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
MR. NOTTINGHAM: Good morning. And welcome. We are pleased to be here today to conduct a field hearing on the U.S. Department of Energy's application for rail construction and operation of the Caliente Line.

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

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

While DOE did not file its construction application until this year with
the STB, in its Section of Environmental Analysis, also known as SEA -- and we'll hear a lot of acronyms today, so bear with it -- the SEA has been involved with Yucca Mountain projects since 2004.

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

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

We have participated in 13 scoping meetings and eight public hearings during the environmental review process. Specifically
the STB's involvement as a cooperating agency
in the preparation of the draft EIS also
included participation in five public scoping
meetings in May 2004 here in Nevada,
participation in a second round of public
scoping meetings, including one in October
2006 in Washington, D.C., and seven in
November 2006 in Nevada, review of more than
4,100 comments received during the first
public scoping period and the nearly 800
additional comments received during the second
public scoping period, participation in site
visits to both the Caliente corridor in 2005
and 2006 and the Mina corridor in 2007,
participation in the selection of alternatives
to carry forward in the EIS, and also review
of the draft EIS documents.

Following release of the EIS, the
STB continued to be involved as a cooperating
agency, including participating in eight
public hearings on the draft EIS in November
and December 2007 in Nevada, California, and
Washington, D.C.
Also we were involved in the review of the approximately 4,000 public and agency comments received during the draft EIS public comment process and public hearings and in the review of the final EIS documents.

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

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

In applying this standard we typically evaluate the public demand or need for the proposed service, the financial soundness of the applicant, whether the proposed service is in the public interest and would not unduly harm existing service, and any safety and environmental concerns. We
also have the discretion to modify the proposal or place conditions on its approval.

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

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

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

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

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

The Department of Energy's application to construct the Caliente Rail Line is one step in our nation's long-term strategy for dealing with the byproducts of
our nuclear energy industry and, to a lesser extent, nuclear waste from military operations.

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

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

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

Now, I've been following this issue for nearly a quarter century. Back in 1984 when I was with the National Academy of Sciences Transportation Research Board there was discussion over the relative merits of transporting spent nuclear waste by rail over good rail lines -- Class 1 rail -- which would go through heavily populated areas versus less populated areas, but taking it over less well constructed and maintained rail. So it was a
trade off between minimizing the exposure of
the population and minimizing the possibility
of an accident. No decisions or no findings
came forth at that time and this issue today,
of course, is still with us.

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

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

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

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

Thank you, sir.

MR. NOTTINGHAM: Thank you, Commissioner Buttrey. We will now to our first panel. It's my pleasure to call forward and welcome the Honorable Congresswoman Shelley Berkley. We're delighted to have Congresswoman Berkley here. And also from Senator John Ensign's office I understand that Christy Guedry is with us this morning as well. And we also have on our panel list a slot in the event that Senator Reid has a representative here -- and I certainly invite that person forward if he or she is here.
It's safe to say we have more technology in this room than we're accustomed to, and so we're all trying to -- if you see us fumbling and working around monitors bear with us, Congresswoman. This is an impressive facility. We tried to move some of these screens a little bit out of the way so you didn't feel like you were blocked behind a monitor.

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

Chairman Nottingham, we recognize this is not something the STB does every day, and your attention to an issue that is
critical to both Nevada and our nation is truly appreciated.

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

I know I speak for a majority of Nevadans when I say that we vehemently oppose Yucca Mountain and the transportation of nuclear waste to our home state. Both proposals are unnecessary and both present unacceptable risks to families, communities, and our environment.
The nuclear industry and the Bush administration can continue to deny reality and act as if nothing has changed on November 4. But we now have a President-elect who has said there will be no nuclear waste stored at Yucca Mountain when he is in the White House.

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

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

This brings me to the subject of today's hearings -- Nevada's opposition to the Caliente Rail Line and the dangers that will arise from current plans to ship more than 70,000 tons of nuclear waste across more than
40 states to Yucca Mountain.

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

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

One accident or terrorist attack involving nuclear waste will cause death, injury, environmental damage, and the closure of major transportation routes. And that's before one of these waste canisters is ever transported on the Yucca Mountain Express.
At every step of the journey nuclear waste shipments will be a prime target for those seeking radioactive materials for terrorist purposes. And we know that accidents will occur statistically speaking, whether in Nevada or on the way to Yucca Mountain.

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

STB cannot ignore this risk to
railroad workers or any other American when looking at the overall impact that current plans for transporting nuclear waste will have on railways from Maine to Missouri to Utah, Arizona, and California.

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

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

But if STB is going to buy this hapless bluff and move forward on DOE's application the Board must look at the true
impact of thousands of radioactive waste shipments transported over more than four decades will have on America's railroads and the residents of every state through which these mobile Chernobyls will pass.

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

Not a single canister of nuclear waste will ever reach Caliente without traveling along one of our nation's existing rail lines. The STB must consider the entire process from start to finish in order to truly assess the total risk that would accompany the mass movement of high-level nuclear radioactive toxic waste, one of the most toxic substances known to man and a prime target for
terrorists hunting for the means to make dirty
bombs that they can unleash on U.S. soil.

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

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

Let us not move forward with this
boondoggle, spend more taxpayers' money that
we simply do not have in this very, very
difficult economic time, and wait and see what happens. I can assure you that there will never be nuclear waste stored at Yucca Mountain. We ought to ditch this deal before it gets started. And I thank you very much for your kind attention.

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

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

This reaches far beyond the borders of Nevada. It affects every single American, and that makes it worthy of the most thorough examination. Unfortunately, that has
never been the case for Yucca Mountain.

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

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

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

These vital issues cannot be an afterthought when it comes to the safety of
our citizens. Instead, the waste should be stored on site where the NRC says it can remain safely for 100 years. Let's use that time and the money saved by shutting down Yucca Mountain to develop technologies to recycle the waste, create new energy sources, and truly manage spent fuel. Thank you for your time and thoughtful consideration of this critical issue.

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

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

CONGRESSWOMAN BERKLEY: How are you?

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

CONGRESSWOMAN BERKLEY: Well,

that's an interesting question, Vice Chairman. And, as a matter of fact, we -- the delegation has spoken of this to see what our next step would be once the new administration took over. It's our belief that President Obama can unilaterally withdraw the application that's now currently before the Nuclear Regulatory Commission.

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

MR. MULVEY: Thank you. One other question for Mr. Ensign's representative. You mentioned about -- when Yucca Mountain is full, isn't it also true that even without
building any new power plants, the amount of material out there will be equal to what is out there today when Yucca is full? And that's without building any new plants -- the amount that's still out in other power plants and other facilities?

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

CONGRESSWOMAN BERKLEY: If I may --

MS. GUEDRY: Yes. Go right ahead.

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

MR. MULVEY: Thank you.
MR. NOTTINGHAM: Mr. Buttrey, any questions for this panel?

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

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

MR. BUTTREY: Thank you.

CONGRESSWOMAN BERKLEY: Thank you.
MR. NOTTINGHAM: Well,
Congresswoman, we hope it doesn't come to
that. We like having you in Washington doing
your job. I know your constituents like
having you here doing your job too.

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

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

We think this is just another --
when the nuclear industry talks about this
rail line as having other purposes, and so if
it isn't built to haul nuclear waste it could
be used to haul products of produce -- fresh
vegetables and fruit. We think that's
absolute insanity.

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

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

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

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

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

And we take our obligation very seriously -- I want you to know that. We come to this proceeding with a very open mind. There's a long record. We'll make our
ultimate decision on the record, which this
hearing will be helpful. We wanted to have
this hearing to build a more in-depth record.
So you're helping us do that.

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

MR. MULVEY: No.

MR. BUTTREY: No.

MR. NOTTINGHAM: Thank you.

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

And I have every confidence in the
world that you will collectively make the
appropriate decision. While I know that we
are not moved by poll numbers, it's
instructive to know that in the last poll 77
percent of the people of the state of Nevada
north and south were opposed to the Yucca Mountain project. And I thank you all very much for your kind attention.

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

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

Each have been allocated ten minutes. And as soon as you are up and ready we will -- we'll start with the second panel. (Pause.) Welcome. We'll start with Mr. Halstead, Agency Transportation Advisor from
the Agency for Nuclear Projects from the state of Nevada.

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

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

As previously stated, Nevada believes that DOE's application fails to provide sufficient detailed information regarding key elements of the proposed transaction to allow stakeholders and the Board to fairly and critically evaluate the actual railroad and construction -- the railroad construction and operation plans for
a Certificate of Public Convenience and
Necessity or to undertake a hard look
environmental impact analysis under the
National Environmental Policy Act, and,
therefore, urges DOE's application to be
rejected as presently filed or otherwise
require that it be appropriately supplemented.
To proceed without supplementation would
result in a premature decision based on
speculation.

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

This is especially true in our
opinion since DOE has provided no agreements
with contractors or otherwise detailed the
actual necessary transportation arrangements
that it proposes to implement if granted a
CPCN. Virtually the entire nation would be
affected by the DOE proposal to construct and
operate the new rail line in Nevada.

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

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

Nevada's analysis shows that
selection of the Caliente Rail option would affect about 22,000 miles of track in 836 counties with a total estimated 2005 census population of about 138 million. Shipments would also travel through 193 central cities with a total estimated population of about 39 million -- and we've attached maps to our statement showing those routes.

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

The spent fuel from civilian nuclear power plants, which would comprise 90 percent of the shipments, is so highly radioactive that even after ten years of cooling unshielded exposure could deliver a lethal dose of radiation in one or two
minutes. And the radiation from spent fuel shipping cask in a routine transit can endanger workers in the public. Severe accident involving release of radioactive materials could cost $10 billion to clean up, and clean up after a successful terrorist attack could cost many tens of billions of dollars.

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

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

And based on these issues we
believe the Board must weight the DOE claims of public convenience and necessity against the lack of information and these risks and affects.

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

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

In particular, we believe that DOE
has repeatedly failed to justify the selection of Caliente as the preferred corridor. We believe that the comparison with the Mina corridor as the basis for DOE's selection of Caliente is an illegal comparison with an unacceptable and non-viable alternative.

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

I believe you're going to be hearing later this morning from representatives of Michael Heizer and the Art Foundation, so I will move to the failure to comply with NEPA regarding a consistent evaluation of the radiological impacts that would be delivered here in Las Vegas and Clark County.
Despite DOE's repeated discussions that they selected Caliente to avoid shipments through Las Vegas, Nevada has informed them, and their own analyses have informed them, that selection of Caliente will, in fact, result in rail shipments through downtown Las Vegas. It's only a matter of what percentage of the total shipments would go through downtown Las Vegas.

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

And this is important because of the way that the city is constructed around the rail line. 95,000 residents currently live within the one-half mile region of radiological influence for routine shipments in Las Vegas itself. There are 34 hotels and 49,000 hotel rooms within that half-mile distance on each side of the rail line. And within the 50-mile region of influence for
accidents and sabotage we estimate 1.8 million
residents in Nevada and the adjacent areas of
Arizona, California, and Utah.

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

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

And concerning DOE's railroad
operations in Nevada, there's a serious
question as to whether and how DOE can comply
with those final rules as they relate to
shipments in Nevada, storage and delays in
transit, inspections and interchange
agreements, rail security coordination, chain
of custody requirements, none of which
elements are addressed in DOE's filing with
the Board.

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

Let me conclude by saying that
Nevada contends that DOE's application and
supporting NEPA documentation did not
presently provide an adequate basis for the
Board to grant this application, and it should be denied without prejudice. DOE has made no reasonable effort to provide a sufficiently detailed Section 10901 application that complies with the information requirements of 49 CFR Parts 1105 and 1150.

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

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

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

On behalf of the Nevada Attorney
General we share the concerns expressed by Congresswoman Berkley and my colleague Mr. Halstead that the STB may be in a position to inappropriately expedite DOE's application for a Certificate of Public Convenience and Necessity while a new administration is imminent and will be assuming office in January 2009.

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

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

This rail line, if approved and constructed, will result in major impacts to
the national rail system. With the prospect of nearly 10,000 shipments of dangerous nuclear waste moving along the country's railroad system for 30 years or more the implications clearly extend to the nation as a whole. Almost every major metropolitan area in the country will be affected.

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

On behalf of the Nevada's Attorney General I ask this Board to reconsider its current course and its schedule for processing DOE's application. I ask that STB postpone any decision until the new administration is in place and has had an opportunity to review the entire Yucca Mountain program and
determine how it intends to proceed.

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

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

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

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

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

This historical approach does not appear to be the case here. Many of the issues that will be raised today and in
written comments submitted into the record
address issues related to the adequacy of
DOE's Environmental Impact Statements and
STB's independent NEPA responsibilities. It
is unclear how, when, and in what form STB
plans to address the vital NEPA issues or
whether adequate opportunities for public
involvement will be afforded.

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

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

STB's own regulations in Part 1150
require informative detail, especially operational data, for obvious evaluative reasons. After decades of study and analysis and many opportunities to provide informative submissions to support this application DOE continues to omit foundational material facts for public scrutiny. Other representatives speaking on behalf of the state of Nevada and local governments will be providing specific information regarding particular deficiencies in DOE's application.

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

MR. NOTTINGHAM: Thank you, Ms. Adams. We'll now hear from Susan Durbin from
the State of California Attorney General's
Office.

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

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

We'd first like to reiterate our formal comments to the Board and incorporate them here by reference. In those comments we
express very strongly our opposition to approval by the Board of the Mina route, even as an alternative.

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

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

That failure is part of a broader failure. DOE has failed to provide enough information in its EISs about where, when, and
how it will transport the spent nuclear fuel
and high-level radioactive waste it seeks to
store at Yucca Mountain to allow the STB to
regard those EISs as adequate compliance with
NEPA that the STB may validly rely on or may
adopt as the STB's own NEPA compliance.

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

California's concerned that this
Board's decision will have a huge potential
environmental impact on California that has
not been examined or disclosed by any federal
agency. As you heard from other speakers, and
will hear again today, this is not solely a
Nevada issue. It is as multi-state issue and
a national issue.
As we stated in our comments, the decision between the Mina and the Caliente routes will have very significant effects on California. DOE estimates that if the Caliente route is used 755 casks will be transported through California. But if the Mina route is used about 2,000 casks will be transported by rail through California -- about one-and-a-half times as many.

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

The Mina route would sent radioactive spent fuel hundreds of miles farther than the Caliente route and send it through the heart of California's agricultural region, often paralleling the route of the
state Water Project Aqueduct that provides drinking water for half of California; would send it through our capital city and over the Donner Pass, with its steep -- severe storms, steep grades, and terrain in which retrieval of a derailed cask would be a monumental undertaking.

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

Second, only radiological impacts are analyzed, not the environmental and economic damage that will result from even an
accident that did not breach a cask, let alone one that did. Just as an example of the impacts DOE has chosen to ignore, the two representative California routes which would connect to Caliente and the Mina respectively that DOE presents are major international trade routes carrying about $150 billion worth of trade goods in 2004, the last year for which data were available. Compromise of either route would cause a national economic disaster, something that DOE has not analyzed or considered.

None of the EISs present a route specific comparison of the Mina and Caliente routes, information that we believe is legally required to support any decision by the STB to approve the Mina route even as an alternative. The EISs address the environmental impacts of transport solely on a programmatic basis, and are inadequate even on that basis. The STB must make a route specific decision, and a programmatic analysis in DOE's EISs is insufficient to support that kind of decision.
California also wants to address a serious issue that has surfaced only recently. On November 6 of this year Ward Sproat, the director of DOE's Office of Civilian Radioactive Waste Management, and the man in charge of the overall Yucca Mountain project, attended a conference on nuclear waste held by the Center for Strategic and International Studies.

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

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

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

Similarly, this change makes DOE's
NEPA documents inadequate for the STB to use
as a basis for issuing a Certificate of Public
Convenience and Necessity. We now do not know
how many trains will actually use the new rail
line whose approval DOE seeks, when, or for
how long. Will the trains come twice as often
for the same number of years, at the same rate
for perhaps a full century rather than 50
years, or will the trains carry twice as many
casks with the attendant increase risk of
public exposure to radiation?

