights attorney, and past owner --
22 proud owner of the Great Western Railway in
23 northern Colorado.

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1 My father was a physicist and a
2 geologist and owned and operated uranium mines
3 in the 1950s, which I frequented as a child.
4 I'm a fourth generation Coloradan, but I've
5 lived here in Nevada for 14 years.

6 In addition to the hot springs in
7 Caliente my wife and own a ranch there and
8 also a farm in Montana and, as perhaps
9 Commissioner Buttrey would appreciate, I wish
10 I were on my tractor this afternoon.

11 I do not appear before you to
12 complain about Yucca Mountain or the proposed
13 Caliente Rail Line in general or the argue the
14 pros and cons of rail haul to storage of high-
15 level nuclear waste. I made the request to
16 speak to you because I want to focus your
17 attention on a specific problem with the
18 proposed Caliente Rail Line as determined by
19 DOE in its Record of Decision.

20 The problem I want to talk about
21 is that DOE wants to build this railroad to
22 haul high-level radioactive waste right into
23 and through, with major switching and staging

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1 in, the very center of Caliente, Nevada. I
2 find it ironic that DOE would move the
3 railroad route in Garden Valley to avoid a
4 land sculpture three miles, but would decide
5 that they need to run the railroad through the
6 middle of Caliente when they have identified
7 a very practical -- and engineered it --
8 alternative to connect with Union Pacific
9 Railroad four miles outside of Caliente at
10 Eccles.

11 Why has DOE chosen to build and
12 operate its radioactive waste hauling railroad
13 into and through the very center of a group of
14 human beings living in Caliente? We believe
15 mistakes have been made because the decision
16 to build into Caliente cannot reasonably --
17 can reasonably and safely be avoided, and so
18 is patently wrong and violates common sense.

19 I ask this Board not to adopt
20 DOE's FEIS on the Caliente Rail Line because
21 of mistakes and shortcomings in it, and that
22 those shortcomings are patent and obvious and
23 of record here. In short, I implore you to

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1 make DOE correct the problem by your refusal
2 to issue a certificate until DOE completes a
3 full and adequate environmental impact
4 disclosure.

5 Mistakes of record to which I
6 refer: DOE's mistakes before this Board began
7 with the application and notices thereof,
8 which state that DOE's proposed Caliente Rail
9 Line will connect with the Union Pacific
10 Railroad "near Caliente." This statement was
11 and is false and is misleading, both to this
12 Board and to the public.

13 DOE's Record of Decision filed in
14 this matter and after the deadline for filing
15 of comments by interested persons, government
16 agencies, and the public, and filed even after
17 the DOE's reply to comments opts for the so-
18 called "Caliente alternative segment." The
19 DOE has decided that it wants to connect with
20 the Union Pacific Railroad not near Caliente
21 but in the very center of the city.

22 DOE has a reasonable and very
23 viable alternative to connect with the Union

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1 Pacific Railroad that DOE has studied and
2 designed in detail -- the Eccles Alternative
3 Segment is what they call it -- whereby the
4 DOE's proposed railroad is -- would connect
5 outside Caliente four miles east.

6 Eccles would avoid risk, damage
7 to, and destruction of life, health, property,
8 and environment posed by the Caliente
9 alternative segment. No one living or working
10 in Caliente needs to be exposed to the
11 physical dangers, potential accidents, noise,
12 dust, and air pollution at the Caliente
13 alternative segment bring right to the
14 doorsteps of the very homes, churches,
15 businesses, and civic buildings.

16 Eccles would avoid the known and
17 unknown risks, the defined and undefined risks
18 to the lives and health of Calienteans that
19 will result from close, repeated, and even
20 prolonged exposure to radiation from DOE
21 cargos.

22 This is especially true in the
23 event that DOE is not required to use

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1 dedicated trains from point of origin to Yucca
2 Mountain since increased switching and waiting
3 time in downtown Caliente will result with
4 carloads of radioactive waste to sit by
5 general freight.

6 Eccles will avoid running across
7 the active and commercially important Caliente
8 geothermal field, the risk attendant thereto
9 which DOE has not studied and has refused to
10 address it in its EIS and Record of Decision.

11 Most importantly, when DOE, in its
12 reply to the comments attached to a letter
13 from the EPA, which purports to approve of the
14 Caliente alternative segment, was conditioned
15 upon the DOE including in its ROD a detailed
16 environmental restoration -- or riparian
17 restoration plan, but the ROD fails to include
18 that.

19 So the -- absolutely of record
20 there is a tremendous deficiency in the
21 representations the DOE's made to this Board
22 with regard to the environmental impacts and
23 the restoration to which it is committed.

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1 Thanks very much.

2 MR. NOTTINGHAM: Thank you, Mr.
3 Huston. We'll now hear from Mr. Gene Kolkman.

4 MR. KOLKMAN: I got stuck with
5 double duty here today. I was asked by
6 Gracian Uhalde to represent him. Would you
7 prefer I read Gracian's testimony?

8 MR. NOTTINGHAM: Oh, yes, Mr.
9 Uhalde was on our witness list, and I
10 understand he's not able to be here but you're
11 able to -- if you could summarize his remarks
12 if you'd like, and then also your own.

13 MR. KOLKMAN: Thank you.

14 MR. NOTTINGHAM: Thanks.

15 MR. KOLKMAN: I'll start with Mr.
16 Uhalde and then read in with the Triple Aught
17 Foundation. Thank you.

18 For the record, my name is Gene
19 Kolkman. I'm here today representing the John
20 Uhalde Company. Mr. Gracian Uhalde asked me
21 to share his views regarding the potential
22 construction and operation of the proposed
23 railroad in Garden and Cole Valleys. And he

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1 sincerely apologizes for not being able to be
2 here himself.

3 The entire family is opposed to
4 this proposed action, and they really would
5 like you to understand why. And it's not
6 about the science, it's not whether it's
7 technically feasible, it's not whether it's
8 economically feasible -- it's just
9 fundamentally wrong -- it's bad U.S. policy
10 from my point of view and from Mr. Uhalde's
11 point of view.

12 John Uhalde and Company started to
13 own and operate a livestock operation in
14 eastern Nevada four generations ago. They
15 talk about their founding father, if you will,
16 earning his first stake of a mule and a tent
17 by packing -- herding a herd of sheep across
18 northern Nevada, and then he was rewarded with
19 a mule and a tent. And on his way back to
20 start in eastern Nevada a bear killed the mule
21 so he had to leave the tent and he walked on
22 into eastern Nevada.

23 These are Basque people. They are

1 the salt of the earth. They're hard working
2 people and they overcame many trials and
3 tribulations to get going what they have going
4 today.

5 The Uhalde ranch operates from
6 Garden Valley in Lincoln County up into
7 Summers in White Pine County, which is
8 about -- I don't know -- 150 miles, 175 miles
9 north of there. They've been operating in
10 an -- you know, we've been looking out looking
11 in. And the way the Uhaldes I think would try
12 to explain it to you is they're in looking
13 out.

14 And they've been in these areas
15 that are remote and isolated by choice. It's
16 not a dollars and cents business. It's not
17 one where they lay out a profit stream and
18 they make some rational economic decision that
19 they can't make a buck at it so they go do
20 something else. It's a way of life. It's who
21 they are. It's part of our history in the
22 west, and we all care about them, and many
23 times they're our friends.

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1 Either route would dissect Mr.
2 Uhalde's allotment, just as Mr. Higbee stated.
3 And it essentially renders his livestock
4 operation unoperable. And the reason it's
5 important to understand the difference in
6 types of livestock, what they eat, what times
7 of year they eat it, where the water supplies
8 are, how storms run, mobility and the ability
9 to drift back and forth and over large spaces
10 is extremely important.

11 The needs during a lambing season,
12 for example, are different than the needs are
13 during a wintering season. And weather
14 dictates where you end up and the rate of
15 growth -- you get the amount of moisture you
16 get one spring and where you get it dictates
17 where you are at that time. It's just that
18 simple. And they've been operating for a long
19 time in a very arid environment. They're good
20 at it.

21 But all of a sudden all of these
22 outside forces come to play on them and
23 completely tip their family over, starting

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1 with the nuclear tests -- they too are some of
2 the downwinders. There are studies today I
3 know by the Department of Energy for various
4 forms of cancers and tumors and have been
5 identified to me personally as interesting
6 subjects by virtue of the numbers of tumors
7 they can have on tumors.

8 And they've carried that insult
9 with them since then. And in Gracian's
10 case -- he's my age -- 80 -- he's carried that
11 insult on him and his family his entire life.

12 Now, here we come again, United
13 States, and we're going to build a railroad --
14 some of us it call it the Chernobyl Choo-Choo
15 and various other names. But the point is --
16 we make light of it, but, here again, it's
17 insult on a top of insult. As Gracian asked
18 me to say, This is equivalent to rubbing salt
19 in an open sore wound. It just is almost too
20 much to bear.

21 And I'd just like to say that
22 it's -- again, it's not about -- they might
23 argue mitigation, we might argue dollars and

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1 cents -- we like to figure out solutions and
2 how we make these work or fit in tight places.
3 But this really isn't about this. It's about
4 caring about do we as a country care about
5 individuals anymore, do we worry about
6 people's individual ways of life that are
7 disappearing before our very eyes, do we feel
8 any obligation to them, or are we down to the
9 bottom line where it's just a matter of what's
10 technically feasible, what would the law allow
11 us to get away with, and we're off to the
12 races. And that's my testimony for Mr.
13 Uhalde.

14 MR. NOTTINGHAM: Thank you. That
15 will be duly noted.

16 MR. KOLKMAN: Thank you. And,
17 again, he apologizes for not being here.

18 For the record, again, my name is
19 Gene Kolkman. I am here today -- my first
20 purpose is here today to represent the Triple
21 Aught Foundation. The Triple Aught Foundation
22 is a nonprofit foundation responsible for the
23 construction, protection, and maintenance of

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1 a nationally significant sculpture in Lincoln
2 County, Nevada, internationally known as City.

3 In 1970 Michael Heizer completed a
4 search for a remote piece of property in
5 Nevada to begin building City. After
6 extensive exploration he located about 2,000
7 acres of private property in Garden Valley,
8 homesteaded around 1880, and he began to
9 assemble all these little private property
10 pieces into a block.

11 The area was undeveloped except
12 for an unsuccessful earthen dam built on the
13 edge of the property at the beginning of the
14 century. The dam is virtually out of sight
15 and it remains intact.

16 Garden Valley was home to no one,
17 used solely by local ranchers for livestock
18 grazing. Mr. Heizer considered this isolated
19 pristine environment to be the ideal condition
20 for building City.

21 City is an earth and concrete
22 structure over one mile long and one-quarter
23 mile wide. Although large for a sculpture,

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1 City is dwarfed by the size and magnificence
2 of Garden Valley. One cannot approach the
3 sculpture without being aware of its spacious
4 natural location.

5 Like the sculpture, the openness
6 of the Valley reduces the viewer's experience
7 to the basic elements of form. This
8 environment is a necessary basic foundation to
9 a sculpture with such scale and dimension.

10 The experience of City conveys
11 stillness and solitude. For this reason it is
12 necessary to protect Cole Valley as it is the
13 only valley between Highway 318 and City. And
14 it is the entry into Garden Valley and is an
15 introduction to the sculpture and its
16 environs.

17 The two valleys are connected by
18 ancient water flow channels, flora and fauna,
19 livestock grazing, geologic transitional
20 zones, and near primordial conditions in our
21 view.

22 Cole Valley and Garden Valley are
23 part of a basin and range ecosystem worthy of

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1 protection. Garden Valley is flanked by the
2 Quinn Canyon, Grant, Worthington, and Golden
3 Gate Ranges. At 11,299 feet Troy Peak is home
4 to an ancient stand of bristlecone pine,
5 Ponderosa pines, and mountain mahogany. Herds
6 of deers, antelope, and big horn sheep graze
7 in these ranges and on the desert floor.

8 About 30,000 acres of the
9 Worthington Mountains has been designated by
10 the United States Congress as wilderness, and
11 there is over 70,000 acres of wilderness again
12 designated by the U.S. Congress in the Grant
13 and Quinn Ranges.

14 These mountains were designated by
15 Congress as wilderness because of their
16 generally wild undisturbed condition. These
17 valleys are undeniably a part of this broader
18 ecosystem. The basin and range is
19 interconnected as one system, and the
20 integrity of these landscapes should be
21 sustained.

22 Economically, the future
23 management of City will favorably impact small

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1 businesses within Lincoln, as well as Nye and
2 White Pine Counties. For these counties will
3 be continued employment on construction and
4 maintenance of the sculpture. We expect
5 visitors to come throughout centuries to come.
6 Today City is one of the largest employers in
7 Lincoln County -- one of the largest. When
8 open to the public visitors to the site will
9 bring revenue to the general region.

10 Since building began on City in
11 the early seventies the sculpture has gained
12 national and international recognition as a
13 unique American artwork. Thirty years of
14 labor and over \$23 million has been
15 contributed towards its construction.

16 The Triple Aught Foundation, which
17 I represent, is a nonprofit foundation
18 established to oversee construction and future
19 maintenance of City. The foundation must now
20 look into the future to protect its legacy and
21 its gift to the American people.

22 I covered this background today
23 because the reader of the EIS the Department

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1 of Energy put out cannot gather this
2 information from that EIS. In fact, the DOE
3 compares the impacts of building this railroad
4 as nearly identical across alternatives. Yet
5 we know for a fact that there is no sculpture
6 with the magnificence of City within proximity
7 of any of these other routes.

8 As such, this is just one example
9 of the way that DOE's evaluation falls
10 short -- because they made their decision, in
11 our view, before fully developing an
12 analysis of impacts, before disclosing those
13 impacts to the public, and before fully
14 considering public comment.

15 Moreover, no expert of any kind
16 was brought in by the Department of Energy to
17 evaluate City and explain the significance of
18 this work of art to the public and to the
19 decision maker. Much of this pertinent
20 information was provided to DOE staff, but
21 they chose to ignore it.

22 Worst yet there is no analysis of
23 impact anywhere in DOE's document that

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1 compares building a railroad line somewhere
2 else, completely avoiding Garden and Cole
3 Valley, and saving a nationally significant
4 work of art. There is no disclosure of the
5 positive impacts to the nation that would be
6 derived by protecting City instead of
7 destroying it. The document does not disclose
8 the beneficial impacts that protection would
9 have on Lincoln County, nor does it show the
10 beneficial impacts that protection would have
11 on the world of art and the nation.

12 We know of no way of mitigating
13 the devastating impacts of this proposal of
14 building this railroad other than moving the
15 railroad route somewhere out of Cole and
16 Garden Valley -- and, for my personal view,
17 out of Nevada. Thank you for allowing me to
18 present this information. Respectfully, Gene
19 Kolkman. Thank you.

20 MR. NOTTINGHAM: Thank you, Mr.
21 Kolkman. We'll now hear from Mr. Robert Alan
22 Kemp of the Nevada Central Railroad.

23 MR. KEMP: Mr. Chairman, members

1 of the Board, thank you very much for this
2 time. I'm here under lawful objection. The
3 Nevada Central Railroad is actually giving
4 notice of claim of 20 USC based on the remarks
5 provided today by the applicant, DOE, under
6 2675 for suit.

7 STB regulations were specifically
8 created by Congress to protect and also
9 regulate railroads, not federal agencies that
10 are federally preempted from interfering with
11 railroads such as the DOE.

12 I'm the chairman and CEO of Nevada
13 Central Railroad, a Nevada corporation, and
14 chairman and CEO of Aviation Technologies
15 Limited Corporation of Nevada. The Nevada
16 Central Railroad construction project,
17 publicly described by trademark named Nevada
18 Central Bypass or NCR Bypass, filed on July
19 14, 2003, to the STB, five years prior to
20 DOE's decision to construct the Caliente Rail
21 Line, under FD 34382, is superior to and
22 federally preempts all of the actions by the
23 Department of Energy within the current DOE

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1 Docket FD 35106 for which today I'm now
2 participating for purposes of lawful notice.

3 NCR staff in 2003 have already
4 provided legal description and mapping to the
5 STB with additional mapping submitted again
6 to -- in DOE public hearings in 2004 and BLM
7 hearings concerning DOE land withdrawal in
8 2005. The DOE hearing occurred in Las Vegas,
9 Nevada. The BLM hearing occurred in Reno,
10 Nevada.

11 1996, prior to NCR's 2003 notice
12 to STB of Construction of the NCR Bypass, U.
13 S. Department of Energy, DOE, contacted NCR
14 staff -- not the other way around -- regarding
15 the NCR railroad construction project, the NCR
16 Bypass, in order to obtain a sole source
17 contractual will-serve commitment by NCR.

18 In order to meet any and all
19 requirements for the transportation
20 requirements of DOE within the state of
21 Nevada, meetings with DOE in Las Vegas totaled
22 seven each from 1996 through 1998. Meetings
23 with USAF, the United States Air Force,

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1 totaled four each and were conducted from '96
2 through '99.

3 Communications and correspondence
4 with DOE has been maintained by NCR to date.
5 DOE has authorized NCR, as late as 2003, to
6 utilize the EIS completed by DOE for studies
7 relating to the construction of rail systems
8 within the state for purposes of submission by
9 NCR to STB under the lawful doctrine of
10 identicality, in order to enable the NCR to
11 construct the NCR Bypass, which is
12 approximately 458 miles of main line high-
13 speed heavy rail system. NCR delayed a
14 warranted will-serve letter until 1999, served
15 again in 2003 to DOE. The provision was based
16 on the provision of rail service at the
17 request of DOE in 1996.

18 NCR executed three meetings in
19 person at the STB HQ from 2003 through 2008 in
20 relation to DOE regulations for construction
21 and pre-notice requirements. Two additional
22 meetings in person were executed within the
23 state of Nevada with DOE staff.

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1 The NCR has noticed the Secretary
2 of the Interior, then Gale Norton in 2003, of
3 the lawful notice and application for right of
4 way for the construction of the NCR Bypass
5 within the state of Nevada. NCR has filed
6 preliminary comments with the STB following
7 application by DOE for rail construction of
8 the Caliente route.

9 STB FCA has failed to lawfully
10 respond to any lawfully submitted information
11 by NCR, including and not limited to the
12 mapping, financial information, EIS,
13 operational data, and procedural violations as
14 a result of instituted federal claims against
15 STB director FCA Victoria Rutson and her
16 assistant David Navecky, relating to fraud,
17 industrial economic espionage, theft of trade
18 secrets, conspiracy regarding all public and
19 public corruption charges and falsification of
20 public records.

21 We are now considering both
22 execution of federal criminal and civil
23 charges against the director of proceedings of

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1 the STB. NCR will petition the President to
2 act under Congressional federal preemption to
3 terminate this application.

4 No construction agreement can be
5 executed by the DOE that would not violate the
6 preexisting NCR contracts for the manufacture
7 of both steel rail, specifically high
8 technology railroad tie systems, and would
9 violate the confidentially basis of the
10 proprietary railroad operational elements of
11 the construction of the NCR.

12 The EIS, according to the STB FCA,
13 was only viable in terms of dedicated
14 shipments solely executed by U.S. Government
15 and does not apply emphasis or not apply -- to
16 any commercial application of the Caliente
17 route for the execution of commercial
18 interstate commerce.

19 Now DOE states it will initiate
20 withdrawal -- excuse me -- unlawful execution
21 of commercial interstate commerce on the same
22 line specifically mapped out and lawfully pre-
23 identified by NCR. In other words, the terms

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1 of the operations of interference and
2 operations of interstate operations, including
3 interference, for which DOE assured NCR staff
4 that would not happen, relating to multiple
5 meetings that DOE would not interfere with the
6 commercial execution of the construction and
7 operation of the NCR Bypass; that this was
8 nothing more than a sole-source government
9 line. No commercial interstate commerce would
10 ever be interfered with. As a result, NCR
11 released and subsequently provided DOE with
12 privileged, confidential, proprietary, and
13 confidential information.

14 Now NCR discovers that DOE has
15 essentially converted its entire sole
16 government requirement for future
17 transportation of government materials to the
18 subcontract execution of same by converting as
19 a subcontractor a rail to be operated and
20 constructed for the sole private use of Union
21 Pacific, in direct contravention of the Board
22 regulations concerning unlawful construction,
23 competitive operations, as well as the Board's

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1 responsibilities in regulating the national
2 railroad system.

3 MR. NOTTINGHAM: Mr. Kemp --

4 MR. KEMP: I'm going to shorten my
5 comments --

6 MR. NOTTINGHAM: If you can just
7 wrap up -- 15 seconds, because --

8 MR. KEMP: Well, I object to the
9 context -- the format of the meeting. The
10 fact that now you've already dismissed DOE
11 from having to respond to your questions
12 related to my testimony today.

13 In summary, I want to say this. I
14 worked five years, moved to West Hampton, New
15 York, in order to execute a \$3.995 billion
16 bond guarantee with one of the leading
17 security firms in the United States -- that
18 was completed by 2003 -- so we could build a
19 privately-funded railroad in the state Nevada
20 for which I worked on for 33 years. We now
21 have 85 shareholders that are completely
22 waiting as we speak for application to be
23 completed.

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1 This is a complete interference
2 under federal preemption. There is no
3 authorization. There is no jurisdiction for
4 DOE under federal regulation of the STB 10901
5 to execute not only the application to
6 continue its operation, execution and
7 procedure, including this hearing today.
8 Thank you very much.

9 MR. NOTTINGHAM: Thank you, Mr.
10 Kemp. We appreciate all the witnesses being
11 here today.

12 Commissioner Buttrey, do you have
13 any questions for this panel?

14 MR. BUTTREY: I have no questions
15 for this panel.

16 MR. NOTTINGHAM: Commissioner
17 Mulvey?

18 MR. MULVEY: I might have just
19 one.

20 MR. KEMP: Yes, sir.

21 MR. MULVEY: If we were to approve
22 this line and DOE was to go ahead and build
23 it, could you bid to be the builder and

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1 operator of the line?

2 MR. KEMP: I believe that there
3 are no bidding restrictions. However, the
4 problem is this: By executing a bid, it is a
5 subversion of our lawful rights since we've
6 already mapped out, through lawful process,
7 the execution of a construction project for
8 over half of the line that DOE is presently
9 applying to construct.

10 Our line -- the overlap starts
11 just above Tonopah, goes on down past Indian
12 Springs near Yucca Mountain. We are the
13 individuals that are building, quote, a
14 commercial bypass -- commercial route to Primm
15 near Jean. We are the individuals that
16 connect that through Mina all the way back up
17 to Flanigan and then head straight up to
18 Vancouver and Washington state.

19 We are the individuals that then
20 connect from Primm due south through a tract
21 rights agreement that's already been -- this
22 has all been outlined to the STB on federal
23 record. We then go over the Parker Dam; we

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1 connect with a short line that we would --
2 feeder line that we build directly to the
3 Mexican border at Naco and connect up the
4 largest city-pair portion of rate-based
5 activity in terms of interstate rail commerce,
6 city-pair based, in the world.

7 This is a completely sole source
8 project under federal preemption. Under
9 Article VI of the Constitution it is supremacy
10 and supreme to any other application currently
11 on file.

12 Now, what's so interesting is that
13 all the maps have disappeared at DOE, all the
14 maps have disappeared at STB, all the mapping
15 has disappeared at the BLM and virtually every
16 other mode for which we have provided all of
17 our official documentation, including
18 evidentiary proofs.

19 And the most important thing we
20 find in this case -- and I would like to
21 conclude quickly because -- I'd love to answer
22 a million questions; I'll stay here till hell
23 freezes over to do that with you.

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1 The key is this: DOE is stopping
2 the first worldwide heavy high-speed railroad
3 transportation project to be constructed in
4 the entire world within the United States that
5 would provide massive jobs in terms of
6 patentable trademarked technology to the
7 citizens of the United States.