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

Another new piece of information
that should also cause DOE to supplement its
EISs is the recent admission by DOE that it is
not committed to using dedicated trains for
all shipments to Yucca Mountain, at least not
outside of the Nevada. That admission has
surfaced in the context of the STB application, as you well know, and has been the subject of several submissions to the Board.

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

Those schematics include a limited number of casks per trains, placement on the train of the casks within the train, and placement of security for the casks. There is no analysis of how the huge heavy casks would be handled when a commercial train is made up, no discussion of the effect of the weight distribution on the risk of derailment on tight curves or steep slopes -- and in California we have plenty -- or whether other flammable or hazardous cargo might be shipped
on commercial transit also carrying nuclear waste, and the possibility that risks might become additive from the shipment of these materials together.

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

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

We thank you again for this opportunity to present California's position.
and California's concerns.

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

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

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

MR. HALSTEAD: Yes, it does, and we're acutely aware of those other risks
because of a runaway chlorine tanker incident that occurred here last year. So there's a long-term concern, and you may also be familiar with some of the past efforts by the state of Nevada to, for example, regulate the storage of explosives on rail properties in urban areas. We have a long history of being concerned with HAZMAT shipments through urban areas, not just with these shipments.

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

So we allow -- that is, the Nuclear Regulatory Commission allows by standard routine emissions from these casks. Those emissions are sufficient to post a threat to workers, and in some circumstances members of the general public depending on proximity and stop time.
So what makes spent nuclear fuel different from all other hazardous materials is it's a danger to workers and the public, even when the system is operating perfectly. It's not to say we're not concerned about chlorine and other hazardous materials.

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

So, yes, we're deeply concerned about all those hazardous materials shipments. And I think it's going to be a national concern, as well as a Nevada and a Las Vegas
concern, even more so as the carriers try to figure out how they will comply with those new security plan requirements, which, of course, don't just relate to spent nuclear fuel and high-level waste, but all of the other high hazard dangerous goods.

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

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

It's important to remember that at the present time there are very few shipments of spent nuclear fuel by any mode. And, secondly, most of the rail shipments are
shipments between reactors in the Carolinas. There have not been the kind of cross-country rail shipments comparable to these. There were a couple of movements of spent nuclear fuel from West Valley, New York, to Idaho. But because that was a very small movement it doesn't represent the kind of planning and risks here.

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

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

Commissioner Buttrey, would you like to take a --

MR. BUTTREY: Thank you, Mr. Chairman. Are there areas within the state of Nevada where areas or territory are off limits to people -- human beings -- because of other
nuclear activities that have taken place in the state over the years?

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

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

MR. HALSTEAD: Restricted --

MR. BUTTREY: -- to go in there.

Is that correct?

MR. HALSTEAD: Well, restricted for civilians obviously.

MR. BUTTREY: Yes.

MR. HALSTEAD: And you'll notice that the Department of Energy has skirted the NTS lands in its rail corridor selections that are currently being evaluated. And in the past DOE considered an option called the Chalk Mountain option, which would have gone across Air Force and other lands -- other federally restricted lands.
So there are some areas, yes, that are restricted. Unfortunately, those don't provide a very good alternative for DOE. And, in particular, the Air Force informed DOE that building the railroad across the area that is used for Air Force activities would be incompatible.

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

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

MR. HALSTEAD: Yes, it is. And I'd go further and say that many of our state and local governments -- jurisdictions that
are responsible for responding to transportation emergencies have benefitted by receiving the training that has been available.

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

So while there's some advantage in having had the presence of these nuclear activities and the kind of training that the federal agencies provide for local and state agencies that doesn't necessarily mean that we don't have the same concerns. And, of course, you know, there's a whole program within the Department of Energy that's supposed to be funded called Section 180C that would provide
financial and technical assistance to training
all of the first responders along the
corridors. But the details for that have not
yet been worked out.

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

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

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

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

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

MR. BUTTREY: Thank you very much.

MS. ADAMS: Thank you.
MR. BUTTREY: That's all I had, Mr. Chairman.

MR. NOTTINGHAM: Vice Chairman Mulvey?

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

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

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

The French too, although they do utilize the breeder reactor, which I
understand the Japanese actually paid for,
 reduces the volume of high-level nuclear waste
 but it -- the byproduct of the breeder reactor
 is actually more toxic than the spent fuel and
 high-level waste we're talking about here.

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

 MR. MULVEY: Okay. Thank you.

 I'll ask that question again later. Mr. Halstead, has the Department of Energy ever
 indicated at all who they thought might
 actually operate the railroad, if it was
 indeed approved? Is it an assumption it will
 be the UP or were they considering getting
 some sort of short line railroad to handle it?
 Have they ever given an indication of that and
 how important that would be in the overall
 consideration?

 MR. HALSTEAD: To my knowledge,
Vice Chairman Mulvey, they've never taken a formal position on the relationship with the Union Pacific, although all of those who are close to it have assumed that the most likely operator based on the discussions with the DOE people would be the Union Pacific.

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

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

MR. MULVEY: Well, the railroads are on record as saying that they are not interested in carrying HAZMATs of any type generally because of the liability issue.
Albeit in the case of nuclear the Price-Anderson Bill does give them protection that they don't have with other hazardous materials. But the railroads are pretty skittish about carrying them.

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

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

MR. MULVEY: Right.

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

It's fair to say that the record -- the safety record of evaluating --
let me put it this way. If you evaluate the safety record based on horrific incidents the industry has a very good record of transporting spent fuel by rail.

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

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

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

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

We believe that the shipments can
be made safely. We don't believe the
Department of Energy has presented a plan that
assures us that they will be shipped safely.
And that's something that we expect the Board
to follow if they make a PCN decision in this
proceeding -- that they actually look at the
operational protocols -- the arrangements that
DOE might have, the requirements for an
integrated safety plan between whoever is
carrying on the DOE operated line from
Caliente to Yucca Mountain as proposed, as
well as the national network.

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

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

MR. MULVEY: So it's 20, 25,
almost 30 years ago now that the Yucca was first identified. Would you say that there's been some changes as to the demographics of Nevada in those last 30 years?

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

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

MS. DURBIN: Yes, sir, Mr. Vice Chairman. If you look at the maps that are attached to Mr. Halstead's testimony you'll see that depending on whether it goes to the
Caliente route or goes the Mina route a great proportion of the waste from the southern -- from the reactors in the southern part of the United States will go through California, up through California's central valley, then over the Donner Pass, and then down to connect at Hazen to the Mina route, as opposed to the Caliente route where it will come into southern California to the Barstow area and then come straight back to connect to the Caliente in Nevada. It's a huge difference.

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

MR. MULVEY: Thank you. I'm familiar with all those areas, and that's -- a lot of population that would be exposed if indeed they were to take those routes. The only map I have in front of me that's provided by the DOE doesn't include any of California movements, and, in fact, it doesn't even
include Las Vegas. So it cuts off a lot of
the routes. So it was hard to tell exactly
where it's coming from and exactly where it
would be originating from.

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

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

But do you think that if you could
accommodate the Air Force that would be a
better route than the Caliente route or the
Mina route? Anybody can answer.

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

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

First, you still have the problem
with the main line connector being the route
that goes through Las Vegas, and DOE has not
chosen to deal with that by saying how they
would block shipments through Las Vegas. In
my opinion, if they thought it would only be
8 percent they would be willing to use
circuitous routing to move those shipments.
So, number one, the Chalk Mountain doesn't deal with the problem from the state of Nevada of shipments through Las Vegas.

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

So the short answer is in order to get to Chalk Mountain and go through the Air Force you still have to go through the most difficult portion of the Caliente route. So whatever advantage there might be of avoiding that extra 120 miles or so going around the northwest corner of the Test Site you would still have the problem from Nevada's
standpoint of shipments through Las Vegas and you would still have all of the environmental impact issues of getting from Caliente to the point of somewhere around Garden Valley where you would turn south and go into the Air Force around where the town of Rachel is located.

MR. MULVEY: Thank you very much.

MR. NOTTINGHAM: Commissioner Buttrey, any follow up?

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

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

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

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

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

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

MR. BUTTREY: Thank you very much.

MR. NOTTINGHAM: Thank you. I think that concludes the questioning for this panel. I did want to note that Vice Chairman Mulvey mentioned the French experience, and I
would dare to say we probably won't be able to get to France for our next hearing on our limited budget.

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

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

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

As soon as you are all settled we will start momentarily with Mayor Goodman. Mayor, welcome. It's an honor to have you here. Thank you for letting us trespass in your fair city for a day or two. It's impressive to see what you have going on here in the way of economic development. And you wouldn't even know -- from my perspective you wouldn't know we were in a recession arriving at the airport and walking the streets. And
that may just be because I'm not used to the
kind of crowds you get during peak times. But
things seem to be still buzzing along here in
your economy, so congratulations to you and
your team.

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

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

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

What we've experienced in the
past -- and I say this with a great deal of
forethought -- is virtually a charade on the
part of the officials who have come out here. And once again I say respectfully, because I respect the office, but a former Secretary of Defense -- of Energy came here charged with responsibility of reporting back to the President on the issues of the scientific validity of the repository itself, charged with the responsibility to go through the records and to ask the questions that you've been asking, and the Secretary spent about ten minutes in performing that charged obligation and then returned and pontificated, with all due respect, to the President that everything was all right when it's not all right.

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

MR. JERBIC: Thank you, Mayor.

Thank you, Chairman and members of the
Committee. I'll be very brief. I want to just as a matter of technicality incorporate all the comments made by the state of Nevada on the record on behalf of the City of Las Vegas. I appreciate the work that Mr. Halstead had done and I agree with everything that he has said and I agree with his written comments that were filed prior to today.

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

I also noted that we are here today because this is going to be a common carrier line. If it were a private line this would not appear before the Surface Transportation Board. It's interesting
that -- this is a common carrier line that I imagine there are other things that are going to go down the line -- maybe goods, maybe people, maybe services of some sort.

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

And, as such, I think that public safety, as you are charged with being able to examine it, should be the focus of this Committee. Now, there are many other issues -- environmental issues and other site locations -- but as City Attorney for Las Vegas for the past sixteen-and-a-half years and as a resident of Nevada for 46 years in Las Vegas I've seen this project migrate, and
I happen to be familiar with the three things that are going on right now. One is a lawsuit challenging the siting of the dump at Yucca Mountain. Two is a challenge to the licensing of the waste dump. And, three, this hearing that we're having today to discuss the rail line. And all are intertwined.

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

So something's happened. What's happened is there's been a slight of hand where there has been a substitution of safety devices. No longer is the repository alone going to contain the waste. Now it's going to be what I will refer to as the magic casks. These are casks which have not been developed, which have not been tested, which we are told
that when they are will be able to withstand all sorts of explosions, collisions, damage, and ultimately contain the waste in Yucca Mountain for a period of time as yet to be determined.

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

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

Mr. Vice Chairman, I had the pleasure of reading your biography as they handed it out as I came in. I noticed that you were staff director for pipelines and
hazardous materials for the Subcommittee on Highways and Transit.

MR. MULVEY: True.

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

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

But, Mr. Vice Chairman and members of the Committee, it reads -- and I will just quote this directly -- That the types of materials that are going to be transported have been determined to represent the greatest rail transportation safety and security risks and the most attractive targets in a target-
rich environment of an exposed rail infrastructure in densely populated areas as weapons of opportunity or mass destruction. And the final rules represent the continuing collection efforts to ensure safe and secure transportation of the DOE's materials.

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

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

Without knowing what the magic casks are, what they're made up, how people are going to respond to it, and just anticipating where human beings make things there will be human error, how can you possibly determine that public safety isn't
significantly impacted by the transportation of materials so deadly that exposure to it, even after it's cooled for ten years -- one or two minutes' exposure is deadly. That's what we're dealing with here.

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

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

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

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

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

But if, in fact, there were a disaster, because we are a discretionary
location -- we're not a mercantile center yet, we're not a financial center yet, we're not a government center yet. Because of that people wouldn't come here. And basically those 24 million people who live in the valley would have to be disbursed. And it's my obligation as the mayor of at least 600,000 of them to at least express my real concern.

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

And it sounded very attractive to them until we provided the proposed routes that the waste would travel on. And one of the mayors discovered that the route was going to go through her living room, and she then...
became an ally. And then the other mayors --
when they looked at the routes they saw that
it's going through their living rooms and it's
going past their hospitals and their schools
and their universities and their business
centers.

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

And I submit in these very
difficult challenging times as far as
economics are concerned there's no way in the
world the federal government is going to be
able to pay for, nor the states will be able
to pay for, nor the counties, nor the cities
to train people to have the expertise to
address these issues along the way. It's not
just being trained when it hits the Nevada
border or on its way up to the repository.

It's all the way across the country, crisscrossing and going upside down, and a disaster could happen.

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

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

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

While we believe the application to build a rail line is not yet approved the
repository is premature and we believe the
issues we're discussing today are appropriate
in front of the STB and need to be considered.

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

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

We believe the DOE has failed to
meet federal environmental standards in its
application to build the rail line and the EIS
which supports it. For example, we don't
believe reasonable alternatives or
socioeconomic impacts were adequately
considered.
The STB should require the DOE to be held to the standards of NEPA and Council on Environmental Quality for both direct and indirect impacts of all the rail construction. Our written statements will outline that for you and give you reasons why we believe that is very important.

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

We believe there is no dispute that Clark County would be directly impacted by rail transport to the repository. Clark County provides local and regional first responder services. The DOE's reliance on Section 180(c) of the Nuclear Waste Policy Act
to meet the burden for first responders is inadequate and inappropriate.

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

And the application should be denied. And we really appreciate your time and attention and that you would hold these hearings here in our state as our state is very concerned what the possibilities of what could happen. So we, again, thank you for
your time, and all my comments and documents will be provided to you. And I apologize if I do have to step out. I had another engagement that I postponed but may have to leave before this panel is finished.


MR. VANNIEL: Thank you, Your Honor. Mr. Name's Jeff VanNiel. I am an attorney. I do represent Nye County actively. I wanted to thank the Board for coming to Nevada to provide Nevada residents and local government the opportunity to provide a public statement on the record concerning DOE's pending application to construct a joint use rail line to the Yucca Mountain facility.

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

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

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

Oh, also I wanted to note for the record that, as to the economic benefits of the various rail options there is a study attached to the previously filed Nye County comments that are already in the record at the STB.
And although I do not have personal knowledge I was informed just before I came up here that with respect to the Nevada Test Site question asked previously the Test Site itself is roughly 1,000 square miles. To be honest, I don't know how many sections that would be. But it sits roughly 60 miles at its closest point to the city of Las Vegas. Thank you for the opportunity to speak.

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

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

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

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

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

As documented in a November 2007
Lincoln County report titled Proposed DOE Caliente Rail Corridor, Lincoln County, Nevada, an analysis of impact and alternatives was recommendation: mitigation. All effective grazing operations, including land and water property rights will be profoundly impacted and, even with implementation of mitigation, a number of the grazing operations may be forced out of business.

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

To ensure that ranching operation and their use of public and private land and water resources are maintained at today's level Lincoln County asks the Surface Transportation Board for conditions that would result in DOE accomplishing the following goals as it designs and implements mitigation strategies regarding public land.
Achieve no net loss of animal-unit months of forage on public grazing land -- AMUs. Make sure mitigation plans are implemented for each impacted allotment before the land is disturbed. Maintain all existing access to public lands. Ensure that adequate funds are available to identify, carry out, and monitor these mitigation, working with the directly impacted parties. Provide lands that require mitigation address direct, indirect, and unanticipated impacts. Establish a cooperative process for identifying, evaluating, implementing, and monitoring the effectiveness of these mitigation measures.

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

Lincoln County urges STB and DOE to work with Lincoln County to effectively mitigate these risks by providing adequate emergency first response, medical personnel,
training, and equipment.

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

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

Lincoln County recommends that the STB encourages DOE to adopt, monitor, and changes needed to these mitigation measures. To protect the public interest we recommend that these measures be included as conditions to any certificate. Lincoln County looks
forward to working with all federal agencies
to ensure actual implementation of these
important mitigation measures.

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

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

    Lincoln County is characterized by
an abundance of outdoor recreational
opportunities. As a result of the undisturbed
and remote nature of much of the county's
public land tourism is an important component
to the local economy.

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

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

To facilitate design and implementation of the adaptive management approach suggested by DOE Lincoln County recommends that STB add a condition for DOE to
include the use of adaptive management approach to account for changes, estimate impacts, and to make adjustments to mitigation measures for actual rather than perceived risk for the construction and operation of the railroad.

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

Finally, to make sure that the Caliente Rail Line and mitigation measures take place in a timely and complete fashion we
ask that your certificate include the following three conditions and they be met before any construction begins.

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

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

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

   DR. BAUGHMAN: Thank you, Mr.
Chairman, members of the Board. My name is Mike Baughman. I'm appearing today on behalf of White Pine County Nuclear Waste Project Office.

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

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

The Caliente Rail Alignment does not cross White Pine County. At its nearest point the county and the rail alignment is
approximately 35 miles south of White Pine County line.

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

The proposed rail alignment would cross public lands and may cross or otherwise impair private lands and improvements owned and operated by or otherwise utilized by residents of White Pine County. In particular, White Pine County based livestock operators owning permits to utilize public land grazing allotments crossed by the Caliente Rail Alignment may see the use and/or value of private base property in White Pine County impacted due to impaired use of public land grazing allotments and related range improvements impacted by the proposed Caliente Rail Alignment.

The Caliente Rail Alignment will
result in a wide variety of impacts to private and public land resources and neighboring, as well the Lincoln and Nye Counties, utilized by residents and industries based in White Pine County. As a consequence, construction and operation of the rail line to Yucca Mountain may impact the economy of White Pine County and the characteristic way of life for some White Pine County residents.

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

If fully identified and evaluated many of the potential impacts of constructing and operating the Caliente Rail Alignment may be avoided or minimized through design and
implementation of appropriate mitigation measures. To the extent that potential impacts are not fully identified and properly evaluated the rail line may result in unanticipated and unmitigated adverse consequences.

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

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

The STB is encouraged to condition any certificate granted to DOE to ensure that all direct and indirect impacts are identified, appropriate measures to mitigate said impacts are implemented, and the
effectiveness of mitigation monitored during
construction and operation of the Caliente
Rail Alignment.

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

The county's comment letter noted
that in the event that a rail incident or
accident involving nuclear waste were to occur
along the Caliente Rail Alignment in the
vicinity of U.S. 93, U.S. 6, or State Route
318 it is possible that media-amplified
negative public perceptions of risk may
significantly reduce, at least on a temporary
basis, highway traffic through White Pine
County and the city of Ely. Such a reduction
in traffic can result -- would result in diminished traveler spending and related fiscal impacts to the county and city.

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

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

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

DOE should assist White Pine County with development and implementation of a monitoring system to detect negative impacts
on traveler-related economic and fiscal activity due to the Caliente Rail Alignment.

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

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

In its August 29, 2008 submission to STB DOE disagrees with the aforementioned mitigation measures. While DOE's response to STB states, In some instances risk perceptions could result in adverse impacts on portions of a local economy the Department provides no commitments to monitor such impacts or to consider alternative measures to mitigate
DOE's response to STB does not include a commitment found in the Department's final rail alignment EIS which states, DOE will continue to work with local communities and tribal nations to understand and mitigate negative perceptions of its operations.

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

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

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

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

And, Commissioner Rowe, you live and lead the local community there. What -- do you have -- what's the housing situation like and the infrastructure like -- water and sewer -- if you were to have hundreds of construction and contractor personnel come in
to Lincoln County to start building this hypothetical railroad if it were to get licensed?

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

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

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

MR. NOTTINGHAM: Thank you. Dr. Baughman, you mentioned some of the highways in the area -- U.S. 93, U.S. 6, I believe, and at least one other you mentioned. I want to make sure I understand. You are not here to tell us today that moving spent nuclear waste by truck via highway is a better idea than via railroad, are you? I just want to make sure. I don't think I heard you say that, but I want to make sure -- in the record there is some -- the big record that DOE and STB have developed there is some discussion, of course, of the
relative merits and risks and the relative safety of moving spent nuclear waste via truck versus via rail. And I think the general consensus has been that it's generally safer by rail, though we're certainly hearing some strong concerns about safety -- concerns about rail movement. Let me make sure I understand what you want us to hear about the highway network there.

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

And the issue, quite frankly, is in the event of some kind of an incident or accident in the proximity of those overpasses or those highways that might result in those roads being shut down. We have few alternative ways to move people in and out of our area, an depending upon how long those...
highways were shut down we could see
significant decline in travelers.

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

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

I know the record has some
discussion of these different ideas. I just
wanted to get your impression. You're there
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on the scene. It's safe to say you know a lot
more about what's going on there and what
could happen there than we do, so I just want
to make sure I understand it.

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

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

MR. NOTTINGHAM: Thank you. Mr.
VanNiel, I want to just ask you to amplify, if
you could, on what you refer to as the through
going corridor. We've heard about some
different corridors here today. I want to
make sure I understand more fully the corridor
that you are suggesting would be worth more
consideration.

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

In that context implementing the
through route from the south through Jean
would provide DOE with the opportunity from
the way we look at the way the design would be
put forward to eliminate all rail
transportation of both spent fuel or high
waste through the Yucca -- I'm sorry --
through the Las Vegas valley itself.
Eliminating any transportation through Las Vegas -- it would either go -- come through the north, not touch Vegas, and then come through either Caliente or Mina, depending on which of the northern routes you were to implement or choose.

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

Also, that would provide opportunities for both elimination of some of the congestion on the route itself from whatever northern route you're discussing and free up the possibility of more commercial traffic to use that route at the same time as
these rail trains for transportation of spent
fuel and waste.

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

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

So that the intense growth -- and
I have one of the largest areas in Clark
County that is growing. From Mountain's Edge
to Southern Highlands to the Coyote Springs is
not there, but with our current economic
situation -- you asked about housing. And I'm
in real estate on my side job. It will be
years before we see something really happen in
that general area. And they are not really
building entry level homes to begin with out
there that would meet the needs.

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

So it has become more and more
populated. And 20 years ago when it was first
looked at it did look probably like a
wasteland. But in driving around now you see
so much, and especially with our strip economy
and the safety of our -- not only our
constituents and citizens but the people that
come from across the world.

MR. NOTTINGHAM: Thank you. Vice
Chairman Mulvey?

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

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

MR. VANNIEL: It's --

MR. MULVEY: -- the Las Vegas
Valley?

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

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

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

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

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

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

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

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

I don't want to say that Yucca
didn't rise to the top. It did. There were three final candidates for the site, and there seemed to be a very acceleration in the thinking on behalf of DOE and the other two were eliminated, bringing us to Yucca.

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

Congress charged the Government with finding a geological repository, like they said, that would last 10,000 years, and it was determined that Yucca was that repository. More studies concluded that Yucca was not that repository and the Government, in many of the papers that have been filed -- and this is in our lawsuit that's pending in the District of Columbia -- began to switch -- why they were using Yucca and what they would do to make up for the fact it was no longer geologically capable.
And what they are using now as the primary method of containment of high-level nuclear waste are these casks, which is, again, have not yet been developed, you know. It makes you wonder. If these casks will be developed just the way the Government says they will be developed and are just as capable of containing waste as they say they would -- even more capable than the mountain -- why the heck are you moving the stuff to begin with? Why don't you just leave it on site, put it in these super casks, and avoid the 9,500 trips to Nevada.

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

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

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

What's going to happen here when people have to assume that radiation that can kill you in one or two minutes might be released? And then imagine that spread over
this entire country on a rail system. Who's going to respond to this? Who's going to clean this up? Who's going to train these people? Who's going to be there when the local government shuts down -- when Las Vegas has to evacuate the Las Vegas strip with over 110,000 rooms and an economy almost 1,000 percent dependent on it if one small accident occurs?

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

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

Lincoln County mentioned some mitigation factors -- we received them. But we would be developing mitigation factors.
Could you identify three or four mitigation factors that you feel would be the sine qua non for letting this operation go forward?

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

And what could you possibly do to mitigate? What are you going to do, pump billions of dollars into training people to deal with the hazard? What are going to do -- are you going to isolate these railways and keep them 5 miles, 10 miles, 50 miles, 100 miles? What are you going to do for the people in Chicago, in Minnesota, in Washington state, in northern California? What are you going to do for the people in Missouri -- in St. Louis and in Kansas on one side and then St. Louis on the other side? What are you
going to do to protect them from all this stuff coming through?

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

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

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

From Lincoln County, you mentioned about one of your mitigations was that every
landowner had to agree with the railroad --
that to acquire the land and build the line.
What if a particular landowner said, No,
there's no way I would ever allow this to go
through? What would the railroad do then? Do
you think that the railroad should then have
the right of eminent domain to take the land
at fair compensation? Or should that be a way
of stopping the line?

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

That leaves our landowners at a
very extreme disadvantage. And that impact
then is unmitigated for quite some time and
the costs of prosecuting it in court isn't, in
fact -- probably will be unmitigated.

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

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

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

DR. BAUGHMAN: If at all possible.
And obviously that puts the onus on DOE's back
I think to be a better negotiation -- to be a
better, more willing partner in trying to
resolve these issues with landowners rather
than just put the big hammer of the federal
government on them and go forward.

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

But wouldn't that be true of
virtually every route in the country where
this stuff is going to be passing through?
Every place would be impacted because, judging
by that map and maps we have here it looks
like wide swaths of the country are going to
be affected and there would be these impacts
throughout all of these routes. I don't see
how we could compensate everybody who's going
to be affected by the movements of spent
nuclear waste.
DR. BAUGHMAN: Mr. Vice Chairman,

I think that speaks to the brevity of the problem that Mr. Jerbic has pointed out and whether it is, in fact, feasible to try and do that. We raise it in our area because we have very few choices for getting through our area on the existing highway system.

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

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

DR. BAUGHMAN: Correct.

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

MR. BUTTREY: Thank you, Mr. Chairman. I think it's probably clear to the
people that are present in the room today that
this hearing is striking some nerves on the
members of this panel. Mr. Rowe, is it -- Mr.
Rowe -- I'm sorry. Is it's Mr. Rowe or is it
Mr. Rowe? I'm sorry.

MR. ROWE: Rowe.

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

MR. ROWE: No, I'm not.

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

MR. ROWE: Right.

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

MR. ROWE: Not only the grazing
land, but it's BLM land. As was stated
before, about 98 percent of our county is
managed by the BLM. Not only is it grazing
land, but it's also multiple purpose -- for
MR. BUTTREY: And BLM does not pay you taxes for -- in your county they do not pay property taxes. Is that correct?

MR. ROWE: They --

MR. BUTTREY: Or do they pay property taxes?

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

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

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

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

MR. ROWE: Right.

MR. BUTTREY: Okay. In my part of
the world where I come from, in Tennessee -- we have these bumper stickers that say, I'm a lawyer by training but I'm a farmer by the grace of God. You know, you struck a nerve with me because I was a farmer before I was anything else. You struck a nerve with me when you started talking about farmers and ranchers and people who have to graze cattle and make a living doing that. I'm familiar with that process.

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

And we had a witness here from California this morning -- earlier this morning. And I understand that California may get a lot of their water from Nevada. I don't know that to be an absolute fact. Maybe you
can confirm that for me.

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

    I mean, the Pacific Ocean is off the coast of California out there and has a lot of water in it. But the water seems to be coming out of Nevada for California. But that's an issue for another day I know. But I just want to have you elaborate -- or anybody else on this panel -- elaborate, if you would, how this water situation is going to work out because it appears to me that this project is going to require in drilling new wells -- a lot of new wells and drawing from
the land water, which means that the cattle
and the people may suffer irreparable harm
here. And I just wish someone would, if they
feel comfortable with it, speak to that issue.
I see the Mayor -- I see some movement from
the Mayor over here. Maybe he has something
to say.

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

So, with that condition, basically
there are serious water issues that confront
us, particularly in southern Nevada. The
water that we get in southern Nevada basically
comes from the Colorado River. And the
snow -- if it snows on the western side of the
Continental Divide provides the water runoff
and the Colorado becomes full and various
lakes along the way -- Powell, Lake Mead --
you're full.

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

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

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

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

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

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

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

So what we have suggested is -- and you may wish to consider this as a condition -- is that the applicant be required to basically, to the extent allowed by law, to
allow for those wells that are drilled by the Department of Energy to be made available to the public land users -- the permittees that are out there -- to substitute for other water resources or access to forage that may have been disrupted by construction of this project. And we think that is one avenue of getting in some of the mitigation we've talked about.

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

DR. BAUGHMAN: I would --

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

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

MR. BUTTREY: There's a vast difference.

DR. BAUGHMAN: -- that if the state engineer approves any water for the Department of Energy for these wells for construction that they probably will require
that those wells be metered in terms of their production.

MR. BUTTREY: Thank you.

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

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

MR. MULVEY: No. Thank you.

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

MAYOR GOODMAN: Thank you.

MR. NOTTINGHAM: -- Commissioners, other witnesses. We will now do a little housekeeping. We will call forward our next panel, Panel I(D), more government officials.

Representing the city of Caliente, the Mayor, Kevin Phillips. From the city of Henderson, Mayor James Gibson and also Councilwoman Gerri Schroder. And also from the N4 State Grazing Board, E. Edwin Higbee, Board member. And Jeremy Drew, an additional witness for N4.

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

(Pause.)

MR. NOTTINGHAM: Mayor, are you
I'm sorry; I couldn't -- I didn't see your name.

MAYOR PHILLIPS: I'm here.

MR. NOTTINGHAM: Well, welcome.

And if the monitor is helping you, feel free to use it. If not you can -- I've found it's mobile too. But, anyway, please, whenever you're ready we will start with you.

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

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

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

MR. NOTTINGHAM: That works.

Thank you.

MAYOR PHILLIPS: Thank you very
much. I'm going to try something here that I hope will work. I have a little dog-and-pony show that will be of interest and break the boredom somewhat.

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

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

Okay. This is Caliente right here in the olden days. My point of this little display is to show you that we have always been a railroad town from its inception, and I think it will prove interesting to you if it works.
I'll just signal to you and you
bring it up.

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

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

The first
central Nevada Railroad was built in 1870.
Locally it was called the Pioche Bougainville,
which hauled ore from the mines in Pioche to
a mill near Panaca for crushing. This route
went through Condor Canyon, which shows some
of the grades and things there, to Pioche --
the old Pioche depot in 1907 this photograph was taken. You can see the ore cars behind there. Next.

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

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

When I was a boy we crossed this bridge. These are the pylons that there were. Next.
We walked across this bridge to go swimming. Next.

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

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

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

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

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

Shows how it worked. Now, this was in the days of steam engines. And the grade from Caliente up over the lip of the Great Basin is fairly steep in a short
distance. And so the trains would come to
here from Las Vegas. Another engine or two
would hook on to push the trains up over the
lip of the Great Basin and on toward Salt Lake
City. When the steam engine era died out to
become diesel locomotive all this stuff was
taken away. Next.

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

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

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

You're standing right at Fremont
Street. And on the far end center is the
first new Union Pacific depot at the head of
Fremont Street -- a tent city, et cetera, and
so forth. So now you see what it used to look
like. Next.
Now in Caliente -- the middle left -- the roundhouse is gone because of the diesel electric advent. No longer the distance is difficult to do, and the engines have enough power to get up over the hill. And so this is the case now. Next.

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

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

We showed you a picture of some of the rail cars, and I noted the shipments that come through there. The city's done a study
relative to risk, and I think it would be well for us to keep risk in perspective.

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

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

Mr. Lux indicated -- Mr. Lux -- excuse me. Bob, I'm sorry. I keep thinking of Bob Lux instead of Bob Halstead. Mr. Halstead always talks about the difficulty of those three or four passes from Caliente and
midway across. I just thought I'd throw these in so he could see. This is the UP going over the Continental Divide -- looks a little difficult, but that's a 2.6 percent grade -- certainly engineered, and they're doing it all the time. Next.