8 This is an electrified railroad.
9 It is operated through gas technology. It's
10 trademarked and patented so I can't continue
11 to explain this, but it's virtually
12 pollutionless. It is 82 percent more
13 efficient than any locomotive operated by any
14 railroad Class 1 operated in the United States
15 today.

16 Why would DOE even dream of
17 blocking a virtually pollutionless intermodal
18 heavy high-speed freight system that would
19 conduct freight operations at roughly three
20 times the average speed of any Class 1
21 railroad today in terms of efficiency?

22 MR. MULVEY: Would you be moving
23 their casks to Yucca Mountain?

1 MR. KEMP: We have no choice if
2 DOE decides to move the casks.

3 MR. MULVEY: As a common carrier.

4 MR. KEMP: Yes, sir. And as a
5 common carrier, as you know, we have no
6 choice. Furthermore, we could do that
7 safer -- 300 percent safer based upon the
8 engineering specifications -- operational
9 specifications of our line -- than any Class
10 1 carrier in the entire United States.

11 MR. MULVEY: Just one question to
12 Mr. Kolkman, and that is in regard to City,
13 didn't DOE address the problem of City by
14 agreeing to move the track three or four miles
15 from City so it was no longer in the view of
16 City and no longer affect the view and the
17 aesthetics?

18 MR. KOLKMAN: It is in the view of
19 City still. It's -- Garden Valley is maybe --
20 I don't know -- 10 or 15 miles wide, and you
21 can see their horizon some 20 miles or so I
22 guess. In that kind of an environment any
23 intrusion like that is noticeable, whether

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1 its -- you know, I think Michael Heizer has
2 said three miles is better than one, but it's
3 still destroys the work as far as the artist
4 is concerned and others.

5 MR. MULVEY: Thank you.

6 MR. KOLKMAN: You bet.

7 MR. NOTTINGHAM: Thank you. We
8 appreciate this panel's patience. We'll
9 dismiss you now. Thank you. And we will now
10 call up the next panel.

11 The next panel initially was a
12 long list of names. We're going to divide it
13 into two segments for seating purposes. I'm
14 going to call up now -- we'll call it Panel A
15 of the sixth panel. From Citizen Alert, Ms.
16 Peggy Maze Johnson, from the Dia Art
17 Foundation, Ms. Katie Sonnenbern, from the 9
18 Group, Ms. Jenna Morton, from the Nevada
19 Nuclear Waste Task Force, Louis Benazet, from
20 the Progressive Leadership Alliance of Nevada,
21 Launce Rake, and from the Toiyabe Chapter of
22 the Sierra Club, Ms. Jane Feldman.

23 We have several more witnesses

1 beyond these. The hour is getting late, so I
2 will ask -- including some witnesses who came
3 to us today and asked for special dispensation
4 to be put on the list at the last minute.

5 And we want to try to accommodate
6 all of those people who we have now signed up,
7 but we can only do that if we all stay strict
8 on our time allocations. I believe you've
9 each been allocated five minutes. And I
10 appreciate your patience. You've been here
11 all day listening to a lot, and I'm sorry that
12 you're near the end -- I guess somebody has to
13 be near the end -- it's just one of those
14 realities.

15 But we will start with Peggy Maze
16 Johnson. Can we have a mike on the far side?

17 MS. JOHNSON: Chairman
18 Hollingsworth, Commissioner Mulvey and
19 Commissioner Buttrey, thank you very much.

20 Thank you for the opportunity to
21 address you today. And on behalf of the
22 people of Clark County thank you for agreeing
23 to hold this very critical hearing in our

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1 county in this state.

2 I am here representing Citizen
3 Alert, an organization that began in the state
4 of Nevada in 1974. They've been bandied about
5 1982 and 1987. 1974 is when Nevada first
6 appeared on the radar in Washington, D.C. for
7 receiving -- possibly receiving nuclear waste.

8 It was then that the talk stated
9 in Washington that there was going to be a
10 determination made about where to repose tons
11 of nuclear waste from nuclear sites around the
12 country, sites mostly in the eastern and
13 middle sections of the country, by the way.
14 Many possible sites were going to be
15 considered, and Nevada in the west was one of
16 those states.

17 A group of concerned citizens
18 decided that they needed to alert our
19 neighbors and friends here in Nevada of this
20 impending possible danger to our safety.
21 Citizen Alert was born and incorporated in
22 1975 and we started our work educating
23 Nevadans.

1 Unfortunately we were a small
2 state with little or no power in the Congress
3 of the United States. And the decision was
4 made that Nevada should have the honor of
5 hosting this horrible waste at a site sacred
6 to the native people in our state, primarily
7 the Shoshones and other tribes. The
8 Congressional action was referred to as the
9 Screw Nevada Bill.

10 In 1987 Citizen Alert, recognizing
11 the menace of putting this most dangerous
12 material known to humankind on the rails and
13 roads of this country, formed the National
14 Nuclear Waste Transportation Task Force. We
15 built two mock nuke waste casks and started to
16 tour the country to let people in other states
17 understand that there was a menace that would
18 possibly come to a road near them and also put
19 them at risk.

20 I understand that you are not here
21 today to discuss the merits of the Yucca
22 Mountain project or the suitability of siting
23 a repository holding thousands of tons of

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1 dangerous nuclear waste in a totally
2 unsuitable and dangerous site. I do
3 understand that you are here to hear our
4 comments on siting a rail line in a totally
5 unsuitable manner through three counties that
6 will be negatively impacted.

7 You will hear some residents and
8 paid representatives of those counties come
9 before you and tell you that this might be a
10 great boon for their distressed areas. In
11 these times of economic downturns that are
12 almost unprecedented in a state that is near
13 the top of the list of home foreclosures and
14 unemployment there might be a sentiment to
15 take anything that might help. I disagree.

16 Citizen Alert believes that the
17 safety of our citizens must be first and
18 foremost. You will hear from the experts that
19 will go into the technical and scientific
20 reasons why this is a bad idea. That is not
21 my role here today.

22 I thank you for coming to Nevada
23 and now I'm going to challenge you to extend

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1 the same courtesy to the other counties around
2 the country that will have the same exposure
3 as Nevadans living in the exposure areas of
4 the transportation routes.

5 I believe that is your
6 responsibility. People around this country
7 know about Yucca Mountain, but are totally
8 unaware how they might be affected by the
9 transport of this terrible stuff.

10 I am submitting two reports that
11 were prepared for the Nevada State Agency for
12 Nuclear Projects. One details every county
13 and the number of residents that will be
14 impacted. The second report is a listing of
15 every Congressional district. There are
16 approximately three-quarters of the
17 Congressional district that will be impacted
18 by this transport.

19 Some of the Congresspersons listed
20 with their political affiliation noted will
21 not be serving in this next Congress, but this
22 will be updated. But you can be sure that
23 these elected officials are going to be

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1 apprised of this situation and know about the
2 risks their constituents will be facing if
3 this project is allowed to go further.

4 Therefore, Citizen Alert is
5 requesting and strongly urging you to extend
6 the same consideration to the rest of the
7 country you are to us by holding these
8 hearings along the proposed routes.

9 We believe that this scheme of
10 transporting this deadly material could result
11 in tragic accidents, and even more troubling
12 in these times when terrorism is on everyone's
13 mind, that the risk of this material in the
14 hands of terrorists would pose a risk that is
15 incomprehensible to contemplate.

16 And, you know, I had two really
17 nice typed pages, but then listening to
18 everybody else here today I have been
19 scribbling notes, and so I certainly hope you
20 ask me questions. Thank you very much.

21 MR. NOTTINGHAM: Thank you. We'll
22 now hear from Ms. Katie Sonnenbern. Is it Dia
23 Art or --

1 MS. SONNENBERN: It's -- actually
2 it's the Dia Art Foundation.

3 MR. NOTTINGHAM: Dia Art -- I
4 apologize. Dia Art Foundation.

5 MS. SONNENBERN: Thank you for
6 hearing us. I am the director of external
7 affairs at Dia. And I'm here to speak on the
8 behalf of our foundation.

9 Dia was founded in 1974 to support
10 the work of exceptional artists. We're based
11 in New York City, but Dia is a national
12 organization with international acclaim.

13 A renowned collection of artworks
14 from the sixties and seventies is housed at
15 the Dia Beacon Museum in New York's Hudson
16 Valley, which is actually the country's
17 largest center for contemporary art, spanning
18 some 300,000 square feet. Additionally, we
19 present art projects in New York City and we
20 maintain several large-scale art permanent
21 projects which are sited directly in the
22 landscape in New Mexico and in Utah.

23 Today I want to address an issue

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1 of national cultural patrimony, the profound
2 negative impacts that the Caliente Rail
3 Corridor will have on Michael Heizer's City.
4 This is a singular and irreplaceable
5 American artwork with Dia has served as a
6 primary conduit of the funding for.

7 If built as proposed construction
8 and operation of this rail will irrevocably
9 violate one of the most important artworks of
10 our time and render a devastating blow to the
11 future of America's cultural history.

12 Heizer is among the great artists
13 alive today. His artwork is included in
14 collections around the world and inspired such
15 national monuments as Maya Lin's Viet Nam
16 Memorial in Washington, D.C.

17 He is most well known, however,
18 for the one project that cannot exist within
19 museum walls, the Nevada sculpture complex,
20 City. Spanning over a mile by 500 feet City
21 is just that. It's the distance of the
22 Washington Mall, if you can imagine.

23 It comprises a series of abstract

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1 forms made of earth, rock, and concrete and it
2 is also the culmination of the pioneering and
3 uniquely American qualities that have created
4 such renown for Heizer. His architectural
5 scale and his use of industrial materials,
6 such as concrete, and construction techniques,
7 such as bulldozers, for the construction of
8 his sculptures.

9 Moreover, City synthesizes
10 Heizer's artistic vocabulary within a
11 transcendent and timeless setting -- Garden
12 Valley -- which is a majestic example of the
13 basin and range topography unique to Nevada.

14 This confluence of natural and
15 manmade beauty is rare, and it is in grave
16 peril if the Caliente Corridor proceeds as
17 planned. The noise, traffic, intrusion of
18 noxious weeds, and visual disruption, in
19 addition to the myriad health and security
20 risks which have been addressed at length
21 today, will irreparably intrude on visitors'
22 experience of this site, which is selected for
23 its grandeur and isolation.

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1 Inspired by the ancient monuments
2 of Egypt, Peru, Mexico, and Bolivia, which
3 Heizer visited as a young adult, he sought to
4 create a powerful masterpiece in this spirit
5 and history, and Garden Valley conveyed a
6 sense of timeliness, which today's City is
7 imbued with.

8 Despite these ancient writs
9 Heizer's monumental project is also uniquely
10 local and modern. City is being built by
11 residents of the region using contemporary
12 construction techniques and materials which
13 are wholly procured at the site.
14 Additionally, the project has helped provide
15 significant local economic benefit to Lincoln
16 and Nye Counties totally over \$23 million in
17 private funding.

18 Equally important, philanthropists
19 are committed to future expenditures of
20 private resources to maintain this sculpture
21 and to provide public access. It is without
22 doubt that when complete City will create
23 economic benefit for these counties by drawing

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1 national and international visitors.

2 As evidence, City is
3 internationally renowned even in its
4 unfinished state. It graced the cover of Art
5 in America in 1976 shortly after the beginning
6 of its construction and has since been known
7 as an icon of post-war art. When the rail was
8 proposed experts across the country expressed
9 shock and dismay at the prospect of losing a
10 monument of this nature and its potential
11 contributions to world culture when open.

12 Additionally, the New York Times
13 profiled the issue on the cover of its
14 national Sunday magazine as one example among
15 many of the level of international
16 significance that this has drawn.

17 Together with Dia, opposition to
18 the Caliente Corridor has been posed by
19 some -- voiced by some of today's more
20 preeminent cultural leaders -- among them,
21 Michael Govan, director of the Los Angeles
22 County Museum of Art, Glenn Lowry, director of
23 the New York's Museum of Modern Art, Kathy

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1 Halbreich, former director of the Walker Arts
2 Center, Minneapolis, Josef Helfenstein,
3 director of the Neal Collection, Houston, and
4 James Wood, president and CEO of the Getty
5 Trust in Los Angeles.