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

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

This is just an actual diagram on the computer of what that Tehachapi Loop looks like. Bottom line, there are no impediments to engineering a railroad from Caliente
across. In fact, it's a cakewalk compared to some of these situations right here, and I wanted to highlight that. Appreciate that very much.

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

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

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

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

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

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

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

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

And we view this as a lot of opportunity and actually some enhancements.
I'll be happy to answer questions later on.

Thank you very much.

MR. NOTTINGHAM: Thank you, Mayor.

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

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

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

The city of Henderson has consistently passed resolutions in opposition of this repository and transportation to it. On May 11, 1999, the City Council passed a
resolution opposing the transportation of radioactive and/or hazardous waste through or near Henderson. That position includes rail transportation of high-level nuclear waste and spent nuclear fuel which we feel could be detrimental to the residents of Henderson. The city of Henderson is, therefore, opposed to the Certificate being granted for STB Docket Number 35106.

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

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

Contamination that could result
from an act of terrorism is another risk we are unwilling to accept. We would like to see the DOE develop a more comprehensive threat assessment to determine the likelihood of a terrorist attack against high-level nuclear waste shipments.

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

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

And, if so, what services and standards would be offered? We are concerned that a shared-use rail line will increase rail
traffic, resulting in air quality, sound
pollution, and emergency response issues.
Congressional funding is uncertain, making the
likelihood of expensive common carrier rail
construction questionable.

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

If the Caliente Rail Line were not
built truck transport would be the only
alternative for shipping. Truck
transportation of high-level radioactive waste
could leave the city of Henderson vulnerable
to economic, health, security, and emergency
management impacts. In addition, no design
approval currently exists for TAD canisters,
further adding to the prospect of adverse consequences to truck transportation.

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

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

To quote a National Academies of Science, Engineering, and Medicine report, these activities may have direct impacts on quality of life, property values, and/or business activities, especially if they
persist over extended periods of time.

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

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

MR. NOTTINGHAM: Thank you,
Councilwoman. We will now hear from Mr. E. Edwin Higbee, board member of the N4 State Grazing Board.

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

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

The N4 Grazing Board is a recognized political subdivision of the state
of Nevada. We represent the public land
ranchers within the Bureau of Land
Management's Ely district. The district
includes White Pine, Lincoln, and portions of
Eureka and Nye Counties.

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

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

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

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

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

The people on the ground are those who can most readily accurately identify the impacts of the projects and develop mitigation alternatives that will allow them operate effectively. Some, but not all, of these impacts and mitigation measures were incorporated in the final EIS.
The Record of Decision that the DOE issued for the rail EIS stated that the preliminary best management practice, BMPs, and mitigation measures will further develop and detail through a regulatory compliance process, such as the DOE's application of Certificate of Public Convenience and Necessity to the Surface Transportation Board.

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

We would ask that the Board include a condition to their Certificate requiring that DOE execute all BMPs, mitigation actions, and processes identified in Chapter 7 of the rail EIS. We would also request that the STB require the DOE's full compliance with any and all stipulations attached to the right of way grant issued by the BLM.
There are several other items that were not included in the rail EIS that we would request the STB to consider as additional conditions. Within the final EIS the DOE proposed a system where affected parties can request mitigation actions, but the DOE will determine the feasibility of that request. The N4 Board sees a potential impasse in the process between what the permittee deems as practical mitigation and what the DOE considers as suitable mitigation measures.

To remedy this potential the N4 Board suggests that a mitigation target could be set to allow permittees to continue to operate at existing stock levels. This will require the development of end-term and long-term allotment management plans prior to the start of construction. We would ask that the STB consider a condition to this effect with the goal of allowing public land grazing allotments to continue operations at current stock levels.
Additionally, the process suggested by DOE will likely be expensive and time consuming for our ranchers. It is imperative that the DOE provide sufficient funding for each affected rancher to hire a range scientist to assist in developing required mitigation actions for their allotment if they desire.

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

In fact, a protocol for successful revegetation has simply not been developed for many of the areas that the corridor will cross. In these cases research will have to be conducted in order to develop applicable
restoration plans. Any disturbed land will require the use of every available tool. This includes the use of temporary irrigation and adaptive plant species to outcompete weeds and stabilize soils until maybe vegetation can be established.

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

However, these tools are not within DOE's list of best management practices. As such, the N4 Grazing Board requests the STB to include a condition that DOE develop restoration plans in conjunction with experts familiar with restoration of these ecosystems, including university researchers and agriculture research services.
Further, that the DOE adds the use of adaptive plant species and temporary irrigation to the list of restoration BMPs. The absolute best management practice is for the DOE to limit their construction disturbance to the smallest practical extent across the entire corridor. These limits should be mapped during design and marked in the field and surveyed to aid in compliance and inspection. We would request a condition for this and emphasize the need for compliance inspection of limits of disturbances throughout the construction of the corridor.

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

Those who reside in, recreate in, and make a living in or simply visit these
areas seek -- to seek solitude and tranquility they now provide. In addition, an overall increase in train traffic -- the increase in train traffic and train speeds will result in increased probability of fire starts, increased direct loss of livestock, wildlife, wild horses, and more restricted movement of these animals, reduce safe access to public lands and private holdings. Wildfire resulting in long-term loss of wildlife habitat and livestock forage can be crippling to herds in public land grazing operations.

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

Increased train traffic speeds will increase the direct loss of wildlife, wild horses, and livestock due to collisions with trains. The loss of livestock can partially be compensated through direct
payment to livestock operators for their loss. However, livestock in these areas have adapted to their surroundings, and replacing livestock in a desert ranching operation is by no means a one-on-one correlation.

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

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

We ask the STB to condition that the location and design of livestock, wild horses, and wildlife crossings be developed during design of the rail, input from public land grazing permittees, BLM, and state wildlife officials. We also ask that these
parties work collectively to establish maximum train speeds throughout the corridor in order to mitigate these impacts.

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

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

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

    MR. NOTTINGHAM: That's good.

You're right on time, Mr. Higbee. If you need 30 seconds to wrap up or if Mr. Drew needs to
chime in -- but time is up. But go ahead and
wrap up if you need to.

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

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

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

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

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

MR. NOTTINGHAM: Mr. Drew?

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

Some of the permittees said -- would give us a set of mitigations that they felt were appropriate to their allotment. Others said there's no amount of mitigation
that could be implemented that would keep us in business, quite frankly.

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

MR. BUTTREY: We make whiskey there too.

MR. DREW: That's right.

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

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

Back to your question more specifically, Vice Chairman: Yes, that's true that any infrastructure improvement would result in those sorts of impacts, but you have
to understand the nature of the area we're
talking about. We're talking about hundreds
if miles of contiguous undisturbed habitat and
the solitude that provides. The only
infrastructure that currently exists in some
of that is dirt and gravel roads with a
maximum safe speed of maybe 50 miles an hour.

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

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

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

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

MS. SCHRODER: Well, one of the
things that I know that Congress is working on
right now is the study of our natural
resources -- using our sun, the solar, the
geothermal in place of nuclear plants. The
something that we want to get away from is
using nuclear power. When we have natural
resources that we can use why can't we use the
money -- instead of using it for Yucca
Mountain use that for our natural resources so
that way we could be more energy independent?

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

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

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

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

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

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

MAYOR PHILLIPS:  2,200 shipments --

MR. MULVEY:  Shipments.

MAYOR PHILLIPS:  Sometimes multiple shipments --

MR. MULVEY:  In a carload.
MAYOR PHILLIPS: -- you know, in a single carload.

MR. MULVEY: oh, okay. Thank you.

That's all.

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

MR. BUTTREY: No further questions.

MR. NOTTINGHAM: Mayor Phillips, thank you for providing a little bit of the history lesson. It was very interested in seeing that. So many of our communities in this country were founded originally to be basically railroad-related service communities. So many of them have grown and changed, and a lot of them -- what we find out in our work many citizens don't remember the history or choose to not remember it when they come to us to ask for more regulation to be imposed or re-routings and stuff. So it's refreshing to hear from a community where you know your history and you share it with us straight up. We appreciate that.
I have to ask. You mentioned being sued because of having an unpopular opinion in some quarters. It's not really relevant to this proceeding, but I've got to ask. As a lawyer I'm just scratching my head. How does somebody get sued for --

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

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

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

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

MR. NOTTINGHAM: Now, as a starting point for this proposed new line right here -- right in your town, Caliente, arguably that's where there might be some switching and some trains coming in and being
prepared and organized to then head towards this proposed facility.

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

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

MR. NOTTINGHAM: Okay. Councilwoman Schroder, you mentioned something that we've seen in the record, which is some concern that the Department of Energy might
not seriously be planning on operating a common carrier -- or I think they use the phrase that's a little less used by us -- shared use line -- that perhaps it might not be a common carrier, so anyone who's interested in the common carrier attributes of the line ought not to get their hopes up if I understood the -- your testimony.

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

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

And we can respond to complaints. We can initiate inquiries. We can convene
show cause proceedings. We can also actually
direct service or put another railroad
operator in place to serve shippers. So we
take that -- that kind of goes to the heart of
what one of the reasons why we even exist as
an agency.

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

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

And in May of 1988 this
corporation that produced rocket fuel had
exploded. Now, back then the only things that
were in that particular area was Pepcon and the Kid Marshmallow Factory. And then a little bit to the east was Thatcher. Today if you look at the area it is dramatically expanded and it's a very densely population area.

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

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

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

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

MR. NOTTINGHAM: Thank you,
Councilwoman. Any further questions for this panel?

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

MS. SCHRODER: Well, it blew up.

MR. MULVEY: Oh, it blew it.

MS. SCHRODER: It's gone.

MR. MULVEY: They didn't replace it.

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

MR. MULVEY: There's not.

MS. SCHRODER: So it was just gone.

MAYOR PHILLIPS: And, hence, the technology moved to Utah because they supported and built a great big plant and it's an extremely thriving industry over there.
that's providing tremendous jobs and benefits to southern Utah now instead of southern Nevada.

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

MR. MULVEY: Thank you.

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

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

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

MR. BUTTREY: Okay.
MS. SCHRODER: But a disaster is a disaster no matter --

MR. BUTTREY: Yes, I would --

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

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

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

MR. BUTTREY: Thank you.

MR. NOTTINGHAM: Thank you panel.

You will be dismissed now. We appreciate your testimony. And we will now break for 30 minutes and return at 12:52 for those keeping score -- or as close to there as possible. And we will start with Panel II representing Native American interests.

(Whereupon, a short recess was taken.)
MR. NOTTINGHAM: We will start with Panel II, representing Native American interests. From the Western Shoshone National Council Mr. Ian Zabarte, Secretary of State for the Western Shoshone National Council. I understand he'll also be joined by Mr. Phil Swain. We also will call forward Margene Bullcreek, President of the Native Community Action Council, and Mr. Joe Kennedy, Chairman of the Timbisha Shoshone Tribe.

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

MR. ZABARTE: Zabarte, yes.

MR. NOTTINGHAM: Zabarte.

Welcome. And we'll start with you.

MR. ZABARTE: Thank you. My name is Ian Zabarte. I am the Secretary of State for the Western Shoshone National Council and the principal man for foreign affairs. I'm here to defend the basic human rights and territorial sovereignty of Newe
Sogobia, the Western Shoshone Nation. The Western Shoshone National Council is the original traditional self-determined government de jure of the Western Shoshone Nation. Our spiritual beliefs, culture, and customs in relation to our country determine who we are as a people.

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

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

The Western Shoshone National Council is opposed to the Department of Energy application for a Certificate of Public Convenience and Necessity, Finance Document Number 35106 now before the Board. The
Western Shoshone Nation challenges the basic assumptions of the U.S. assertion of ownership to the entire 300-mile-long Caliente Rail Corridor set forth in Department of Energy application.

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

The Department of Energy misidentifies the ownership status of the land within the proposed rail corridor. By and through the Treaty of Ruby Valley the Western Shoshone Nation asserts original and continuing ownership to the lands that constitute the 300-mile proposed rail corridor.
In 1863 the United States agreed to purchase specific interests sought by the treaty, then failed to fulfill the payment schedule in Article VII, a substantial breach of the purchase agreement clause. Our government's position is that the status of the land returned to the status quo ante the treaty.

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

Unfortunately we have had no word from Washington and, instead, suffer the crippling legacy of injustice and environmental racism as institutions of the United States Government we trust to keep us safe fail to do so. The United States fails to restrain acts that violate the Treaty of
Ruby Valley, giving no justification for violations of our borders, sovereignty, and well being of the peaceful Western Shoshone people.

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

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

The Western Shoshone perspective views the United States Government as making a practice of abuse one government institution after another. On the one hand, agencies selectively target the most prominent Western
Shoshone nationals for abuse, such as Carrie Dan, Western Shoshone National Council representative, and former chief -- Western Shoshone National Council Chief Raymond Yowell, both of whom are engaged in the peaceful expression and display of property ownership rights contemplated by the treaty as hunters or herdsman.

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

The Board is hereby formerly noticed that any actions certifying the Department of Energy application without a claim under the Treaty of Ruby Valley is manifest of willful intent by the Board to
commit crimes against the humanity and dignity of the Western Shoshone people.

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

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

The final report to Congress did not cease to be a condition of finality when
the Indian Claims Commission was terminated by Congress in 1978. Thus, since the Indian Claims Commission no longer exists to file the necessary report it is now too late for the United States to ever achieve finality in the Western Shoshone case within the framework -- the statutory framework of the Indian Claims Commission Act.

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

Consider the 1861 act of Congress organizing the territory of Nevada -- Provided further that nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights shall remain unextinguished by treaty
between the United States and such Indians or
to include any territory which by treaty with
any Indian tribe is not without the consent of
said tribe to be included within the
territorial limits or jurisdiction of any
state or territory. But all such territory
shall be accepted out of the boundaries and
constitute no part of the territory of Nevada
until said tribes shall signify their assent
to the President of the United States to be
included within said territory.

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

Title to the territorial
sovereignty of the Western Shoshone Nation
rests upon the vestative facts that
international law recognizes as creating title
the Treaty of Ruby Valley. The United States
willingly consented to the Treaty of Ruby
Valley, recognizing the legal right, privileges, powers, and immunities that are true of Western Shoshone nationals that are not conferred upon others.

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

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

MR. NOTTINGHAM: Thank you. We will now hear from Mr. Phil Swain.
MR. SWAIN: Yes. Thank you. As you noticed, I was looking around for my paperwork. I must have misplaced it somewhere and it's not in here, but I will let it go.

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

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

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

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

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

I was under the impression that we kind of put a hold on this repository, but it's kind of like putting the cart before the horse. Maybe you guys know more than I know about this, but with the new elected President -- you know, if he's 100 percent for it I haven't heard anything like that. So
that's one of the main problems I have and the astronomical cost that it's going to cost to build this thing.

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

But the thing that I look at, because it's my homeland and the Western Shoshone's -- you know, we fought over that homeland -- that territory that they've given us as a line. But in years we traded together we went looking for pine nuts, we went hunting for deer in that area. So it was our ancestral where we hunted and fished.
And if, like one of the gentlemen talked about Las Vegas -- how it looked before it became Las Vegas, you know -- if you can imagine, you know, the meadows, the water, and the places where the Indians camped. And, you know, they didn't want for a lot because the land gave it to them.

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

Water is another critical issue. Where are you going to get the water? If you're going to talk about water then you have to talk about the Southern Nevada Water Authority. And I don't know if you all know -- it sounds like most of you guys are not from here and are not familiar with the state -- but we're trying to bring water from
northern Nevada to southern Nevada in an eight-foot pipe.

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

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

So when the water flows it flows underground, surfaces, then flows underground again, and then ends up in Lake Mead. Now, if you ever go out to the northern tip of Lake
Mead, you know -- I mean, talk about storage and trying to create jobs for people. You need to look at the northern end of Lake Mead and your heart will cry because all there is is a little stream about four feet wide that used to hold gallons and gallons of water up in the northern end. It still runs, but it's not as much.

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

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

And you gentlemen here are from the Surface Transportation Board. I appreciate your concern in how you're going to transport. But, you know, when I look at the route of the railroad I think about my tribe which is
located 50 miles from here. And we're probably I believe the fourth largest landholder here in southern Nevada besides the federal government and several -- maybe Harvey out there in Coyote Springs.

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

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

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

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

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

So those are some of the little stories that I have about this whole process. And when I think about the rail system -- and somebody said, Well, it comes through Las
Vegas -- well, they're not really sure, but I think it does.

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

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

And so my thing is -- and because I live out there and I have contact with engineers and people that worked at Yucca Mountain or Nevada Test Site where they were doing the testing in the early sixties and
seventies. Many of them have come to me and said, Phil, you know, the government is crazy because they're building it on a fault. And I'm saying, Well, that's not what they're telling me. They say it's safe and sound.

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

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

And this is my reason I think -- and I'm not sure why -- many of our people
couldn't come here today because they live in
the outlying areas and it's hard for them to
buy the gas to get here. Now, if we were one
of those so-called affected tribes then we
would get some of that money, but I doubt that
very seriously because we've tried and we've
tried and we've tried, and we haven't been
able to get it.

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

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

MR. SWAIN: All right.

MR. NOTTINGHAM: Thank you.

MR. SWAIN: All right. I'll wrap
it up. I appreciate the time. But, anyway, I just want to thank you and say that, you know, these are my very serious concerns. And what more can I say.

MR. NOTTINGHAM: Thank you, Mr. Swain.

MR. SWAIN: Thank you.

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

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

My name is Margene Bullcreek. I am a Goshute Shoshone, from Skull Valley band of Goshutes located in Utah, about 70 miles from Salt Lake City. I am also the President
of the Native Community Action Council. I would like to thank you for allowing me your time to hear me speak.

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

The tribes are Paiute, Shoshone, and Owens Valley Paiute, Shoshone Native Americans. These communities have already had health effects from the Nevada testing conducted in the '50s, '60s, and to the present.

The Native American has cancers, thyroid, et cetera. Many have died from these poisonous effects from the Test Site fallouts. Today many youths are suffering from thyroid health problems. The Native Community Action
Committee studied and has written data resources on the radiation effects of their communities.

The indigenous people have always been caretakers of their Mother Earth. They have respected all living creatures and their livelihood. What plant and medicine present in this day and age are still very much part of their culture and tradition.

The U.S. Department of Energy works to protect important cultural resources at the site. Department scientists protect these resources through Yucca Mountain Projects Cultural Resources Program, which makes the Nuclear Waste Policy Act requirements that important resources of Yucca Mountain be protected during the characterizing -- characterization; I'm sorry.

The program complies with numerous federal laws addressing Native American issues and cultural resources, including the American Indian Religious Freedom Act and the National Historic Preservation Act.
The 300-mile construction of rail line within the corner of the Western Shoshone homeland would cause irreversible destruction of values of cultural and traditional plants, medicine, and plant food, as well as living creatures -- some are distinctive.

There are well understood definitions and references in this indigenous way of life called sacredness. The sacredness could be referred to as homeopathic medicine or organic gardening by the non-Indians.

This proposed rail line would disturb all issues I have mentioned. This construction should not happen. The communities will be -- this -- communities will be affected by a nuclear mishap. There are no emergency responders trained to protect communities. This is just not 300 miles of proposal but thousands of miles of transportation transporting high-level nuclear waste to an unsettled repository site that has lots of EIS problems; this site, Yucca Mountain, that is part of the Shoshone
homeland of cultural and traditional indigenous people. We demand justice not genocide for our indigenous people.

The EIS works with tribe and they should be provided in the environmental training. Because of the struggles of the self-determination at different geopolitical and scales in the politics of environment justice, tribal sovereignty, and American Indian identities within a racist white society and communities of color, environmental racism needs clarification regarding important issues of internal power structures identity, politics, and ideological disparities that confront communities of color.

Plus the Shoshone nation Paiutes have been excluded from decision making Indian rights to production, siting, and management of radioactive waste.

I also want to be able to talk a little about the dark history of Native Americans. Native Americans had never -- can
never have their land back. Their own ancestral land that belonged to them -- American history -- United States history and the Native American history -- the treatment of Native Americans is unjust, but a legal status and political status is there. And this had happened to most of the Indian tribes in America.

Native Indians were made citizens of the United States by the Act of Congress in 1924. Some obtained citizenship through treaties and special statutes of the Congress of the United States.

United States of America negotiated treaties to open up land for settlement. Some tribes had millions of acres of land. U.S. decided that tribes didn't have that many people to live on -- in terms of necessity to make a living by the utilization of the land. The United States saw that it would be reduced in size and still sustain Indian people.

Treaties were a formal way of
sequestering American Indians, treaties of the United States Constitution, the supreme law of land. The President of the United States would send out commissionaries to meet with native people. There was force and treaty was signed. The ceding gave large portions of their acres and was located on reservations. And in return of giving up the land, there were terms to promise our nation.

The terms were to protect and take care of our homeland so there were no -- so that there would be no intrusion or no molestation and provide education assistance, active cultural assistance, and health care, and provide the community treaty rights to hunt, religion, history of taking Native lands. American Indians bargained for this right after giving up massive amount of land for it.

The non-Indian has benefitted from it. The United States has benefitted from it. And the occupied lands of the United States -- they should be able to exercise their treaty
rights.

And so what I'm saying is that the Native Americans should be allowed to be who they are and to protect their homeland. And this disturbing of building a rail line would do so, and it will have an irreversible effect on our medicine plants.

I -- like I mentioned, I'm from Skull Valley, Utah, and our tribe had wanted to bring a temporary storage to our reservation -- biofuel storage, and we formed an organization to stop it.

And with our allies, the state of Utah and the senators and the Interior, made a decision to not allow this to happen from where we live because of our homeland, because of our culture and our traditions that we believe in. That would affect who we are by having this economic development come about.

And this is all I have to say.
Thank you.

MR. NOTTINGHAM: Thank you,

President Bullcreek. I thank all the
Mr. Swain, you did a very effective job with no notes. I commend you.

MR. SWAIN: Thank you.

MR. NOTTINGHAM: Maybe it's further evidence of the oral history that Mr. Zabarte talked to us about that comes from your people. Thank you for being here with us. You did touch on some of the confusion that some of your constituents and neighbors might feel as to, you know, what's going on here.

This is -- we are a fairly small agency based in Washington and all of a sudden we're here in town talking about a new proposed line of railroad that might very well -- in fact, is being proposed to serve a potential Yucca Mountain nuclear waste repository. And, you know, how does it all, you know, fit in.

And just so you understand where we -- where we're coming from procedurally. We have a legal responsibility to review rail
construction applications, which is in our little world -- corner of the world that's what this is. It's a big and controversial one, but it is a application to construct a 300 -- approximately 300-mile new line of railroad.

And it would -- the railroad is proposed to be used to serve common carriage, meaning any shipper, upon reasonable request, can get service on that line if it were to be approved and built.

And so that's really what brings us here. We generally try to act on those applications in a fairly timely manner. It's permissive though -- of course, were we to approve, or approve with conditions, this application is not the determining factor as to whether or not such a rail line would ever get built. That's obviously going to be dependent on whether this Yucca Mountain facility ever gets licensed and built.

And so it is -- several witnesses today have I think expressed some concern of
why are we doing this now, does this lock in place -- will require something to happen that might not even been needed -- wouldn't that be a waste of money.

And it does not lock anything in. It just says if all the other approvals come through -- if we were to approve this the Department of Energy would have the ability to build the line.

So we're not locking anything in no matter what we do here. But I do understand it's confusing. It was confusing to me when I first began learning about this a couple of years ago. And so I just wanted to try to help clarify a little bit procedurally.

Vice Chairman Mulvey, anything you'd like to add?

MR. MULVEY: A couple of questions. This is about the Supreme Court ruling. Do you have any ways of rearguing that case in the future? Can that case be reopened -- your claims against the Government
for the occupation of the Shoshone land?

    MR. ZABARTE: Well, as a sovereign nation that may not be the appropriate approach. We don't like going into the United States courts because that leaves the United States in control of making determinations, and it hasn't been very good at ruling justly.

    And so I think the most appropriate course is for us to demonstrate our foreign sovereign immunity. And I mentioned the Nevada Organizing Act as a way of showing that our country, which was defined by the treaty, is not to be included in the boundaries of jurisdiction if any state or territory.

    Now, the problem is that that territorial act also authorized a Nevada Surveyor General. That Nevada Surveyor General did not identify the boundaries of the Shoshone nation by the treaty and left the rest to the imagination. And you know how the American imagination is -- it's called Manifest Destiny.
MR. MULVEY: Uh-huh.

MR. ZABARTE: Well, the fact is the treaty's in full force and effect and we've gone and brought our case -- the Dan case itself was viewed by the Organization of American States, and the Organization of American States ruled that the United States violated the Shoshone rights to due process, rights to property ownership, and basic human rights.

And we are -- presented the same cases at the United Nations Commission on Human Rights, and the United States thus far has failed to respond to the Commission's request for information about these matters.

And, as I said, you know, we're -- you know -- and we've been victimized for a long time. We're trying to be reasonable, we're trying to -- we prefer negotiations. We want to talk and discuss these matters. There just seems to be a lot of trouble from the Americans letting go to some of the thoughts.

MR. MULVEY: So you have the venue
of international courts. I ask you because my
brother recently -- well, for about 20 years
he was representing New York Indians against
the state of New York. And this goes back to
agreements and treaties that predated actually
the American Revolution.

And I can't discuss the outcome of
that, but to some extent they were quite
successful in rearguing these property rights
and the fact that these treaties were still in
force, even though they were a hundred years
before the creation of the state of Nevada.

The lands that the Shoshones are
interested in and argue about, are those lands
today all occupied by the BLM or some of them
occupied also by private ranchers?

MR. ZABARTE: Well, largely
they're occupied by no one. You know, the
vast majority of the land is unoccupied. And,
you know, the United States claims that our
lands were taken. And if you look out there
you'll see that they're still there.

The BLM controls -- and this is
where the abuse comes in -- and they violate
us because we haven't had the capacity to
defend ourselves legally. When we signed the
Treaty of Peace of Friendship we allied
ourselves with the Union that allowed for the
transport of gold across our country during
the Civil War. And that allowed the Union to
finance this war against the South.

And we laid down our arms and
didn't have any other way to defend ourselves.
Our people didn't speak English, we didn't
have, you know, legal training. And we're
starting to get those things. And we're
confident that now we can defend our sovereign
immunity in the courts of the United States.

So that is our course as far as
the courts go, as well as there are
international venues and other foreign
relations with governments around the world.

MR. MULVEY: One other question on
the remains. When the STB does any
environmental impact analysis of any new
construction one of the things we do consult
with are Native Americans -- first Americans 
first nations to find out if, indeed, they're 
going over any grounds that are the property 
of or affected by Indian cultural artifacts 
and the like -- and I believe that includes 
remains.

Is there any approach that could 
be taken by the railroad if it's constructed 
so that any time it does run over -- run into 
remains they could be re-interred or moved and 
placed elsewhere within the culture of the 
Native American people? Or can they be moved 
to -- must they stay where they are?

VOICE: That's for you, Mr. Swain?

MR. SWAIN: Who are you 
addressing?

MR. MULVEY: You. I'm sorry.

MR. SWAIN: Me?

MR. MULVEY: Yes, sir.

MR. SWAIN: Oh, I'm sorry. That's 
the big question. That's really the big 
question because when we work with government 
agencies -- I'll give you an example. The
Grand Canyon -- that was our ancestral land too. So every now and then they'll discover a remain and they'll give us a call and say, well, what do you want us to do with this remain.

Well, in our culture it wasn't kosher for us to go and dig up a remain and move it to some other place. Once we put a person away we put the person away. So it's like coming up with new thoughts -- new ideas on how we're going to handle that.

If anything we would like to leave the body there, you know, so it won't be disturbed. And we're very spiritual as people. So we say, Well, we don't want to bother that. We'll just leave it where it is.

But because of other things that enter into the play they may say, Well, cost wise it's not going to be effective for us to leave it there so we've got to move it, you know. So we're saying, Well, what do we do, you know. And that's the big $64,000 question. We're not sure what we're supposed
to do.

And, like I say, being spiritual, we like to leave things alone as they were. And, like I said earlier in my testimony, that we didn't have cemeteries so we did the next best thing. We took that person out and we buried him, you know, in a cave or a crevice or something like that and covered the person up.

And so we like to stay away from that. But we do have -- like the Native Graves Repatriation Act -- I think that's it -- you've got to realize I have -- I spoke the Indian language before English came as a second language. Sometimes I have a hard time pronouncing some words. But, anyway --

MR. MULVEY: Your English is better than my Shoshone.

MR. SWAIN: So that's -- you know, that's what I'm saying. We -- I guess we're willing to, you know, sit down and talk about these issues. And I'm not going to say that the Government hasn't been doing that. They
have been meeting with us. We've had some
people out there already walking, you know,
the areas and looking it over. So we're
preparing for that if it ever does happen. So
that's all I can say with that because we're
not really sure in our culture how we address
those issues.

MR. MULVEY: Just one question for
Ms. Bullcreek. You mentioned the suffering
that Native Americans felt from the nuclear
blast, et cetera. And I was just wondering,
was any epidemiological data collected --
survey data collected as to how much more
often Indians in the area have been afflicted
with cancers and the like than the population
in general?

MS. BULLCREEK: We have come up
with some doses that they have received. And
maybe Ian will want to say something about
that. But I do have some brochures I could
leave with you that --

MR. MULVEY: Okay. Thank you very
much. I appreciate that. Thank you.
MR. NOTTINGHAM: Commissioner Buttrey, any questions for this panel?

MR. BUTTREY: Thank you, Mr. Chairman. I'd like to ask any member of the panel actually to respond to this. The Paiute nation was mentioned a lot in the Environmental Impact Statement -- the Draft Environmental Impact Statement.

And I was wondering whether we are to assume that you are speaking for the Paiute nation in any shape or fashion with respect to your comments today or are they not included in your comments and we should just simply wait until we hear from them or just take what they've given us so far and go with that?

MR. SWAIN: Well, as the Chairman from our -- for our tribe -- as the elected official who represents them in areas of environmental, judicial legal issues, water issues, whether it's the Nevada Water Authority, I think I can speak for my tribe. But also I want to make this clear -- is that -- and I'm hoping that this
is just one of many hearings you're going to have across the United States because we have tribes all along the rail line that are going to be affected by the shipment of nuclear waste.

So we have 26 tribes in the state of Nevada and we have four or five down in our area. Like our said, our land base is just 30 miles north of here and we occupy 70,000 acres. And then you go up into Caliente and those areas, we have scattered bands or scattered groups living up in those area.

They're not really officially recognized by the tribe, although they're related to us and we're related to Bishop -- people in Bishop and other places like that up to the Goshute Reservation. And the southern Paiutes encompass California, Nevada, Utah, Arizona, and parts of Oregon.

So we are a big, big tribe. But I would truthfully like to say I'd like to speak on behalf of the other 520 tribes if this is the only hearing you're going to have. But,
you know, we need to be included in the negotiation of these things, you know.

And so if you're going to make a statement saying that you're going to go across the country where the Navaho tribe will be able to sit in on the negotiation, because they were one of the first -- when we went to a meeting in El Paso that said, you know, what are we going to do -- we've got 200 miles of rail. Do you have the authority -- the jurisdiction to go into Indian reservation -- I don't think so, you know.

So these are the issues that we face, and we've got 20 miles of rail just right outside of Las Vegas here. So I can't say that I represent them, but I think I represent them in the cultural and spiritual way of how we all feel in our reverence for the law.

MR. ZABARTE: If I could clarify, Chairman Swain is Southern Paiute, and, you know, for Western Shoshone all Western Shoshone are related. I'm sure it's similar
for Southern Paiutes. And I do represent the
Shoshone population that is displaced
economically, politically within -- outside of
our territory.