6 Each publicly testified to the
7 enormous cultural significance of City and the
8 fundamental responsibility to protect it as a
9 national treasure. Their letters and others
10 have been submitted as part of our formal
11 testimony.

12 Echoing their support was a
13 unanimous resolution passed by the Association
14 of American Art Museum Directors toward the
15 long-term protection of City. Representing
16 148 directors from 39 states, Washington,
17 D.C., and Puerto Rico the AAMD's resolution
18 predicted -- and I quote -- a great cultural
19 loss for the nation if the Caliente Corridor
20 were to proceed as planned. The College Art
21 Association published a similar declaration.

22 Dia has regularly submitted -- I'm
23 almost done.

1 MR. NOTTINGHAM: Good.

2 MS. SONNENBERN: Dia has regularly
3 submitted comments expressing our points of
4 contention against the Corridor, most recently
5 to STB on July 15. Nevertheless, DOE has not
6 made any significant efforts to directly
7 engage Dia or our colleagues in the expert
8 community that have testified to the
9 unequivocal cultural importance of City, nor
10 has the agency addressed the potential
11 cultural and economic benefits of preserving
12 City. As we have previously stated we welcome
13 the opportunity to participate in any such
14 analysis.

15 Today, however, I would like to
16 firmly reiterate our opposition to the rail
17 line as currently planned and to represent for
18 STB the sincere concern held by many Americans
19 about the proposed route among the cultural
20 community.

21 We request the Caliente Corridor
22 and any alternative rail line traversing
23 Garden Valley be rerouted to protect this

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1 major cultural contribution to our country.

2 Thank you.

3 MR. NOTTINGHAM: Thank you, Ms.
4 Sonnenbern. We will now hear from Ms. Jenna
5 Morton.

6 MS. MORTON: Thank you. I echo
7 the incredulity of Brad Jerbic from earlier.
8 I find it really refreshing to have somebody
9 who speaks so candidly about our objections.

10 And that incredulity is also
11 echoed in the community where I live and at
12 the school where my children attend. Many of
13 my counterparts there find this process
14 inaccessible and intimidating, so they sort of
15 count on me to be here, and I think you guys
16 are okay so I'm here. But thank you so much
17 for hearing our voices. It means a lot to us.

18 You probably won't hear a whole
19 lot that's new from me, but hopefully what I
20 am saying will serve as a relative summary of
21 some of the objections you've heard earlier.

22 I'm speaking to you today on
23 behalf of my 1,200 employees. I am a business

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1 person in Las Vegas. Las Vegas is the number
2 one tourist destination in the United States.
3 We got that way by creating the greatest brand
4 in the world. The Las Vegas business
5 community has gone to great lengths to develop
6 and guard that brand.

7 Our success is based both on
8 perception and experience. The Las Vegas
9 experience is one of a complete mental escape.
10 My employees work very hard to provide that
11 experience. Their livelihood depends on it.
12 Currently the experience matches the
13 perception we've created.

14 Nuclear waste destroys that
15 perception. Nuclear waste does not belong
16 here. Our success is responsible for dramatic
17 population growth in Nevada. Las Vegas -- the
18 Las Vegas Valley alone is now home to 2
19 million people and is one of the populous
20 cities in the American west. We are no longer
21 a stopover on the pioneer trail. With nearly
22 40 million visitors per year, during any given
23 week we are also home to an additional 800,000

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1 people.

2 This growth and success is based
3 on maintaining the experience that we have put
4 our hearts and souls into. We believe we
5 are -- I believe we are well aware of the very
6 real risks associated with the Yucca Mountain
7 project itself from radiation leeching into
8 our precious groundwater to Yucca's unviable
9 location in an earthquake zone and its status
10 as an early volcano. These risks alone should
11 have ruled Yucca Mountain out as a nuclear
12 waste dump from the get go.

13 I know that today we are focusing
14 specifically on a relatively small rail line
15 necessary to ultimately deliver this deadly
16 waste to Yucca Mountain -- small, that is,
17 relative to the distances the wastes would
18 have to travel on various existing lines prior
19 to reaching the Caliente line.

20 I submit to you that in doing an
21 environment impact study there are various
22 environments that must be taken into
23 consideration. While the focus may initially

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1 be the immediate physical environment of the
2 rail line itself that environment, while also
3 precious, does not exist in isolation.

4 While considering the consequences
5 of building this piece of rail you must be
6 aware that any decision has repercussions
7 extending from one coast of the United States
8 to the other. There's a map over there
9 indicating all the locations of the nuclear
10 power plants with waste, and then the big spot
11 in Nevada is representing Yucca Mountain. And
12 you can that's not a place where we actually
13 produce waste. But those clearly aren't rail
14 lines, but those are long distances that this
15 waste would need to travel.

16 To reach Yucca Mountain by rail
17 nuclear waste would have to travel through
18 nearly every major metropolitan area in our
19 country, exposing literally millions of people
20 to, in the best case scenario, a dose of
21 radiation equivalent to an x-ray with each of
22 thousands of shipments. Other scenarios range
23 from disruption of commerce by utilizing

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1 existing rail lines that carry a number of
2 other goods to dire consequences of a
3 potential accident.

4 Any consideration of the Caliente
5 line must take into account the potential
6 environmental impact on each of these
7 communities. Truly, prior to approval, each
8 of these communities that may be negatively
9 impacted ought to be offered this same
10 opportunity to comment as you have graciously
11 offered us today.

12 In addition to the vast physical
13 environment you must also consider the
14 economic environment. Speaking on behalf of
15 the Las Vegas business community I tell you
16 that even if we ignore the potentially dire
17 physical consequences of the transportation of
18 deadly nuclear waste through our community the
19 mere perception of any risk associated with
20 its transport to Yucca Mountain severely
21 damages Nevada's economic engine.

22 Deutsche Bank gaming analyst Bill
23 Lerner puts it this way -- and I quote him --

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1 The prospect of Yucca Mountain as a sole
2 nuclear waste repository carries great
3 economic risk for Nevada. We believe both
4 inbound travel and population migration would
5 be materially hampered by the simple prospect
6 of Yucca transport and storage risk.

7 Well, let me just wrap up by
8 saying land identity and carefree gestalt may
9 have a disproportionate value for a Las Vegas
10 community, but every other community including
11 my beloved Chicago, the home of my company's
12 flagship, through which that nuclear fuel will
13 have to travel prior to reaching the Caliente
14 line, could make a similar claim to the
15 potential negative economic impact of the
16 perception of threat.

17 In addition to my responsibility
18 to my employees, both here and in Chicago, I
19 am also a mother. So I urge you on behalf of
20 my three children and, indeed, every one of
21 the millions of people who live along the
22 transportation routes across America, to find
23 that both the physical and economic

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1 environmental impacts of the Caliente line are
2 too great.

3 Nuclear waste is deadly and it
4 belongs neither in Nevada nor on our rail
5 lines throughout the country. Thank you.

6 MR. NOTTINGHAM: Thank you, Ms.
7 Morton. We'll now hear from Mr. Louis
8 Benazet.

9 MR. BENAZET: Yes. Thank you.
10 Thank you all for providing the opportunity to
11 comment and for coming to Nevada. And I want
12 to also thank Mrs. Judy Treichel of the Nevada
13 Nuclear Waste Task Force for giving me her
14 time.

15 In the interest of having somebody
16 from -- who's an ordinary citizen from Lincoln
17 County address you people, I live in -- near
18 Pioche -- actually on the west side of the
19 Pioche hills -- the old Prince Mine. Looking
20 down the valley it's about 25 miles to
21 Caliente if you could see it, but it
22 disappears into a canyon down there.

23 It's an original terminus of a

1 railroad line that Mayor Kevin Phillips talked
2 about that was built in the early days that
3 ran up to the town of Pioche. That line was
4 actually abandoned about 1985 by the Union
5 Pacific Railroad.

6 The proposed Yucca Mountain Rail
7 Line originating in Caliente would not
8 actually restore anything like the old line
9 that was -- that came up Middle Valley since
10 it cuts off to the west about maybe ten miles
11 north of Caliente, goes out through Bennett
12 Pass, and on out to where Mr. Heizer has his
13 artwork and some of these other very remote
14 areas.

15 The -- when I came to this hearing
16 I kind of thought it was going to be an NRC
17 hearing. And one of the things I wanted to
18 say was that I'm concerned about the
19 possibility that a decision for Yucca Mountain
20 would be compartmentalized so that you don't
21 really get to see everything that you're
22 dealing with here.

23 I'm disabused of this fear

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1 actually by the questions you people have
2 asked. You've gone far beyond just concerning
3 yourself with the question of how do you move
4 a substance from Caliente to the vicinity of
5 Tonopah or Yucca Mountain. You're looking at
6 a lot of issues.

7 I would like to add to the
8 question of the mammoth unprecedented
9 transportation project that this is likely to
10 set in motion and the unprecedented
11 establishment of a high-level nuclear waste
12 repository for all the nation's most dangerous
13 materials.

14 Other issues that are related to
15 this -- we heard from Paul Seidler of the NEI.
16 One of the things he didn't comment to you is
17 that the NEI sees Yucca Mountain as the
18 roadblock that stands in the way of creating
19 a nuclear power renaissance in this country.
20 So we're talking about the potential of really
21 getting into nuclear power in a big way if we
22 can deal with the waste problem.

23 The trouble is that bad as the

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1 waste problem is -- and I think it's
2 insurmountable -- we also have the problems of
3 the limited resource, which -- unrenewable
4 resource, which uranium represents, and all
5 the hazards associated with the production of
6 nuclear fuel, including mine tailings and the
7 waste associated with that.

8 As an opponent of Yucca Mountain
9 projected I've felt that I'm really an anti-
10 nuclear person, you know. But I think that my
11 opposition to the Yucca Mountain was really
12 galvanized -- my awareness took over in 1987
13 when what seemed to be a more or less
14 dispassionate scientific fair process of
15 finding a repository turned into a political
16 process whereby all the other places that
17 didn't want a repository said stick it on
18 Nevada, got that through Congress, created the
19 Screw Nevada Bill.

20 There were other sites being
21 considered, and some of them had a far better
22 potential for being a good repository site.
23 All the sites in the east were in granite

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1 formations, granite -- old rocks that have
2 been there forever, never been moved.

3 The western sites they were
4 considering by contrast, Yucca Mountain -- the
5 Yucca Mountain tuff, the basalt of the Hanford
6 region are in tectonically active areas.

7 The third area in the west was
8 actually in Texas. It was a salt formation
9 near Deaf Smith Country. What happened,
10 however, was that an important senator from
11 Louisiana, who was also in the area affected
12 by potential choice of a salt formation,
13 staged the Yucca Mountain Screw Nevada Bill,
14 which we have been dealing with ever since.

15 This illuminated an alternative.
16 So the decision that's going to be made for
17 Yucca Mountain is going to be made in the
18 absence of a really viable alternative. We're
19 trying to make a round peg go into a square
20 hole here and make it work.

21 I have had other difficulties in
22 my opposition to the Yucca Mountain project,
23 and that has been the effort on part of some

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1 local officials to see it entirely as an
2 economic boon potentially to the county. And
3 I feel that because this has happened some of
4 the information that has come out of our local
5 government oversight programs has not
6 addressed the real issues that you'll be
7 having to deal with in the case of the Yucca
8 Mountain Railroad from Caliente.

9 And if I could just quickly list
10 them, because I know my time is up --

11 MR. NOTTINGHAM: If you could just
12 wrap up please. Thanks.

13 MR. BENAZET: Yes. The major
14 potential for flooding in the Meadow Valley,
15 Clover Valley area where the city of Caliente
16 is located -- the rail line comes in Clover
17 Valley and would turn up Meadow Valley.

18 The fact that no analysis has been
19 done of a potential incident in the city of
20 Caliente -- the mayor and his folks have said,
21 Well, that's just not something that's going
22 to happen -- we're not going to look at that.
23 It's very important.

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1 The fact that we are the
2 downwinder communities from the nuclear
3 waste -- nuclear atomic testing and we need
4 compensation for that as well.

5 So those are the issues. Thank
6 you very much.

7 MR. NOTTINGHAM: Thank you, Mr.
8 Benazet. We'll now hear from Ms. Jane Feldman
9 of the Toiyabe -- please help me with the
10 pronunciation -- Chapter of the Sierra Club.

11 MS. FELDMAN: Thank you so much,
12 gentlemen, for convening this hearing here.

13 It is, however, unfortunate that
14 we're here today talking to you, unfortunate
15 because the need for a 300-mile railroad
16 through the heart of Nevada is disputed,
17 questionable, and thoroughly unwanted.

18 There should be no talk of
19 additional rail line across virgin territory
20 for several core reasons. I have six of them.

21 The end point of the rail line is
22 a proposed facility. The proposed facility
23 has an incomplete design. The transportation

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1 canisters for high-level nuclear waste are not
2 yet prototyped. The transportation of high-
3 level nuclear waste is deeply controversial,
4 as you've seen today, and it continues to draw
5 strong opposition from many corridors. Fifth,
6 the cost of nuclear power is skyrocketing.
7 And, sixth, the new federal administration
8 that we're waiting for is already reevaluating
9 and re-prioritizing our national energy
10 landscape.

11 There's a solid probability, and
12 the probability is strengthening every day,
13 that the proposed repository at Yucca Mountain
14 for high-level nuclear waste will never be
15 built.

16 There are too many questions, too
17 much opposition to creating and transporting
18 the most dangerous toxin ever known to man,
19 too many concerns about global warming, too
20 many profound changes in energy technology and
21 financing that will impact the decision of
22 whether a high-level nuclear waste repository
23 will ever be built.

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1 There is absolutely no public
2 convenience or necessity for this rail line.
3 The public, in fact, is highly inconvenienced
4 in several different ways by the
5 transportation of high-level nuclear waste
6 thousands of miles through every urban center
7 in the continental United States to Yucca
8 Mountain. And there is abjectly no necessity
9 to do that. A new rail line through Nevada
10 should not be approved at this time because
11 its need is in question.

12 As an environmental organization,
13 the Sierra Club is intensely interested in the
14 specific routing of any proposed disturbance
15 to the landscape and the ecosystems that would
16 be affected by it. A large proportion of
17 Nevada -- you've already heard this, too.
18 Over 80 percent of Nevada is managed as public
19 land. It's managed by federal or state
20 agencies as national forest, wildlife refuges,
21 areas of critical environmental concern,
22 critical habitat under the U.S. Fish and
23 Wildlife Service Habitat Conservation Plans

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1 for Endangered and Threatened Species,
2 National Park Service sites, wilderness,
3 wilderness study areas, national conservation
4 areas, national rec areas, and state parks.

5 Any place in our desert where
6 there is surface water is a precious place
7 where plant and animals thrive, biodiversity
8 is high, and people treasure.

9 In Nevada, whether we're in the
10 Mojave Desert or the Great Basin Desert, we
11 fiercely protect our places with surface
12 water. Surface water includes washes that
13 have water only when the infrequent rains
14 reach it.

15 Surface water here in the desert
16 include seeps and springs that slowly express
17 water from between rock layers where plants
18 and animals congregate. Surface water is not
19 lakes and rivers of the wetter places of our
20 nation.

21 I live here in Las Vegas, and my
22 son is a junior at the University of Nevada in
23 Reno. That's 450 miles from here up Highway

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1 95, past Mercury and Yucca Mountain and Beatty
2 through Tonopah, past Luning and Mina, through
3 Hawthorne and Yerington and Fernley.

4 Every time I drive that route, I
5 see wetlands, wildlife refuges, and state
6 parks. In the cold winter months I watch the
7 cottonwoods turn gold and the creeks steam
8 across the valleys with geothermal heat. I
9 watch migrating birds search out the wet
10 places to rest overnight. Nevada is a
11 beautiful place for living things.

12 There must be a careful
13 examination in the EIS -- the supplemental EIS
14 of specific resources along the proposed 300-
15 mile corridor from Caliente to Tonopah and
16 then south to Beatty into Yucca Mountain to
17 determine what kinds of lands, what kinds of
18 habitats, plants, and animals will be affected
19 by the disturbance there. A new rail line
20 through Nevada should not approved at this
21 time because the environmental impacts need to
22 be more carefully quantified.

23 Let me end by saying that the

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1 Sierra Club has said for the last 25 years
2 about what we should be doing. First, we
3 should stop creating high-level nuclear waste.
4 That means that we should close the nuclear
5 power plants that we already have and we
6 should not build any more.

7 Second, we should make the high-
8 level nuclear waste that already exists as
9 safe as possible and keep it as close as
10 possible to the site where it's generated.
11 That's how to minimize the exposure of both
12 people and the environment to the risk and
13 threats presented by the most dangerous
14 material known to man.

15 And particular, the proposed C-22
16 storage casks need to have design,
17 manufacture, quality control, and monitoring
18 procedures tested and finalized. These
19 storage casks are meant to store high-level
20 nuclear waste in Yucca Mountain, but these
21 engineered barriers could be used to store
22 safely nuclear waste at the sites of
23 generation.

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1 Additionally, DOE and the nuclear
2 industry should be working on better
3 monitoring and maintenance for dry casks and
4 pool storage. This should include vastly
5 better procedures for monitoring and
6 inspecting dry casks and procedures for
7 transferring waste from them if and when they
8 start to deteriorate. There is presently only
9 limited ability to monitor and no ability at
10 all to transfer from defective casks.

11 Finally, sites close to every
12 nuclear power plant need to be identified and
13 secured for long-term storage. Right now
14 these places are short-term storage sites and
15 they need to be managed for long-term storage.

16 In summary, instead of wasting
17 money on premature and unwarranted rail lines
18 with the STB, the DOE should instead be
19 working on fuel storage and dry cask design
20 and management and on-site safety. Thank you.

21 MR. NOTTINGHAM: Thank you, Ms.
22 Feldman. We'll now hear from Mr. Rake.

23 MR. RAKE: Thank you, Chairman and

1 Board members. I really appreciate the
2 opportunity to speak today.

3 Again, my name is Launce Rake.
4 I'm with the Progressive Leadership Alliance
5 of Nevada. We're actually a coalition of
6 about 30 groups here, including the major
7 labor unions here in the state of Nevada,
8 conservation groups, groups that are working
9 for social-economic equity and justice
10 throughout the service state.

11 We've also partnered with national
12 organizations, including my friends from the
13 Sierra Club and the Friends of the Earth in a
14 recent advertising campaign nationally and
15 locally that points out the fact that we
16 believe that this Caliente Rail Line and Yucca
17 Mountain generally is profoundly bad public
18 policy initiative by the Department of Energy.

19 And on that subject I'd just like
20 to briefly refer to Ms. Neumayr's testimony
21 earlier from the Department. She referred to
22 the Yucca Mountain as a geologic barrier -- is
23 her rationale for putting nuclear waste there.

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1 The problem is that Yucca Mountain
2 itself is not a geologic barrier. The barrier
3 that we're talking about is an engineered
4 barrier. That's why we spent, you know,
5 hundreds of millions of dollars devising casks
6 to contain this nuclear material.

7 And I think that's significant,
8 because if we have an engineered barrier that
9 is this cask it doesn't have to be in Yucca
10 Mountain. In fact, it doesn't make any sense
11 at all to transport it across the country and
12 stick it in a hole in the ground in our
13 backyards. It would be better to have those
14 casks on site wherever they are.

15 And that's where the
16 transportation element is that you have to
17 deal with. So I think you really do have to
18 think about this issue of does it even make
19 sense to transport this material on the
20 Caliente Rail Line or on any railroad across
21 this country. So I think that's important.

22 But there's another element of her
23 testimony that I found problematic, and that

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1 was her -- a dismissal -- I think fairly
2 cavalier dismissal -- of the legal concerns of
3 the Shoshone people. And I think that her
4 reference was that the federal government and
5 the Department of Energy provided some
6 gracious grant of land for the Shoshone to
7 continue living in Nevada.

8 The fact is that I think that's
9 representative of the Department of Energy's
10 relationship to the people of Nevada and, in
11 fact, people throughout this country. And
12 that is that they're -- the Department of
13 Energy's concerns trump the legal, political,
14 and historical concerns of the people that
15 they live with -- and their neighbors. And
16 that's true in Savannah River, it's true in
17 Hanford, Washington, it's true in Nevada.

18 We've had a terrible experience
19 with them over the years. The Department of
20 Energy and its predecessor agency, the Atomic
21 Energy Commission, of course, is responsible
22 for the development and explosion of nuclear
23 weapons at the Nevada Test Site above and

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1 below ground. You've heard a little bit about
2 that today.

3 But I think it's an example of the
4 relationship that that Department has to the
5 people here. And that is that people I think
6 believe -- and I think they have some evidence
7 to suggest -- that they are suffering from
8 disease because of the activities of the
9 Department of Energy.

10 So we don't really trust them, and
11 I don't think we have good reason to trust
12 them based on the record of their scientific
13 and technical work over the years on Yucca
14 Mountain either, which has been profoundly
15 troubled and in some cases fraudulent I would
16 suggest.

17 So there we are. The fact is I
18 think that Ms. Neumayr's comments about the
19 legal rights of the Shoshones -- it's more
20 than just ignorance. It's probably malicious
21 as well. And I say malicious because it's --
22 it strains of credibility to suggest that the
23 counsel for the Department of Energy is

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1 unaware of the 150 years of historic political
2 and legal relationship to the Shoshone to the
3 federal and state governments. It's quite
4 complex.

5 But, additionally, the Department
6 of Energy and the Atomic Energy Commission has
7 been dealing with issues with the Shoshone for
8 60 years. So she's aware that there are
9 complex issues out there. And to dismiss them
10 so easily is troublesome.

11 I'd like to kind of change tracks
12 a little bit and just say that I love Lincoln
13 County. I think it's a beautiful place. I
14 like to spend my money up there. I like to
15 encourage people to do tourism up here. As
16 much as I like Las Vegas -- I'm a Las Vegas
17 resident on the federal land grant that we
18 call metropolitan or county.

19 But the point is that Lincoln
20 County is a beautiful place but is an
21 environmentally sensitive place. I can wrap
22 up very quickly.

23 MR. NOTTINGHAM: Thank you.

1 MR. RAKE: A few years ago the --
2 in Rainbow Canyon, one of the environmental
3 treasures I think of the Great Basin, a flood
4 came along that knocked out the Union Pacific
5 Railroad. The fact is that Lincoln County did
6 not have the ability to respond -- the state
7 of Nevada did not have the ability to
8 immediately respond to those needs, and that's
9 the same sort of event that could affect some
10 rail line in Caliente.

11 That's kind of a nightmare
12 scenario obviously, but I think that we need
13 to take into account the fact that we just
14 don't have the resources -- the infrastructure
15 to respond to some sort of disaster on a
16 statewide basis or certainly on a Lincoln
17 County basis.

18 Again, I want to thank you for
19 your time and your patience today. And thank
20 you very much.

21 MR. NOTTINGHAM: Thank you, Mr.
22 Rake. And thanks to everyone on the panel.
23 I just have a couple of quick comments. Ms.

1 Sonnenbern, I wanted to thank you especially
2 for your very eloquent testimony. You echoed
3 some of the testimony we also heard from Mr.
4 Kolkman. I wanted to thank him too -- I
5 didn't remember to do so after his testimony.

6 We do a lot on this Board with
7 some things that for non-transportation folks
8 would probably sound pretty dry -- proposed
9 abandonments of rail lines. Every once in a
10 while we may get a merger that's kind of a big
11 deal in our little world. But you've kind of
12 helped elevate the tone here to help come --
13 did you come all the way from New York, by the
14 way?