MR. BUTTREY: Thank you. This is
a little bit off the subject, but I was just
curious. Have you followed the success of the
Alaska Native claims in the Court of Claims
case in Washington where they were able to get
a huge settlement regarding issues in Alaska?
And I was wondering whether you had followed
that or not or whether you intend to pursue
anything similar to that.

MR. SWAIN: Well, way back a
little history: We followed that, but the
Government decided they were only going to pay
us 28 cents an acre -- not what the land is
worth today but what it was, you know, worth
back then. So we didn't get a heck of a lot
for the land where under the treaties they
said they took that right from us, and that's
what we've been fighting ever since.

They're still under a treaty
saying that, you know, they're not going to
accept the 28 cents or whatever it is now --
maybe it's 30 cents -- we don't know. But,
you know, they're saying, you know, their land
is worth more.

We took it because of our economic
situation on the reservations where we don't
have jobs, we don't have, you know,
manufacturing. In fact, an official from
Vegas said, Do you have any building codes,
Phil? I looked at him and I kind of chuckled
because I said, What are we going to have
codes for? We don't even have buildings out
there, you know.

MR. BUTTREY: Uh-huh.

MR. SWAIN: So I said, you know --
we followed that to a certain extent and I
think that put us on the right track. So
without really boasting a lot, you know, we do
have a piece of the rock.

MR. ZABARTE: Some years ago I did
have conversation with Ramsay Clark, who was
a part of the Alaska Native Claim Settlement
Commission at that time I believe. And he said that they were doing the best that they can. The Alaska Natives were on a piece of ice that was shrinking with development coming in there, and so they did the best they can to keep that from shrinking.

I don't think it correlates well with our situation. Our treaty is one of the few treaties that does not cede land to the United States. And, again, that was because of our relationship at the time of the Civil War. Just three years prior to that gold was shipped from San Francisco -- out of the Comstock -- the gold fields of the Sierras down to San Francisco on steamship to Panama and over.

And in September of 1857 21 tons of gold bullion was lost off of the coast of North Carolina, which a month later resulted in the first major stock market crash and depression in the United States. And three years later the Civil War came along. In order to certify to the European governments
that were supplying armaments and resources to the Union they needed to show by treaty that they could get that gold and pay for those resources that they needed to prosecute the war against the South.

So that's our relationship. And, like I said, we've trusted the United States. And that trust has been violated. And we're to the point where we realize that the United States must be -- the treaty must be enforced against the United States. We're still open and willing to negotiate, but we're going to go to the point of demonstrating our foreign sovereign immunity as needed in the course of the United States. That's what must be done.

And it's actually asserting our rights and demonstrating that the United States does not have jurisdiction over our nationals exercising our freedoms within our country.

MR. BUTTREY: Thank you very much.

MR. NOTTINGHAM: Any further questions for this panel?
MR. MULVEY: No. Thank you very much.

MR. NOTTINGHAM: Thank you very much. We will dismiss this panel. We very much appreciate your participate today and your testimony. And your complete statements will be taken in the record. Ms. Marvin can take I think statements.

We will now call the next panel up, Panel III. It is our custom in proceedings where we're looking at the merits and demerits of an application for construction of a new line that we hear from the applicant.

And there's been much said today about the applicant, which is the Department of Energy. But we're pleased to actually have the Department with us to speak for themselves and so we can hear directly from the applicant.

We have Mary Neumayr, Deputy General Counsel for Environment and Nuclear Programs -- and we've given her a little extra
time -- 15 minutes -- considering that she
represents the applicant and that DOE has been
mentioned often today. And so we welcome you,
Ms. Neumayr, and we will turn it over to you.

MS. NEUMAYR: Thank you very much,
and good afternoon. The Department very much
appreciates the opportunity to appear before
the Board today to comment on its application
to construct and operate an approximately 300-
mile rail line in Nevada to be known as the
Caliente Rail Line.

DOE has proposed to construct and
operate this rail line in order to fulfill its
responsibilities under the Nuclear Waste
Policy Act of 1982 to dispose of the nation's
spent nuclear fuel and high-level radioactive
waste.

The rail line would connect the
existing Union Pacific main line in the city
of Caliente to the Yucca Mountain Repository
and would be used to transport spent nuclear
fuel, high-level radioactive waste, and
construction materials to the repository site.
The rail line would also promote economic development in rural communities in Nevada along the rail corridor by being available for common carrier rail service by commercial shippers.

The Caliente Rail Line is consistent with the public convenience and necessity and DOE respectfully urges that the Board approve DOE's requested certificate.

As an initial matter, the Department notes the following developments that have occurred since DOE filed its application. First, in July 2008 DOE issued two documents prepared pursuant to the National Environmental Policy Act. In particular, DOE issued its final Nevada Rail Corridor SERS and its final rail alignment EIS for the proposed Nevada rail line to the Yucca Mountain Repository.

MR. NOTTINGHAM: Ms. Neumayr, I hate to interrupt. If you could just back a little away from the mike -- we're getting some feedback up here. It's working too well.
I'm sorry.

MS. NEUMAYR: All right. Thank you. DOE filed copies of both the final Nevada Rail Corridor SERS and the final Rail Alignment EIS in this proceeding on August 14, 2008.

Second, in October 2008 DOE issued its Record of Decision selecting a rail alignment within the Caliente Corridor. DOE filed this Record of Decision with the Board on October 9, 2008.

As stated in the Record of Decision, DOE has decided to construct and operate a railroad along the rail alignment within the Caliente Corridor and to allow shipments of general freight on the rail line, also known as the shared use option, subject to obtaining a Certificate of Public Convenience and Necessity from this Board and to obtaining any other necessary regulatory approvals.

The Board's consideration of DOE's application is governed by 49 USC, Section
That statute mandates issuance of a Certificate of Public Convenience and Necessity unless the Board makes an express determination that the proposed rail line is inconsistent with the public convenience and necessity. That statute creates a presumption that applications for new lines and new rail operations are to be approved.

DOE respectfully submits that the Caliente Rail Line is consistent with the public convenience and necessity. The three factors or criteria that guide the Board's public convenience and necessity determination support that conclusion.

In particular, with respect to the financial ability criterion, the Caliente Rail Line is expected to cost approximately 2.6 billion in 2008 dollars. The source of those funds will be the Nuclear Waste Fund, which was established pursuant to the Nuclear Waste Policy Act to provide funds to cover DOE's costs associated with the management and disposal of spent nuclear fuel and high-level
radioactive waste. The value of the Nuclear Waste Fund at the beginning of this fiscal year was approximately 24 billion.

With respect to the public demand criterion, DOE will use the Caliente Rail Line to transport spent nuclear fuel, high-level radioactive waste, and construction materials to the Yucca Mountain Repository site. That use satisfies the public demand criterion of the public convenience and necessity determination.

As set forth in the ROD, DOE will also hold out the Caliente Rail Line for commercial use. And DOE estimates that there could be approximately eight train shipments per week of commercial freight demand along the Caliente Rail Line.

Finally, with respect to the public interest and harm to existing surface criterion, the Board has declared that the rail construction is presumed to be in the public interest. The Caliente Rail Line will enable DOE to fulfill its responsibilities
under the Nuclear Waste Policy Act and, accordingly, satisfies the public interest requirement.

In addition, there are currently no existing no rail services in the part of Nevada that the Caliente Rail Line will service. The Caliente Rail Line, therefore, will not harm any existing rail services.

In sum, there are clear and undisputed grounds establishing that the Caliente Rail Line is consistent with the public convenience and necessity, and, accordingly, the Board should grant DOE its requested certificate.

In preparing its final Nevada Rail Corridor SERS and final Rail Alignment EIS, as well as the Record of Decision, DOE has undertaken extensive public outreach activities among interested parties, agencies, states, localities, tribes, organizations, and the general public.

Those activities have provided interested persons the opportunity to be
informed about the proposed rail line, to identify issues, and provide written and oral comments to DOE, both as part of the NEPA process and in this proceeding.

Those comments have addressed a wide variety of topics. DOE has provided extensive responses to those comments in the Nevada Rail Corridor SERS and Rail Alignment EIS, as well as in its reply to comments on its pending application. The following addresses the major issues that have raised by interested parties.

First, a number of comments have related to safety and security issues. As discussed in Congressional testimony on September 24, 2008, by the director of DOE's Office of Civilian Radioactive Waste Management -- and a copy of this testimony is attached to our written statement -- it is well established that spent nuclear fuel and high-level radioactive waste can be shipped safely by rail.

Since the early 1960s more than
3,000 shipments of spent nuclear fuel have been conducted safely and securely in the United States, having traveled more than 1.7 million miles. There has never been a spent nuclear fuel transportation accident that has resulted in any release of radioactive material harmful to the public or the environment.

The National Academy of Sciences has determined that each spent nuclear shipment is thousands of times less risky than shipments of other commonly transported hazardous materials. Even when the Yucca Mountain Repository is operational there will be far fewer shipments of spent nuclear fuel and high-level radioactive waste than shipments of these other hazardous materials.

This demonstrated safety record is a consequence of both the use of robust casks certified by the Nuclear Regulatory Commission to transport spent nuclear fuel and the strict regulatory standards that apply to every aspect of the logistics for that
transportation, including material,
characterization, packing, loading, marking,
and equipment inspections, routing, training,
security, and shipment monitoring.

The National Academy of Sciences
has concluded that, from a technical
viewpoint, shipments of spent nuclear fuel
present, quote, A low radiological risk
activity with manageable safety, health, and
environmental consequences when conducted with
strict adherence to existing regulations.

DOE places the highest priority on
the protection of spent nuclear fuel and high-
level radioactive waste in transit and will
implement appropriate measures to safeguard
the transit of these materials to the
repository. The use of these measures will
ensure the safe and secure shipment of spent
nuclear fuel and high-level radioactive waste
to the repository. DOE is and will continue
to coordinate our planning closely with the
NRC, the Department of Transportation, and the
Department of Homeland Security.
Other commenters have focused on potential mitigation measures relating to the proposed rail line. DOE has committed to implementing measures to avoid or minimize impacts related to shipments of spent nuclear fuel and high-level radioactive waste, including implementation of best management practices and measures during construction and operation of the railroad.

DOE further proposes to constitute one or more mitigation advisory boards to assist DOE in developing, implementing, and monitoring those best management practices and mitigation measures.

DOE also has committed to consult with parties directly affected by the rail line, such as the state of Nevada, Native American tribes, local governments, utilities, the transportation industry, and grazing permittees in a cooperative manner to develop and implement mitigation measures. More information concerning mitigation measures is provided in our written statement, as well as
in the ROD, the Rail Alignment EIS, and our response to comments on the application.

DOE has also received comments relating to the city earthworks sculpture located on private land in Garden Valley, Nevada. DOE has addressed those comments by selecting an alignment segment in Garden Valley that is farthest from the sculpture to reduce any potential noise or aesthetic impacts to those visiting the sculpture.

In its draft Rail Alignment EIS DOE indicated that its preferred alignment for the rail line will pass within approximately one mile of the city sculpture. In response to comments, however, DOE selected an alternative route that is about four times farther than the preferred alignment in the draft Rail Alignment EIS. Other more distant routes were analyzed, but they were not reasonably feasible.

Finally, participants in this proceeding have commented that the Board should require DOE to use dedicated trains for
the shipment of spent nuclear fuel and high-level radioactive waste nationwide. As discussed in its response to comments and in pleadings in this proceeding, the Board should not impose such a condition.

Prior administrative proceedings have already addressed and rejected carrier attempts to impose mandatory special train restrictions on shipments of spent nuclear fuel, and DOE has cited to those relevant decisions in case authorities in its filings with the Board.

As discussed in those filings, DOE has adopted a policy to use dedicated trains as its usual mode of rail transportation for spent nuclear fuel and high-level radioactive waste shipments to the repository. In adopting this policy, however, DOE has recognized that such material can be shipped safely, regardless of mode or type of service, primarily due to the stringent regulations in place and the robust nature of the transport packages involved.
DOE additionally has identified that the primary benefit of using dedicated trains is a significant cost savings over the lifetime of the Yucca Mountain project, including greater operational flexibility and efficiency.

A condition mandating the use of dedicated trains by DOE in all instances nationwide would impede DOE's ability to pursue an alternate approach when the use of dedicated trains would not advance such cost savings and/or would interfere with DOE's operational flexibility and efficiency for shipments to the Yucca Mountain repository.

In closing, DOE requests that its application be approved. DOE appreciates the opportunity to appear before the Board and requests that a copy of its full written statement be entered into the record. Thank you.

MR. NOTTINGHAM: Thank you, Ms. Neumayr. And, of course, we will include your entire statement in the record. I have a
couple of questions. You I'm sure were here this morning, and there was much discussion by some witnesses about the concerns about the lack of specificity regarding the actual containers that would be used on the trains to transport the spent nuclear waste. Can you try to shed some light on that for us as to, you know, why we shouldn't be concerned with the purported lack of information about those containers?

MS. NEUMAYR: Yes. The earlier witnesses were referring to the transportation aging and disposal canisters which DOE anticipates using for the majority of the spent fuel that is disposed of in the repository. These containers are comparable to existing canisters that are used for spent fuel and which have been certified by the NRC. And the TAD canisters which will be developed will also be certified by the NRC and will be comparable to those existing canisters which have been in use for some time.

MR. NOTTINGHAM: There was also
reference to a -- I guess one of the original earlier plans -- or maybe it's still the current DOE plan -- that there actually be two disposal geologically appropriate spent nuclear waste disposal facilities. There's reference to Yucca Mountain being the first, and then a second one planned to come on line in the future. And there were some statements earlier by witnesses that said DOE may have changed its position on the necessity or worthiness of having a second facility. Can you shed any light on that. It just was a little bit confusing to me.

MS. NEUMAYR: Yes. Under the Nuclear Waste Policy Act the Department is directed to pursue the Yucca Mountain Repository as the nation's first repository for the disposal of spent nuclear fuel and high-level radioactive waste. Under the Nuclear Waste Policy Act the Department is required to report to the President and to Congress on the need for a second repository, and they're required to report on that need at
some time after -- I think it's the beginning of 2007 and sometime before 2010.

And the Department does anticipate sending such a report to the Congress, and the recommendation in that report we anticipate will be consistent with legislation which has been in the past proposed by the Department to expand the capacity for Yucca Mountain. Under the Nuclear Waste Policy Act there is a statutory -- an arbitrary statutory cap on the amount of fuel that can be disposed at Yucca Mountain before a second repository is in operation -- and that amount is 70,000 metric tons.

In our legislation submitted to the Congress I believe last year we recommended that that cap be lifted because the 70,000 metric tons is a arbitrary amount limitation. And under the existing law we would not be able to dispose more than 70,000 metric tons unless or until a second repository was in operation.

MR. NOTTINGHAM: And when you say
lifted -- open ended lifted or lifted to another capped number?

MS. NEUMAYR: Well, I think that would be up to the Congress. The recommendation is that from a technical standpoint the repository has significantly greater capacity than 70,000 metric tons.

MR. NOTTINGHAM: It occurs to me in your line of work you're probably familiar with the general state of play around the country as it relates to the movement currently of spent nuclear waste on occasion, whether it be by truck or by rail.

Can you give us a little bit of a snapshot of what the current status quo is? My understanding is there are movements of spent nuclear waste and fuel by rail currently. Some of that goes -- much of it on Class 1 system often through major urban areas. We don't typically hear a lot about individual movements -- thank goodness. That's probably because there hasn't been an accident or problems. But can you elaborate
a little bit more on what the current state of
transportation practice is as it relates to
spent nuclear fuel?

MS. NEUMAYR: Well, I would
comment that such materials are transported
safely throughout the country. And, as stated
in our testimony, it's been done for many
decades now and it's been done safely and
securely. It is done with significant
coordination with state and local authorities
as appropriate. And, as noted in our
testimony, it's been done without any accident
resulting in any kind of release that has been
harmful to the environment or the public.