15 MS. SONNENBERN: I did, yes.

16 MR. NOTTINGHAM: That says a lot
17 in itself. And we don't get exposed to the
18 world of sculpture and the arts too often in
19 our work. Although we can certainly throw a
20 stone and probably hit some of the great
21 museums of our country from our office we
22 probably don't spend much time actually
23 entering those doors as we'd like.

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1 So thanks -- to thank you for
2 elevating the tone here and educating us a
3 little bit speaks volumes about your
4 commitment to this and all the people you
5 mentioned that you represent.

6 MS. SONNENBERN: Well, I'd be
7 happy to send you some additional information
8 about the sculpture if that would be useful
9 and also to help situate perhaps Michael
10 Heizer's place in our history, because I
11 really can't under-emphasize how important he
12 has been in terms of defining the landscape of
13 art in the last 30 years.

14 In the sixties the United States
15 experienced a kind of resurgence of cultural
16 energy and there was a generation of whom
17 Michael was sort of among the pioneers who
18 moved outside of the galleries and came to the
19 American west to make artwork.

20 And, you know, other works which
21 are in Dia's collection -- Robert Smithson's
22 Spiral Jetty, which is in the Great Salt Lake,
23 Walter De Maria's Lightning Field, which is in

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1 rural New Mexico. These are the artworks that
2 are covering art history books that are being
3 taught today. They have an international
4 renown and they are inspiring artists or
5 historians, designers, to fashion people -- I
6 mean, I can't -- the breadth of influence --
7 writers -- is profound.

8 And Heizer's project is
9 particularly difficult in the sense that it
10 isn't yet complete. And so we don't have the
11 thousands of visitors to show you who have
12 been there and who can stand in testimony to
13 its importance. All we can represent is the
14 legacy that he already has, that the work
15 already has, and the desire that exists for
16 people to see that work complete and available
17 to the world.

18 MR. NOTTINGHAM: Well, thank you.
19 And I can assure you that the record is very
20 full of strong statements about the importance
21 of that work of art and what it symbolizes,
22 and we welcome anything else that you'd want
23 to send us. The record will be closed I

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1 believe today but -- the official record --
2 but, you know, we're always open to receive --

3 MS. SONNENBERN: Good.

4 MR. NOTTINGHAM: -- mail from
5 taxpayers any time. And thank you. Ms.
6 Morton, just -- the 9 Group -- is that your
7 business name?

8 MS. MORTON: Yes.

9 MR. NOTTINGHAM: And are you in
10 the hospitality industry?

11 MS. MORTON: We are -- restaurants
12 and nightclubs. We have restaurants in
13 Chicago, Dallas, and Las Vegas and nightclubs
14 here.

15 MR. NOTTINGHAM: Very good.
16 Colleagues, any questions for this panel?

17 MR. MULVEY: Yes, I have a couple
18 of questions. Ms. Sonnenbern, I've been to
19 your operation up in Beacon. My wife takes me
20 all these places. But it would be good to
21 actually -- if you could send something on
22 this because I think the visual would be very,
23 very helpful. And --

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1 MS. SONNENBERN: Yes, I didn't
2 realize that that was an option today.

3 MR. MULVEY: Let me ask something
4 about this. I mean, it's -- this railroad
5 would be a distraction -- would be an
6 intrusion. And it's one mile long if I'm not
7 mistaken. Would sinking the railroad for the
8 one mile so it was below eye level -- would
9 that be helpful because it is three miles away
10 now. But if it's three miles away and also
11 below eye level would that be good enough
12 or --

13 MS. SONNENBERN: You know, I'm
14 concerned about responding to that. I know
15 that one of the primary concerns that the
16 artist has is the degradation of the Valley
17 from an ecological perspective. And I suspect
18 that digging down in that way would be
19 extremely intrusive.

20 It's worth noting that he -- I
21 mean, it is -- he is doing construction in the
22 Valley, but has done it with the utmost
23 respect and integrity for the natural

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1 ecosystem of the site. I mean, he's in --
2 Nevada and California roots. His grandfathers
3 were geologists. His father was an
4 anthropologist.

5 He has a very complete sense of
6 the environment, and it's only recently that
7 he's even been using large-scale construction
8 machinery. Most of the work was done really
9 at a small local level.

10 So I think that there's a very big
11 concern from our perspective about the
12 disruption of the natural environment with the
13 submerging of a railroad. And that -- you
14 know, perhaps from a visual perspective there
15 could be some mitigation there. But I think
16 that there would still be really significant
17 oral impacts.

18 One of the things that Dia has
19 done is conducted a natural soundscape study
20 at the site. And based on our analysis we've
21 determined that Garden Valley is among the
22 quietest places in the entire country. We had
23 to get special equipment out there to measure

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1 the sound. And if you imagine honking a horn
2 from -- I believe it was either a mile-and-a-
3 half or two miles you could hear that horn
4 across the entire Valley. They estimate that
5 every train that goes by will be audible for
6 at least 20 minutes before and 20 minutes
7 after it's in the Valley itself.

8 So I think that these are issues
9 that I'm not sure could be mitigated by
10 submerging the rail. And the cost of that
11 would make me ask the question of whether just
12 relocating it would be equally beneficial.

13 MR. MULVEY: Okay. It would be
14 more costly. There are sound deadening
15 approaches, but, again, they raise the cost.
16 Ms. Johnson --

17 MS. JOHNSON: Yes.

18 MR. MULVEY: -- you were talking
19 about the potential for terrorists who attack
20 the train and to I guess steal the casks. But
21 these things weigh five tons. And wouldn't it
22 be easier to protect these casks in transit
23 and protect them at a place like Yucca

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1 Mountain than trying to protect them at 30
2 places around the nation? If indeed you're
3 afraid of terrorists actually breaking in and
4 getting the materials isn't it more vulnerable
5 when it's spread around the country?

6 MS. JOHNSON: Well, I have to tell
7 you that by simply the act of bringing it to
8 Yucca Mountain does not dissolve the effect of
9 it being still on site, because once it comes
10 out of the reactor it has to stay outside for
11 five years. So it's there. It's going to be
12 there.

13 So it isn't going to reduce the
14 number of sites because once they start
15 closing the ones -- if they start closing them
16 the proposal, which I totally disagree with,
17 is to build more.

18 Ward Sproat from the Yucca
19 Mountain project just a month or so ago talked
20 about the fact that they weren't looking at a
21 second site; that they were just going to
22 expand Yucca Mountain.

23 You know, two years ago NEI came

1 out with this little thing that came out in
2 the paper that said, Oops, we made a mistake;
3 Yucca Mountain can hold nine times the amount
4 of waste that we originally said that it could
5 hold.

6 So you have to understand that
7 those of us in Nevada and other groups that I
8 have worked with around the country have a
9 tendency not to believe what we are hearing,
10 you know. And, Commissioner Buttrey, you
11 asked -- or you spoke to the man from NEI --
12 the scientist -- and you told him how glad you
13 were that there was a scientist that you could
14 ask these questions.

15 And I would tell you, you know,
16 that this is a project that has not been peer
17 reviewed, which is almost unheard of in the
18 scientific community. And rather than talking
19 to scientists from the NRC, the NEI, DOE, even
20 the state of Nevada, you need to seek out
21 scientists that are independent.

22 People like Dr. Allison McFarland,
23 that until a year or so ago was at MIT, that

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1 has studied this project extensively since
2 1987 and has said that Yucca Mountain is
3 absolutely the worst place to have a
4 repository.

5 Now, that's somebody that's not
6 paid by the government, not paid by the
7 nuclear industry, and not paid by the state of
8 Nevada, but is actually doing this on an
9 independent basis.

10 You know, I think that those are
11 the people you need to talk to. You know,
12 when the man from NEI said, Well, you know,
13 they can't start the repository until they get
14 the license application but you all can start,
15 you know, doing the railroad.

16 Well, you know, that seems to be
17 me a little bit backwards. Why would you
18 build a railroad and put all that money into
19 something that you might not need unless you
20 want to cart all those vegetables and fruit
21 that Congresswoman Berkley was talking about?
22 I mean, we would appreciate it.

23 MR. MULVEY: And I'm a great

1 believer in independent assessments by people
2 who are not hired guns. And I think there is
3 a problem that you get too much from people
4 with vested interests on both sides of issues.
5 It's always good if we can hear from people
6 like university professors and people from
7 think tanks, et cetera, who don't have any
8 preconceived notions.

9 One of the studies that you
10 mentioned from Deutsche Bank, Ms. Morton, that
11 looked at something that I'm interested in --
12 and that is what is the overall economic
13 impact of siting these kinds of things.

14 We have another project we're
15 looking right now and an issue there as well.
16 And the data, I must tell you, are very, very
17 scant. So if you have a copy of that Deutsche
18 Bank report and you could send it to us I
19 would be greatly appreciative of that.

20 MS. MORTON: It's actually not a
21 specific report. It's an opinion of a gaming
22 analyst who focuses on specific -- gaming in
23 Nevada and other locations around the country.

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1 And -- but I can check with --

2 MR. MULVEY: Because a gaming
3 analyst at least I assume is a statistician.

4 MS. MORTON: Excuse me?

5 MR. MULVEY: At least I assume
6 he's a statistician if he's a gaming analyst.

7 MS. MORTON: Yes, I'm assuming so
8 too. But I can get some more information from
9 him.

10 MR. MULVEY: Ms. Feldman, you were
11 talking about an overall opposition to nuclear
12 power in general, and you mentioned global
13 warming. But isn't it true that some of the
14 environmental community now have backed away
15 from opposition to nuclear power because of
16 global warming -- that nuclear power does not
17 create the greenhouse gases that coal-fired
18 power plants and others do, or, for that
19 matter, natural gas? And, therefore, nuclear
20 power is considered by some to be an answer to
21 our most pressing problem?

22 MS. FELDMAN: The Sierra Club has
23 not backed away from that position at all.

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1 MR. MULVEY: I know the Sierra
2 Club has not, but I'm thinking --

3 MS. FELDMAN: Neither has the
4 national --

5 MR. MULVEY: -- Greenpeace, for
6 example, has backed away.

7 MS. FELDMAN: The Nuclear
8 Information and Research Service has not
9 backed away from that position. And the
10 bottom line fact is that nuclear power is not
11 carbon free. Mining uranium, processing the
12 uranium, mining the plutonium, processing the
13 plutonium, transporting it is not carbon free.

14 MR. MULVEY: Transporting coal --

15 MS. FELDMAN: There are greenhouse
16 gases --

17 MR. MULVEY: Transporting coal is
18 not carbon free either. So, I mean --

19 MS. FELDMAN: You betcha.

20 MR. MULVEY: -- transportation
21 isn't the problem.

22 MS. FELDMAN: That's why we are
23 maintaining that the energy future that this

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1 nation needs relies on energy efficiency --
2 wind, solar, and geothermal, which are clean
3 energy sources. And we cannot afford to go
4 down the nuclear track.

5 MS. JOHNSON: Commissioner Mulvey,
6 may I say -- may I correct you for just a
7 moment? Greenpeace has not taken away their
8 opposition to nuclear power. A lower luminary
9 who was involved in Greenpeace at the very
10 beginning is now being paid by the nuclear
11 industry to say, Ooh, nuclear power is great,
12 you know, for dealing with global warming. It
13 is not Greenpeace that has withdrawn its
14 opposition to nuclear power.

15 MR. MULVEY: He was a long-time
16 spokesman for them so that's -- so it's been
17 affiliated with him and Greenpeace.

18 MS. JOHNSON: I know. But he got
19 paid now for what he's saying.

20 MR. MULVEY: Gets back to my hired
21 gun issue before.

22 MS. JOHNSON: Yes, he is.

23 MR. NOTTINGHAM: Mr. Mulvey, we

1 have one other panel.

2 MR. MULVEY: I'm going -- we do?

3 MR. NOTTINGHAM: Yes, we do.

4 MR. MULVEY: Oh, I'm sorry. Yes,
5 that's my last question, then.

6 MR. NOTTINGHAM: That's all right.
7 I just wanted to make sure you knew that we do
8 have five more names to try to accommodate.

9 But you've been very patient, Mr.
10 Buttrey. I didn't want to cut you off.
11 You're certainly entitled to ask questions.

12 MR. BUTTREY: Thank you. I'll be
13 brief. Ms. Feldman --

14 MS. FELDMAN: Yes, sir.

15 MR. BUTTREY: -- I hear a
16 criticism -- not that I believe it or I
17 subscribe to it necessary -- but I hear the
18 criticism from time to time that the Sierra
19 Club is against a lot of things and it's not
20 for anything -- that you're not -- that your
21 organization doesn't come forward with
22 meaningful, logical, reasonable alternatives
23 to things that you're opposed to.

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1 But I can tell you I heard today
2 refreshing news from you -- and I want to make
3 sure that I heard and it's on the record
4 clearly exactly what it is you do favor as an
5 alternative to the proposal that's being made
6 here in general.

7 Because under the environmental
8 laws in this country they clearly require that
9 all reasonable alternatives be considered --
10 given serious consideration. And I want to be
11 sure I understood for myself and for the
12 record exactly what it is you do favor in this
13 regard.

14 MS. FELDMAN: You bet. This has
15 been our -- the Sierra Club position for 25
16 years and is posted on our website,
17 www.sierraclub.org. And it has two parts.
18 The first part is don't make any nuclear
19 waste, which means shut down the nuclear power
20 plants that we have now and don't build
21 anymore.

22 The second part is make the
23 nuclear waste that we have created as safe as

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1 possible and keep it as close as possible --
2 as can be safely done -- near the site that
3 it's been generated.

4 When you start containerizing and
5 transporting nuclear waste and putting it into
6 Yucca Mountain that's when you increase the
7 exposure, the risk, the threats to people,
8 plants, and animal exponentially, and we can't
9 afford to do that.

10 And we believe that there's a
11 magic cask. It hasn't been prototyped,
12 tested, designed, quality controlled, but we
13 do believe that the nuclear industry is
14 creating this magic cask that was talked about
15 earlier today and we should use those for on-
16 site storage -- or storage very, very close to
17 the site of generation. And that is the
18 safest answer for people and places, plants,
19 and animals.

20 MR. BUTTREY: Thank you very much.

21 MS. FELDMAN: You're welcome.

22 MR. NOTTINGHAM: We thank this
23 panel again. We will dismiss you now. Thank

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1 you for your patience. We have this last
2 panel I'll call up -- and as I do so just say
3 that we are really facing the clock here. We
4 did promise our landlord here that we would be
5 finished at five o'clock. And there's
6 overtime and security issues involved.

7 But we do want to hear from Rollin
8 Kim Lee, Moe Truman, Stuart Waymire, Juan
9 Manuel Gutierrez, and Jennifer Viereck. And
10 you've each been allocated time amounts. Mr.
11 Lee and Mr. Truman, five minutes. Mr.
12 Waymire, five minutes. And Mr. Gutierrez and
13 Ms. Viereck, three minutes.

14 We would appreciate any
15 summarizing you can do. Your full statements
16 will definitely be put in the record. And
17 unlike the motto we hear that what happens in
18 Las Vegas stays in Las Vegas, I can assure you
19 what happens today will stay in the record and
20 will be with us all over the country. And I'm
21 sure despite our best efforts will be in the
22 courts one way or another which is case with
23 most of our significant work.

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1 MR. BUTTREY: If we don't finish
2 by five we all have to stay here overnight.
3 Right?

4 MR. NOTTINGHAM: Yes, the lock --

5 MR. BUTTREY: They lock the
6 building down. I don't know about the rest of
7 you but I want to be out of here before five
8 o'clock.

9 MR. NOTTINGHAM: Mr. Truman, would
10 you like to go first?

11 MR. TRUMAN: Sure. I was quite
12 concerned if I was at the right dance as I
13 thought we had to talk about the necessity of
14 commerce on the line to Caliente. So now I
15 understand that that might be part of the
16 dance I'm quite comfortable being here.

17 This is probably my first
18 experience with being a democratic republic.
19 As I've talked to or listened to one of the
20 fine spokesmen from the great state of
21 Tennessee he talked about what Oak Ridge had
22 done for the National Defense Department and
23 how it had gave lots of time and lots of

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1 energy and lots of real estate to that.

2 And the statesman who spoke at the
3 conference we were at talked about the fact
4 that Tennessee's called the Volunteer State.
5 And I'm quite embarrassed about my state in --
6 as we talk and listen to about the things that
7 we don't want to do for the betterment of the
8 democratic republic.

9 Everything that we buy here in
10 Nevada comes from other states. So we buy our
11 petrochemicals, we buy our pantihose, we buy
12 our medicines -- that has been made,
13 manufactured -- and its waste is being held in
14 other states.

15 So as we look at our
16 responsibility to shoulder our fair share of
17 the states' -- and the nation's -- waste that
18 we are the beneficiary of I'm ashamed of what
19 we have portrayed to the STB.

20 Getting on to my comment, in
21 commerce Las Vegas is a large deterrent
22 because of our cost of real estate here.
23 Caliente has the vast potential, because of

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1 the of real estate in that fair city, to
2 actually be a major driver for economics.
3 Cedar City, Utah, right now is stealing a lot
4 of businesses that should come to Las Vegas
5 because of rail service and also because of
6 the price of the property.

7 So I would commend to this to be
8 to understand that there is economic drivers
9 to go through and have businesses thrive in
10 the Caliente region. Some of those that have
11 left our facility -- left Las Vegas and had to
12 relocate other places -- there's a company
13 called Heritage Plastic.

14 They would take resin that would
15 come by rail cars out of the chemical alley
16 into their facility, manufacture it into
17 plastic pipe. It would be destined for the
18 eighth largest economy in the world, which is
19 the southern California region, and get there
20 by truck.

21 So, I mean, we could go on for
22 several minutes about the businesses looking
23 to relocate on a cusp around that southern

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1 California market, and they're relocating to
2 other facilities. So the political side of
3 the nuclear waste aside, there is commerce
4 that could be driven to Caliente and use the
5 rail line for beneficial goods.

6 At the present time the railroad
7 does not have service into Caliente for
8 manifest service. So the businesses that we
9 have worked with the local economic
10 development companies, which would be City of
11 Henderson, City of North Las Vegas, the State,
12 and the NDA have all looked at bringing
13 businesses to Caliente. But because the rail
14 service does not exist, they've had to go
15 through to other locales.

16 So my testimony to the STB is
17 there is economic industry that could go to
18 that area if it was approved. Thank you for
19 your time.

20 MR. NOTTINGHAM: Thank you, Mr.
21 Truman. We'll now hear from Mr. Stuart
22 Waymire.

23 MR. WAYMIRE: Stuart Waymire. I'm

1 a mechanical engineer. By default, over the
2 years I've also become sort of a historian of
3 the Yucca Mountain project, specifically the
4 Nuclear Waste Project office, which is now the
5 agency for nuclear projects.

6 I was with ANEC, which is American
7 Nuclear Energy Council, in 1991. I worked for
8 them as a walk-on, because my engineering
9 professors -- they told me that they were
10 always afraid the federales would show up.
11 That's in regard to some of the things that
12 the Nuclear Waste Project Office was doing
13 with a couple of companies called Mountain
14 West, Decision Research, and some of the other
15 people that dealt with the stigma effects and
16 the -- some of the other concerns you had with
17 perception stuff.

18 Before I get into some more of
19 what was going on there I wanted to address
20 Mr. Buttrey's question and some of your others
21 because we've missed this -- on why those
22 casks don't want to -- we don't want to store
23 them on site. It's never been answered here.

1 There's something called corrosion
2 that occurs. It occurs even at Yucca
3 Mountain. When you have hot casks they're hot
4 for long periods of times, hundreds of
5 years -- they tend to take the humidity; the
6 humidity goes to steam essentially. That
7 steam cools and then it drips down on the
8 different casks.

9 So if you're prepared to have on-
10 site storage that you can guarantee for the
11 next few hundred years where there is no
12 precipitation, no humidity, and no corrosion
13 of the casks, well, then please go ahead and
14 do so. But, otherwise, you could very well
15 end up with 35 sites with massive amounts of
16 nuclear ceramics sitting there essentially
17 loose on the ground.

18 That also brings up the other
19 point. We've heard numerous times here "most
20 dangerous substance in the world,"
21 "cataclysmic." It's a ceramic; it's like
22 plates. It's uranium oxides -- various
23 uranium oxides. They're also radioactive.

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1 Things called Geiger counters can be used to
2 find those things.

3 You've mentioned we've got sodium
4 hydroxide, chlorine, hydrochloric acid,
5 sulphuric acid, titanium -- those things are
6 all coming through the Valley. If you have a
7 problem with those things, you really can't
8 find that stuff. I mean, it can disburse --
9 it can be in the air.

10 So of all the different disasters
11 possible -- we had also a recent scare; about
12 this much ricin sent the Valley into paroxysm.
13 But just imagine 75,000 tons of ricin and then
14 kind of compare that when people say this is
15 most dangerous substance anywhere.

16 But to go back, I ended up writing
17 a book, a 200,000 word book, on -- as a
18 whistleblower on the Nuclear Waste Project
19 Office. It's online at
20 yuccamountainexpose.com -- yuccamountainexpose
21 all one word.

22 It's well worth your while,
23 because just recently Mr. Bob Lux was fired

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1 from the agency. The reason he was fired was
2 because he embezzled half a million dollars.
3 We don't call it embezzlement here in Nevada,
4 because it also goes to the intimidation
5 factor because you've got certain politicians
6 who kept Mr. Lux in power for 30 years.

7 That was certainly not the only
8 time he played fast and furious. There are
9 GAO reports; I have quite a few different
10 things. Some of the people here have
11 benefitted also from his money. In fact, one
12 of the people who testified was pandering for
13 a grant earlier. He was also involved in some
14 of that.

15 So my point there is that a lot of
16 the things that come from the Nuclear Waste
17 Project Office and from the current nuclear
18 projects group are not to be totally believed.
19 They have a vested interest from way back in
20 trying to promote an anti-nuclear position.

21 When the Mountain West and the --
22 when Decision Research came in, Decision
23 Research did a lot of the perceived-risk kind

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1 of things. The availability -- I think you
2 might hear about that sometimes if you're
3 really nerdy and kinky about it, but that's
4 the idea that you can never learn to accept
5 risk; no one can.

6 Well, those are the theories that
7 came out in '87 when the socioeconomic studies
8 were done. 15 million went to socioeconomic
9 studies here. 14 million went out of state.
10 Roger Casperson, one of the people who led up
11 some of the stuff with -- from Clark
12 University, I caught him writing in '74 a
13 Maoist/Marxist anarchist decentralist paper
14 that said social scientists do not need to be
15 objective.

16 That carried through when they
17 came here. It followed through through a
18 number of different things. They became
19 advocates for the position. That's carried
20 through when Mr. Lux ended up having kind of
21 a fiefdom where he was in control of a number
22 of different things. He sort of appointed
23 people and things happened as he wanted.

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1 Now, the way you know that he was
2 corrupt is because he isn't taken out for
3 embezzlement and in prison right now. He's
4 been protected by Senator Bryan, Senator Reid,
5 and a number of other people too. Anyone else
6 who did something like that would be long
7 gone.

8 So I just suggest you look at
9 www.yuccamountainexpose.com. And I think
10 you'll find quite a few eyeopeners for you.

11 MR. NOTTINGHAM: Thank you, Mr.
12 Waymire.

13 We'll now hear from Mr. Lee.

14 MR. LEE: Thank you. I appreciate
15 this opportunity. I'm Rollin Kim Lee. I live
16 in Panaca, Nevada. My grandfather four
17 generations back settled Panaca, Nevada, in
18 1864. I'm married to Linda O'Connor, also a
19 direct descendant of one of the pioneers who
20 settled that community. We have seven
21 children and 18 grandchildren. And because of
22 this we feel like we have a right to have an
23 opinion of what's going to happen to our

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1 little community around Panaca.