MR. NOTTINGHAM: Your testimony
was quite clear on the Department's
preference -- strong preference to not be
required to only move spent nuclear fuel in
dedicated trains -- meaning only in trains
that don't have other types of cargo and rail
cars attached to them. Yet, the -- some of
the Class 1 railroads seem to feel strongly
that the materials should only move -- and be
only allowed to move in dedicated trains. Why do you think the railroad, who seem to have a lot of experience in the safe movement of all kinds of hazardous and other material, would feel so strongly about wanting dedicated trains versus not?

MS. NEUMAYR: Well, I believe -- this area has been an area of significant litigation in the past. And I think the predecessor agency to the Surface Transportation Board dealt with a number of cases involving this issue.

But I think that the issue does have an impact on rates and, accordingly, that may be a contributing factor. As stated in our testimony, it is our policy that dedicated trains will be the usual mode of transportation of spent nuclear fuel shipments to the repository.

MR. NOTTINGHAM: So if I may read into your answer a little bit, perhaps there's a business -- which wouldn't be surprising since they are businesses -- Class 1
railroads -- a business motive of wanting for negotiating and rate-setting purposes to be able to say, Hey -- to their customers or potential customers who would like to ship spent nuclear waste -- Hey, we can't just serve you every day on all of our trains and just hook up your spent nuclear material cars to any one of our cars as we are somewhat obligated to deal with -- in common carriage. We've got to schedule this based on dedicated trains. There are only a limited number of those, and that's a more expensive kind of a service. And perhaps they could then have less complicated service requirements and also be able to charge more rates. Is that possibly what's going on here?

MS. NEUMAYR: I think you would have to ask the carriers, but I am aware that it has been a subject of litigation in the past, and there are economic considerations associated with the issue.

MR. NOTTINGHAM: Okay. Does the Department have any thoughts yet about -- my
understanding is the Department of Energy is not a seasoned rail operator. And who's going to operate these trains? Are you going to see the Secretary of Energy working the brake or -- presumably you're going to need a contract that's out I suppose or --

MS. NEUMAYR: Well, I will say just as a preliminary matter, we do on -- at DOE sites have rail spurs and we do transport material by rail at some of our sites.

As with other DOE projects the way that we would approach this is that we would go through a formal procurement process and issue RFPs and conduct a very thorough and formal procurement process in order to identify and select an operator for the rail line.

And we would be subject as part of that to very rigorous requirements under the procurement statutes and regulations, which ensure that we will conduct a very thorough and rigorous search for appropriate candidates to operate the rail line.
MR. NOTTINGHAM: Would the eventual operator be protected by the Price-Anderson Acts liability provisions? One thing that's unique to the movement of nuclear materials is there is some special liability provisions that are separate and distinct from that that applies to the regular movement of toxic materials -- toxic inhalants and HAZMAT -- that happens every day around the country that greatly concerns the rail industry because they feel they have a lot of exposure there.

But would the movements on behalf of the DOE -- on this proposed line -- would they be -- would they fall under the Price-Anderson regime?

MS. NEUMAYR: I'm probably not prepared to address that issue today. But my understanding would be that the Price-Anderson Act would apply in a regime similar to -- or it would apply as would many of our other contractors. So that would be my expectation that, yes, the Price-Anderson Act would be
implemented or applied to this particular contracting arrangement.

MR. NOTTINGHAM: Okay. Vice Chairman Mulvey? (Pause.) Vice Chairman Mulvey, do you have any questions?

MR. MULVEY: Yes, thank you.

We've heard a lot about this potential -- the routes other than Caliente, including this through route through Jean -- the Jean route being better because not only does it avoid moving the materials through Las Vegas, the most populated area, and I guess Henderson also. Also it's more in line with the shared use or common carrier obligation and that a dead heading route at Yucca Mountain really isn't going to capture much of the traffic except for the movement of spent nuclear materials, whereas a through route that went through Jean and came up to Yucca Mountain from the south would be more appropriate. Can you comment on why a route such as that was abandoned in favor of a route that dead heads in Yucca Mountain?
MS. NEUMAYR: My understanding is that use of the -- in order to avoid Las Vegas we would require both the Jean Corridor and the Caliente Corridor. It would not eliminate the transportation through Las Vegas.

But my further understanding is that -- well, I'll just leave it at that I guess. But we could provide additional information if you would concerning the Jean Corridor. I believe it's addressed in our EIS documents.

MR. MULVEY: It is. And some of the discussions on some of the alternative routes seem to be -- I don't want to say given short shrift, but are not as convincing as you would like to see why it is a particularly better route -- why Caliente is so much better. And we've heard a lot of evidence -- a lot of testimony today that maybe there are alternatives that are more productive, especially given the supposed shared use or common carrier nature of this route.
other materials that are expected to be -- you said eight trains a day, but what would you expect to be moved on this -- I know the area a little bit. I'm just trying to imagine what would be moving along this route -- eight trains a day.

MS. NEUMAYR: Well, in our application -- I believe at Appendix J we have a study which identifies materials that we would anticipate. And they include minerals, petrochemicals, and other non-radiological waste materials and other commodities. And I believe there's some additional detail in the study, but primarily minerals and petrochemicals I believe.

MR. MULVEY: Okay. Then I'll go back and take a look at Appendix J. You know, we have these little submissions here, but I do have also several feet of submissions on this.

On this question of the casks, there's confusing testimony as to that also. Some people say that these casks that are
going to be used that are theoretically so
safe and the ones that are shown in the
presentations have not yet been built or
tested, and that you're saying they will be
built and tested. And I guess they would be
superior to what's being used now.

But have they been built and
tested at all? And should there be delays
until these are shown to be practical before
we go ahead?

MS. NEUMAYR: The Department would
not take that view. These canisters are in
the process of being designed. They will be
very robust. They will need to be certified
by the NRC, so they will be subject to the
NRC's review and testing and thorough
consideration. And they are very robust.

MR. MULVEY: And how long --
approximately how long will that take?

MS. NEUMAYR: I believe that the
process will occur over the next couple of
years.

MR. MULVEY: You said that the
Department did not want to limit itself to dedicated trains, and that for the most part that would be your preferred mode of movement, but there will be times when dedicated trains would not be appropriate.

Will the Department be amenable though to any kind of restrictions on the kinds of trains that move -- for example, the trains in which these materials were included could not have other HAZMATs on the train. So a train that was comprised of general merchandise or a unit train with double sacks heading back to Los Angeles, whatever, that would be okay. But a train that also had on it anhydrous ammonia or chlorine would not be acceptable. Would the Department be amenable to a restriction like that, do you think?

MS. NEUMAYR: I think we would have to see the restriction, but I anticipate that we would be amenable to reasonable restrictions of that nature.

MR. MULVEY: Okay. Also, about safeguarding and training employees, that
railroad engineers and others who work on the
railroads -- conductors and the like -- are
not going to get any kind of special
protection or special training, et cetera, so
that they would be more at risk of being
harmed by the carriers because they
wouldn't be trained. Does the Department have
a program for training the engineers and
others when they're handling this? Or is that
to be left to the railroads? Or do you have
a program for that?

MS. NEUMAYR: Well, the Department
under the -- well, the Department is committed
to working with the Department of
Transportation, with the state authorities,
local authorities in connection with the
transit of these materials, as it does
currently.

The Department also has
responsibility under the Nuclear Waste Policy
Act to provide training to emergency response
officials and, in fact, has issued a policy
relating to that. It's referred to frequently
as the 180(c) policy -- Section 180(c) of the Nuclear Waste Policy Act.

MR. MULVEY: Would that cover local engineers that conduct this? Because they're not usually considered to be EMS emergency response people. So it will include those?

MS. NEUMAYR: I don't believe that it applies to those individuals, but the Department would be committed to working with the operators of the rail line.

MR. MULVEY: And in a more general sense, it was stated earlier on that why are we moving all of these -- if these cases -- these casks are so attack proof, so safe, et cetera, why don't we just leave things where they are rather than transport them across thousands of miles of track and put all of this in one large storage facility?

My understanding, no matter even if you went to 130,000 tons, 20 or 30 years from now it would be full and you still would have more materials out there from more
nuclear power plants. So why not just leave it all in situ and leave it protected in these casks? Why transport it across the country?

MS. NEUMAYR: Well, I think the consensus of the scientific community has long been that deep geologic disposal is the safest and most appropriate means for disposing of these materials over the long term; that while the material is safely stored in pools and in dry casks on site, ultimately it is in the interest of the public and it is the national policy that ultimately we ought to be disposing of this underground not storing it indefinitely in metropolitan areas.

MR. MULVEY: I could make you very popular in some -- unpopular in some part of the country and ask you to speculate on where else would you find an underground facility where you could store spent nuclear waste. You want to identify another state or --

MS. NEUMAYR: Well, I won't identify another state. What I can say is that in connection with selecting the Yucca
Mountain site there was a very extensive program undertaken to identify potential sites, and sites were located throughout the country initially. I believe there were nine sites that were selected for study. And, as one of the other witnesses stated, it was narrowed to three sites and ultimately to Yucca Mountain.

MR. MULVEY: My understanding was that before the Yucca was full you have to identify another site, but now you want to change that and make Yucca handle more materials before you have to find a second site? Is that what's being proposed right now -- that you expand Yucca's capacity to 130,000 tons before you have to identify a second site?

MS. NEUMAYR: Well, that was the recommendation in the administration's legislation. And the report has not yet been issued on the need for a second repository. But that is one potential approach that the Congress could take in order to defer the need
for a second repository.

MR. MULVEY: Thank you.

MR. NOTTINGHAM: Commissioner Buttrey, questions?

MR. BUTTREY: Thank you, Mr. Chairman. I appreciate the statement of the witness. Would you agree that other than fully active new fuel rods spent nuclear material is the most dangerous commodity known to man?

MS. NEUMAYR: I would agree that it is referred to as one of the most dangerous known to man.

MR. BUTTREY: Okay. This morning we had the city attorney for the city of Las Vegas here, and he spoke extensively on this issue that's before us now. And he made the unequivocal -- or what I think was unequivocal statement that in his view the decision to put all this nuclear fuel in one place -- being transported over the railroads and being put in this one place at Yucca Mountain -- I think the words he used was the dumbest thing he
ever -- that the U.S. Government has ever
proposed to do.

I'd just be interested in knowing,
you know, what your response would be. He's
not here now, but what your response to that
would be.

MS. NEUMAYR: Well, the Nuclear
Waste Policy Act sets forth the nation's
policy with respect to the management and
disposal of spent nuclear fuel. And it
contemplates that we will have a repository
that we will dispose of the material in a
permanent repository.

And that has been the national
policy for many decades. It has not been
changed by the Congress. And it has been a
consensus view of the international community
that it's an appropriate approach to follow.

MR. BUTTREY: I don't know whether
you were in the room or not, a few minutes ago
we had a panel before us of Native American --
Native American tribes. And the implication
I think of what was said -- or at least my
takeaway of what was said by the three witnesses we had was that I think they believe that one of the reasons this site was chosen was because it is on what was originally Native American land.

And it was because of that that they thought they had the least ability to fight back, if you will -- according to them, anyway -- I'm not here as an advocate for them -- I'm just telling you what my takeaway was -- is that they seem to believe that one of the reasons this particular site was chosen was because the people who have cultural, historical, traditional interests in this land were in the least best position to fight back, if you will, and that they had sort of consistency lost their efforts to maintain their traditional and cultural control over that territory. Do you have any response to that whatsoever?

MS. NEUMAYR: Well, I think we would reject that view. The site is one of the most studied locations on earth -- it's
often said to be that. And the reasons for selecting the site are set forth in our site recommendation and have everything to do with the location and nature of the -- the remote location and nature and characteristics of the site and not considerations relating to whether or not it might be Native American lands.

And I am not sure, and I am not -- we can supplement the record, but with respect to the tribes that were testifying, I am not sure that these were, in fact, their lands but rather a land grant subsequently given to them in very recent times.

MR. BUTTREY: Well, it is -- isn't it illogical to assume that -- I mean, isn't it logical to assume that they were here first?

MS. NEUMAYR: In the United States.

MR. BUTTREY: In the -- well, yes, in the United States.

MS. NEUMAYR: But what I would say
is that the site has been selected for geographic -- or geologic characteristics of the site and the climate conditions and all of the reasons that have been set forth in the site recommendation.

MR. BUTTREY: Thank you, Mr. Chairman.

MR. NOTTINGHAM: Ms. Neumayr, there was some testimony earlier today that -- I believe from the city of Las Vegas, in particular, that they estimate that at least 40 percent of all the future rail traffic that would go to Yucca Mountain would actually pass through downtown Las Vegas. Is that your position today? And, if not, could you elaborate on what the Department's position is on how much rail traffic with spent nuclear fuel would be expected to be going through downtown Las Vegas?

MS. NEUMAYR: My understanding is that the estimated number of rail casks that would be traveling through Las Vegas would be approximately 755 rail casks of the estimated
9,495 casks. So it would be approximately 8 percent of the overall rail shipments.

MR. NOTTINGHAM: And do you have any estimate how many casks would be on a given train? Is there a formula that you look at --

MS. NEUMAYR: I believe that we anticipate three to five in a shipment.

MR. NOTTINGHAM: Okay. It's probably beyond our jurisdiction -- I know it is actually about -- it's not this Board's lawful ability or position to speak to or to try to determine energy policy or nuclear energy or waste policy. Congress has weighed in a major way on that. The Department of Energy has the lead in administering those policies.

There has been some testimony though earlier today on whether or not this whole -- you know, are we as an agency, you know, wasting our time, wasting taxpayer money because this whole enterprise of building out a facility at Yucca Mountain is on the verge
of disappearing or being cancelled? Would it take an act of Congress at this point -- an affirmative act of Congress to change the direction that the Department of Energy is currently on as it relates to the Yucca Mountain facility?

MS. NEUMAYR: Well, under the Nuclear Waste Policy Act, which has been the law of the land since 1982, the Department is obligated by statute to pursue a repository. And pursuant to that Act and the joint resolution that was passed in 2002 the Department is obligated to pursue a repository at Yucca Mountain. And so under current law that is the obligation of the Department of Energy.

MR. NOTTINGHAM: Vice Chairman Mulvey, any questions?

MR. MULVEY: Just to follow up on that, the Department of Energy then would be legally bound to continue this unless Congress enacted a repeal of the Act of 1982; is that your view?
MS. NEUMAYR: Congress has directed the Department to pursue the Yucca Mountain Repository.

MR. MULVEY: Right. And I guess my question then would be, well, what if the Secretary of Energy decided that you were not going to pursue this. Are we just going to set it aside -- that Congress was not appropriating funds for it? What would be the result? Would somebody have to go and file suit to have the Department of Energy to, quote, unquote, do its job? Or what would happen at that point if the new Secretary decided he wasn't going to follow this under, say, new public policy, new energy policy? I know that's a very difficult question, but, you know, is that a possibility that it could just --

MS. NEUMAYR: Well, under the Nuclear Waste Policy Act we are obligated to -- we have responsibility for disposal of the nation's spent nuclear fuel and high-level radioactive waste. We are -- we were
obligated to open the repository in 1998 under existing law, and the Department has been sued by utilities, and there are large number of lawsuits which --

MR. MULVEY: Well, that's my question I guess. So it would be utilities that might bring a case before the courts saying that the Department is not following the law and it would be utilities that would argue that they would have to move forward then.

MS. NEUMAYR: I wouldn't want to speculate but --

MR. MULVEY: But that's -- exactly it would be them -- that's all I'm saying.

MS. NEUMAYR: There is pending litigation relating to the delays associated with the opening of Yucca Mountain.

MR. MULVEY: Okay. Thank you.

MR. NOTTINGHAM: We're familiar with I'll say legal capabilities of the electric utility industry. They're a frequent stakeholder of ours in rate disputes, so I can
in some ways sympathize with what it's like to be under the threat of constant lawsuit from those folks. It's certainly I'm sure is something for you to be keeping your eye on in your job.

Let's see. Do we have any other questions for this witness?

MR. MULVEY: No.

MR. NOTTINGHAM: Mr. Buttrey?

MR. BUTTREY: No.