2 Concerns about a railroad in
3 Lincoln County -- there's some bullets here
4 that I'd like to cover if I can get through
5 this. How are we doing without it now? Did
6 rail access benefit our community during the
7 decades it was available? What impact could
8 construction have on our community and its
9 future? What about our rural way of life?
10 What benefit would there be in having a
11 railroad if our community couldn't use it?

12 How are we doing without it?
13 Well, we have zero chance of receiving
14 equipment or materials that cannot be
15 economically transported without being on a
16 highway in a truck. We have zero opportunity
17 to ship materials or finished products out
18 that cannot be moved economically without a
19 truck.

20 Consequently, there is no interest
21 in any firm or company to establish an
22 operation near Panaca or in Lincoln County.
23 We cannot develop our national resources

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1 requiring rail transportation to market. But
2 we do have the lowest number of railroad-
3 related employment opportunities in Lincoln
4 County since the railroad was established over
5 a hundred years ago.

6 Did the railroad benefit our
7 community when it was here? I can only speak
8 from personal experience. Before the four
9 companies were in Lincoln County that I
10 personally worked for and received a paycheck
11 and took care of my family from that depended
12 on the rail to ship its product out of Lincoln
13 County.

14 During the construction of the
15 Glen Canyon Dam, pozzolan was shipped from two
16 miles north of Panaca on rail to Glen Canyon
17 Dam's construction. That rail has been
18 removed, and we'd like it back.

19 Many residents, including myself,
20 supported their families through the
21 employment of these companies. Many people I
22 know made their living working directly for
23 that railroad that is now gone.

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1 Combine Metals Reduction Company,
2 Bunker Hill Mining, Sierra Chemical, Panaca
3 Pozzolan Plant -- these are the four companies
4 that I personally worked for. And I know for
5 a fact they needed the rail to ship their
6 product.

7 Due to these companies and the
8 employment they provided I believe each and
9 every business in Lincoln County benefitted in
10 one way or another. Our school enrollment was
11 up, the tax base was larger, the merchants
12 sold more product, and the list goes on.

13 What impact could the construction
14 of this railroad have on our community and our
15 future? Well, increased employment, increased
16 tax revenue, increased business for each and
17 every merchant and business in our community,
18 an incentive for youth to remain in the area
19 with good employment, and have a renewed sense
20 of pride that has not existed for years in our
21 community.

22 What about our rural way of life?
23 I grew up on a farm four miles below Panaca,

1 Nevada. It's probably within a mile-and-a-
2 half of where this proposed rail is going to
3 go. We had cattle. My father and I moved
4 cattle back and forth across the tracks that
5 were there dozens of times in my lifetime.
6 Those rails were 150 yards from our front
7 door.

8 The tracks nor the train were ever
9 an issue in my family or our lifestyle. In
10 fact, that train rolling past our house,
11 hearing the whistle blow, and seeing the
12 people that you knew working on that train are
13 a fond memory and a part of our rural
14 community that I know and love.

15 What benefits are there in having
16 a railroad that we cannot use ourselves -- as
17 they talked about dedicated trains?
18 Absolutely zero. This railroad should be
19 constructed and made available to Lincoln
20 County's economic possibilities and growth.

21 Scientifically, economically, and
22 realistically it is absurd to consider any
23 other location for nuclear waste than Yucca

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1 Mountain. That's my opinion based on all the
2 reading I've done so far.

3 The route to this repository is
4 one that's been picked by people that are
5 knowledgeable and have the expertise to do so;
6 that being the Caliente Line that we discussed
7 today. To not allow the public to utilize
8 this tremendous opportunity for progress and
9 growth is beyond reason.

10 As a resident of Lincoln County,
11 having grown up and spent most of my life
12 here, I am in complete support of this rail
13 line and appeal to this Board to provide
14 access to it for the commercial transportation
15 development and growth of our great community.
16 It may be the most important puzzle piece we
17 can acquire to ensure a positive financial
18 future for Lincoln County's children.

19 A point I'd like to add: I have
20 intimate knowledge of a firm who has purchased
21 9,000 acres north of Panaca about two miles
22 for the resource pozzolan. It's a rhyolitic
23 ash that is deposited after a volcano. This

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1 ash is ages old. It's a unique commodity as
2 an admix to concrete. It is a green additive
3 to concrete that reduces the amount of
4 Portland cement that must be used and,
5 therefore, reduces the carbon footprint of the
6 cement industry.

7 They bought 9,000 acres of this
8 product with the intent of developing it and
9 selling it at a rate of 50 tons per hour.
10 That's 300 rail cars a month. So this one
11 firm is among the mix that doesn't happen to
12 be the lettuce and tomatoes and fruit that's
13 been made fun of this morning about the
14 commercial use of this train.

15 I thank you very much for this
16 opportunity and your time.

17 MR. NOTTINGHAM: Thank you, Mr.
18 Lee. We'll now hear from Mr. Gutierrez for
19 three minutes.

20 MR. GUTIERREZ: I'm Juan Manuel
21 Gutierrez. I'm on the Board of Directors for
22 the Shundahai Network.

23 MR. NOTTINGHAM: Oh, Mr.

1 Gutierrez, I think there's a button to depress
2 on your -- makes sure the mike goes on.

3 MR. GUTIERREZ: Hello?

4 MR. NOTTINGHAM: Perfect. Thank you.

5 MR. GUTIERREZ: Hello. My name is
6 Juan Manuel Gutierrez. I'm on the Board of
7 Directors with the Shundahai Network. And I
8 came here to speak with everybody else.

9 Now, some of the things I've heard
10 here -- a lot of this has started because of
11 a mandate from Congress to the Department of
12 Energy. Congress gets its mandates from
13 politicians making laws or the lobbyists from
14 companies coming in to say we want this. So
15 it's the Department of Energy, the Department
16 of Defense ordering Congress to put all of
17 this over here.

18 The United States of America's
19 mandate is to protect U.S. citizens. By
20 bringing nuclear waste through every community
21 in this nation is not protecting U.S.
22 citizens. We have a scientist who would not
23 say this cask will last 10,000 years. Bar him

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1 saying that I think the Congress was sold.
2 The Yucca Mountain nuclear kitty waste box --
3 very smart people telling you how a cat takes
4 a dump and this is doing to keep us safe.

5 And I think that that is not
6 science. I think that it was a con. And I
7 think science would be trying to figure out
8 how to render nuclear waste inert, thereby
9 keeping all people safe forever.

10 I've heard people talk about art
11 and I've heard people talk about the dismissal
12 of the Shoshone. And I would submit to you
13 that every valley, even the valley where this
14 art piece is going, contains the art that the
15 Shoshone have valued the most -- the art of
16 creator. Every bird, every fish, every tree,
17 every insect, the air, the water, and the
18 dirt, and the rocks itself all are alive. The
19 Shoshone view this as God's art and they
20 worship it.

21 Now Mount Tenabo is being taken
22 down for gold. And I just hope that the
23 United States would honor all people's

1 religions, not just Christian and Muslim and
2 Jewish and all the major religions, but all
3 religions.

4 Now, the Shoshone have been --
5 signed a treaty of peace and friendship with
6 the United States. Now for the United States
7 to come back and say we're going to give you
8 \$15 an acre and we're going to take it from
9 this pocket and put it into this pocket and
10 you guys sold your land when it is against
11 their philosophy to sell their mother. You
12 cannot sell God. You cannot sell the mother.

13 MR. NOTTINGHAM: Mr. Gutierrez, if
14 you could wrap up whenever you --

15 MR. GUTIERREZ: Yes, go ahead.
16 Thank you.

17 MR. NOTTINGHAM: Thank you. And
18 now we'll hear from Ms. Jennifer Viereck. And
19 thank you for your patience. I think you're
20 the last witness today. And please know that
21 that's just random luck, and we expect the
22 best for last, so we'll close with you.

23 MS. VIERECK: Well, we've got a

1 lot of hard acts to follow today. Minor
2 correction -- my name is Jennifer Olorano
3 Viereck, and I'm the executive director of an
4 organization called H.O.M.E.; that's for
5 Healing Ourselves and Mother Earth. We're a
6 grassroots stakeholder group with offices in
7 Nevada and California.

8 Personally, I live in California.
9 I may live closer to Yucca Mountain than
10 anyone we've heard today. I live 50 miles
11 directly south in the immediate watershed of
12 both the western portion of the proposed
13 railroad and the repository itself. I work 50
14 feet from the current nuclear waste route on
15 a tiny paved road in California -- Route 127.

16 H.O.M.E. has done independent
17 studies of baseline radiochemistry for the
18 water that we felt were not being done by DOE
19 and other science studies there. I've
20 conducted a HAZMAT transportation study on
21 this current route for the local first
22 responder district. And that route already
23 includes two different kinds of nuclear waste.

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1 I've also collected an extensive
2 archive of the impact of flooding in this area
3 on transportation. And as someone noted
4 earlier, we may only get a couple of inches a
5 year, but we can get it in 25 minutes. The
6 most recent incident was when our one and only
7 police car was washed off the road earlier
8 this year on this route that we're discussing.

9 In 1951 the Atomic Energy
10 Commission relevant to the Nevada Test Site
11 referred to local stakeholders as a low-use
12 segment of society. I have that document.
13 Currently we're talked about as potential
14 human dose receptors and maximally exposed
15 individuals. None of this is really
16 particularly charming from our perspective.

17 H.O.M.E. strongly supports the
18 Treaty of Ruby Valley, as well as the United
19 Nations Committee to end racial
20 discrimination's decision several years ago to
21 order the United States to cease and desist
22 all Yucca Mountain activities as part of the
23 racial discrimination against Shoshone people.

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1 There's been a lot of really
2 excellent comments made earlier today, and I
3 don't want to repeat them, nor do I have the
4 time. But I'd like to particularly show
5 appreciation for the comments of Congresswoman
6 Berkley, for the Nevada and California state
7 representatives, and for all of the Native
8 speakers today, and by reference incorporate
9 them into my own comments.

10 I would also like to commend the
11 mayor's representative -- who I don't recall
12 his name -- and particularly appreciate his
13 comments on the magic cask scenario and the
14 magnitude of stupidity reflective in this
15 transportation proposal.

16 I think that he summed up fairly
17 accurately why we believe that the application
18 to put a railroad in the state of Nevada at
19 this point is extremely premature. And we
20 also think that this meeting itself has been
21 premature because a lot of the NEPA issues
22 that we've commented on extensively over the
23 years have not been resolved yet. And until

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1 they are I'm not sure in what context we can
2 address this proposal. Thank you.

3 MR. NOTTINGHAM: Thank you. Vice
4 Chairman Mulvey, do you have any concluding
5 remarks?

6 MR. MULVEY: No, I don't. I just
7 want to apologize to this panel because I
8 didn't realize there was one more panel coming
9 up. I thought -- my comments to the last
10 panels would have been more brief if I would
11 have known I you were going to be here. But
12 thank you very much for your excellent
13 testimony -- all of you. Thank you.

14 MR. NOTTINGHAM: Mr. Buttrey, any
15 questions or closing remarks?

16 (No response.)

17 MR. NOTTINGHAM: I want to thank
18 this panel and all the panelists and just also
19 thank our hosts here at the Nuclear Regulatory
20 Commission for making this space available us.

21 We recognize these are some
22 difficult issues -- a lot of emotion, a lot of
23 science. We pledge -- it's my personal pledge

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1 on behalf of my colleagues and our agency that
2 we will remain independent, as we always have
3 been. We do not work for the Department of
4 Energy. We don't take orders from anybody on
5 this matter or any matter. And we were
6 created by Congress to be bipartisan and to be
7 independent, and we will conduct ourselves in
8 that manner.

9 At the same time we have some
10 important statutory obligations to consider --
11 matters that are brought to us such as this,
12 and we will be doing so. And, again, thank
13 you for being here today. Many of you came
14 long distances and waited many hours to speak,
15 and we appreciate that.

16 Hearings are not worth much if we
17 don't have the public engaged. And I think it
18 speaks good things about the people of this
19 region and folks from around the country who
20 came all this way to contribute to this
21 hearing. So we appreciate that. Thank you
22 and we are adjourned.

23 (Whereupon, at 5:12 p.m., the

1 hearing was concluded.)