MR. NOTTINGHAM: We will thank you now for your testimony. We appreciate your coming all this way. I think it's very important that the Department is represented today. And we thank you and will now dismiss you.

MS. NEUMAYR: Thank you.

MR. NOTTINGHAM: And we'll call up the next panel, Panel IV. The Nuclear Energy Institute, Paul Seidler, Senior Director, Nevada, and Everett Redmond II, Senior Project Manager. (Pause.) Welcome, Mr. Seidler and Mr. Redmond. The floor is yours now for a
combined ten minutes. Thank you.

MR. SEIDLER: We will be brief.

Thank you. My name is Paul Seidler. I'm the
senior director for the Nuclear Energy
Institute. Thank you for hearing our
testimony and coming to Nevada to hear the
many diverse opinions concerning this issue.

I'm joined today by Dr. Everett
Redmond. He will briefly discuss the
technical issues associated with the
transportation of used fuel.

Our comments today are a bit
shorter than our written comments -- and they
are outside the door for anybody in the
audience to get if they would like our more
detailed comments concerning this matter. And
our July 15 comment letter to the Board is
also available to the public. And that's a
much more detailed statement.

The NEI is the policy organization
of the nuclear energy and technologies
industry and participates in both the national
and global policy making process. It's more
than 300 members include operators of nuclear power plants, companies involved in nuclear medicine and nuclear industrial applications, radionuclides and radiopharmaceutical companies, universities, and research laboratories, and labor unions.

80 percent of -- nuclear presently provides 80 percent of our greenhouse gas free electricity in the United States. As was mentioned earlier roughly 20 percent of the electricity in the United States is nuclear.

Nevada is a big importer of electricity. We don't have nuclear reactors in the state, but we generally received about 2-1/2 percent of our electricity in Nevada from nuclear energy.

NEI members have a direct interest in the construction of the proposed rail line. Used nuclear fuel from our plants would be transported along the proposed rail line and disposed of at the Yucca Mountain Repository if the site is licensed. Transportation and disposal of used nuclear fuel in this manner
would further the integrated three-prong strategy which NEI supports for the safe and efficient management of such fuel.

Fuel management strategy involves centralized internal storage of used nuclear fuel at power plants or central facilities until recycling or permanent disposal are available. Research into the development and demonstration of advanced recycling technologies to close the nuclear fuel cycle and development of a permanent disposal facility for used fuel or residual waste from recycling.

A major component of this strategy, disposal in an approved geologic repository, would be realized by the Yucca Mountain project. DOE's application helps achieve that goal by providing the groundwork for the rail transportation of used nuclear fuel to Yucca Mountain.

At NEI I am responsible for activities in Nevada. I've been a Nevada resident for the past 20 years and have had
the good fortune of working on the used fuel management issue from an industry as well as a local, state, and federal government outlook.

I hold a master's degree from the University of Chicago in public policy with a focus on public health issues. And I started my career working for the Illinois Department of Nuclear Safety where I assisted in the development of its world class programs for managing the transportation of used fuel, including programs for inspecting and escorting all shipments through the state.

These model programs resulted in a high degree of public confidence in the safety of the many used fuel shipments that traversed major population centers of Illinois. I also had hands-on experience escorting used fuel.

Later I worked on the issue at the federal level, where I directly engaged local officials and the public in evaluating routes to Yucca Mountain. I led the effort that ultimately resulted in DOE adopting the
concept of sharing the railroad with others for local economic development.

Even though shipments would surely go through other major population centers of the U.S. federal policy makers decided that the cumulative impact of transporting and disposing of used nuclear fuel and defense waste material at Yucca Mountain justified evaluating less direct and more costly options that would avoid large population centers in Nevada.

The options included the Caliente route, which was determined to be eminently buildable, albeit less direct and more costly than others. While there may be scenarios that require a small number of shipments through heavily populated areas of southern Nevada the Caliente route goes a very long way towards alleviating the need to ship through populated areas.

I would also add that the state has the opportunity to designate alternative routes for highway shipments of radioactive
material. I believe under HM 164, Department of Transportation regulations, the state has the opportunity to designate alternative routes.

The comments submitted by NEI on July 15, 2008, provides a detailed discussion of the considerations that were strongly in favor of approval of this application. In summary, we find that DOE's FEIS satisfied the Board's obligation under NEPA and provide ample satisfaction of NEPA requirements for discussion of environmental mitigation and provide an adequate basis for any environmental mitigation imposed by the Board.

The Board should adopt the FEISs and close the environmental record. DOE's application clearly meets the statutory standard and the Board's requirement for approval. And a full record and all relevant environmental issues has been prepared and completed.

Regarding the routing issue, we concur with previous Board findings that the
role of the Board is not to reshape or develop the proposal, but rather to determine if the proposal submitted meets the statutory criteria. Its duty is not to second-guess applicants or to choose between alternatives, end of quote.

Therefore, while some parties may prefer changes in the proposal and we respect their economic development intentions, it is neither necessary nor appropriate for the Board to attempt to determine whether variations of the proposed project might, in the view of some, better serve the public interest. The Board's real decision is whether DOE's application as submitted meets the statutory requirements for approval.

NEI, therefore, respectfully requests the Board grant DOE's application so that the rail line will be available for receipt of used fuel once the repository is licensed by NRC and further requests the Board do so expeditiously so that the rail line can be used for the construction of the repository
and local communities can begin to realize the economic benefits of the proposed line as soon as possible.

The U.S. and international safety record associated with shipping used nuclear fuel speaks for itself. The DOE's shipping campaign to WIPP also speaks to DOE's capability to develop a safe, well-planned, large-scale transportation program.

We commend DOE's effort concerning rail routing. The construction of the Caliente Railroad plays an important role in the integrated used fuel management strategy. Dr. Redmond will now testify regarding the technical aspects of the transportation system. We look forward to addressing your questions. Thank you.

DR. REDMOND: I am Everett Redmond, Senior Project Manager, Used Fuel Storage and Transportation at NEI. Before I begin I would like to thank the Board for permitting us to provide testimony on the Department of Energy's application.
My educational background is in nuclear engineering and I hold a Ph.D. from MIT. Prior to joining NEI in October of 2006, I was employed by Holtec International, a dry fuel storage and transportation cask supplier.

Transportation casks for used nuclear fuel, which by the way is a solid ceramic material that will not leak or explode, are constructed of many layers of steel, lead, and other materials. There are approximately four tons of shielding for every ton of used nuclear fuel inside the casks.

Used nuclear fuel will be shipped to Yucca Mountain using both rail and truck, with the majority of the transport occurring by rail. Casks that are shipped by rail are typically larger, weighing up to 250,000 pounds, and hold up to 32 pressurized water reactor fuel assemblies, compared to truck casks, which weigh approximately 50,000 pounds, and hold up to four fuel assemblies.

The large capacity rail casks that will be used for transportation to Yucca
Mountain are not hypothetical. Numerous casks have been constructed and licensed for both storage and transportation and are currently in use storing fuel on site at nuclear power plants.

Used nuclear fuel has been safely transported by decades in both the United States and abroad. Over the last 40 years there have been more than 3,000 used nuclear fuel shipments in the United States covering more than 1.7 million miles. Outside the United States there have been tens of thousands of shipments of used fuel.

Within the United States each transportation cask design for radioactive material is licensed by the Nuclear Regulatory Commission and must meet stringent safety requirements. Designs must be able to safely contain their radioactive contents under various normal conditions and hypothetical accident conditions as defined in 10 CFR 71.

These hypothetical accident conditions, which are analyzed in sequence,
are a 30-foot drop onto an unyielding surface, followed by a 40-inch drop onto a six-inch diameter steel rod, followed by a 30-minute exposure to a fully engulfing fire at 1,475 degree Fahrenheit.

In addition, a package containing used fuel must be designed so that it can withstand a water pressure greater than a depth of 600 feet for one hour without collapsing, buckling, or in leakage of water. For comparison, Sandia National Laboratory has shown that the 30-foot drop onto an unyielding surface encompasses a cask being struck by a train traveling 60 miles per hour.

In addition to the regulatory design criteria the NRC requires the establishment and implementation of a security plan to ship used nuclear fuel before shipments begin. The NRC must review and approve the plan and procedures to protect against radiological sabotage or theft in advance. After the plan is developed and approved the shipper will then track and
monitor these shipments carefully over the entire route.

Since 1971 there have been nine accidents involving commercial used nuclear fuel containers in the U.S., four on highways and five during rail transport. Approximately half of these accidents involved empty containers and none of these accidents resulted in breach of the container or any release of its radioactive cargo.

In 2001 a train carrying non-nuclear hazardous material derailed and caught fire inside the Howard Street Railroad Tunnel in Baltimore. The NRC analyzed the fire and determined that the regulatory dose limits for accident conditions would not have been exceeded for the two rail casks and one legal white cask analyzed.

In addition to the normal and the hypothetical accident conditions that must be designed for, a transportation cask must be designed so that they exposure from direct radiation is less than two millirem per hour.
to any individual on the train and less than

 ten millirem per hour at 6-1/2 feet from the
 edge of the transport vehicle. Typically the
dose rates are much considerably lower than
that.

And to put these number in

 perspective an average citizen in the U.S.
receives approximately 300 millirem in a year
for normal activities, and I received
approximately one to two millirem from my
flight from Washington to Las Vegas as a
result of cosmic radiation.

In conclusion, the nuclear
industry and the federal government take the
transportation of the used fuel very
seriously, and transportation of used fuel has
been and will continue to be done safely and
securely. Thank you for your attention and
for permitting me to run a minute or two over.

MR. NOTTINGHAM: Thank you, Dr.
Redmond and Mr. Seidler. Vice Chairman
Mulvey, would you like to start off with
questions?
MR. MULVEY: Starting with an

issue I raised earlier -- that this problem of

moving all this nuclear materials to a special

repository in the United States seems to be I

wouldn't say unique, but seems to be focusing

on the United States where we have the most

plants, but not the greatest portion of our

energy created by nuclear power.

The French reprocess it and it's

been suggested that the United States ought to

adopt another way of handling the materials so

they could be reprocessed. And I know the

final outcome is even more serious, but it's

less material and it can be stored in glass or

what have you. Can you explain how the French

system is different and why -- I know it's

more expensive but why it's not simply what we

would want to pursue rather than moving all

this material around?

DR. REDMOND: The French do

reprocess at La Hague. They send all of their

used fuel from the plants to La Hague -- ship

it to La Hague where it is reprocessed. The
byproducts -- radioactive byproducts are stored on site and will eventually be put in a deep geologic repository.

We are in the United States beginning to explore reprocessing as well. It hasn't -- it's not currently done here, but that is something we are looking at.

MR. MULVEY: Is it mostly a cost issue?

DR. REDMOND: Cost is certainly one of the factors that comes into it.

MR. MULVEY: We've been told that compared to in situ storage the reason why we agreed to move the materials to Yucca Mountain for final storage in a geologic site is that, one, it's the law, and, two, that it is the consensus of the scientific community. Could you briefly explain why storing it at Yucca Mountain is superior to in situ storage?

DR. REDMOND: Long-term geologic disposal is the appropriate way to environmentally isolate the material. And while we can store the fuel on site, we have
a responsibility to ultimately dispose of this material, and that's why we are in support of the Yucca Mountain project and feel that that is the most appropriate way to ultimately dispose of the material.

MR. MULVEY: Although --

MR. SEIDLER: If I could just say -- I'm sorry. If I could just say -- add to that, that's an international scientific consensus and the approach other countries are taking as well.

MR. MULVEY: That's an important element. Let's see here. You mentioned about -- we were talking about the amount of material that's going to be coming into Nevada, and a lot of it's going to be passing -- try to avoid going through Las Vegas, but it still will be going to Caliente and then coming down to Yucca Mountain.

People today were complaining about the fact that it's going to be passing through many cities around the country, and so it's a nationwide problem, not simply a Nevada
problem. Are you suggesting that this is not really a problem -- that this is -- these fears are somewhat irrational and that, to some extent, it's -- I guess the popular term today is it's some sort of NIMBYism. Do you feel that these fears are irrational -- that it's the same as people are afraid of nuclear power plants -- that it has the word nuclear and, therefore, it's frightening?

MR. SEIDLER: No, I respect the views of other people. I guess our only point is is that the material has been routinely and safely shipped through the intra-metropolitan cities in the United States. And in Illinois we were very concerned about that and we took very proactive approach, inspecting all shipments at the border of the state and escorting all shipments.

That was both technical experts from the Department of Nuclear Safety, the state police, as well as the Commerce Commission. The state would actually escort all shipments through the state. And we also
had mobile radiological labs -- mobile
community centers to assure the safety of the
shipments. It's a concern.

MR. MULVEY: So this is guarded
all the way through on dedicated trains with
basically troops all around it and safely
moving it. Is that --

MR. SEIDLER: No, the system would
involve one or more individuals actually being
on the train in radio contact with staff --
both technical staff and state troopers who
follow the shipment through the state, stay
close to the railroad so that they could
respond quickly -- but always being in radio
contact with the individuals on the train.

And now, of course, technology has
evolved a great deal since then and I'm
sure -- that was my personal experience. But
I'm sure the system will involve considerable
technology as well. One of the beauties, of
course, of radioactive material is how easy it
is to detect it, unlike other hazardous
materials that aren't so easily measured.
MR. MULVEY: And some of them odorless, for example, and you don't know how bad it is until you strike a match. But there is a concern -- I am aware of the numbers that there's never been a spill in all the stuff that's moved through the United States over the last 20, 30 years or so. There's never been an accident that's involved a spill.

But the concerns that are being raised here is that we're now dealing with an order of magnitude -- that most of the movements have been fairly short and we haven't had that many movements, even though you're talking about 1.7 movements -- miles or what have you.

But now we're talking about 70-, 80-, 130,000 tons, each moving -- much of it moving a couple of thousand miles. So this is many, many, many orders of magnitude. And I know it's impossible to extrapolate from zero and get a positive number. But is there any way you can tell these people that even though we're going to be carrying far, far, far more
than we ever have before we are still going to
keep it at zero? It is going to be safe given
the four tons of shielding for every ton of
material that's involved in these casks?

Mr. Seidler: Certainly we can't
promise that there won't be accidents. If we
look at the combination of the record in the
United States and the international record,
which gives us an enormous number of shipments
to look at, the record has been very
impressive. That doesn't mean that there
won't be an accident in the future.

And that's why we rely so heavily
on the integrity of these containers. And I
would add that the shipments in the U.S. --
many of those shipments were very long in
nature. For instance, I participated in
shipments -- we had a facility in Illinois --
at Morris, Illinois, that was actually a
recycling facility that was almost complete.
It was stopped due to economic and political
and technical considerations. Several
different considerations stopped construction.
But as a result G.E. actually -- instead of selling the fuel leased the fuel to the reactors that owned the fuel. And so we had to accept the fuel from all over the country back at that facility. So those were very long shipments, as well as -- of course, the Naval fuel shipments, which presently are stored at Idaho -- and a great number of shipments of Naval reactor fuel go to Idaho from the ports.

MR. MULVEY: Uh-huh.

MR. SEIDLER: And those are just some examples. So we have very extensive experience with large-scale shipping campaigns going great distances and very excellent safety record.

MR. MULVEY: And Idaho, like Nevada here, is a mecca for tourism, et cetera. And there are some concerns expressed that there could be negative consequences for tourism if, indeed, these kinds of facilities are located nearby or there's these trains are moving nearby.
And we've had this issue come up in other contexts, which I'm not going to get into right now. But have you looked at -- have there been any studies of economic impacts or developmental impacts on areas where such things as nuclear power plants or other nuclear storage facilities, et cetera, are sited? Or is it really sort of a red herring?

MR. SEIDLER: Yes, there have been studies of that nature. We have to keep in mind -- I think the number's on the order of 150 million Americans live within 75 miles of our nuclear plants in the United States right now. In this case we're talking about a plant that's much -- it doesn't involve all the mechanical processes of a nuclear plant. We're talking about a storage facility that's roughly 90 miles away Las Vegas.

That doesn't mean that you can completely disregard stigma issues and things to that effect. But it hasn't -- there hasn't been that sort of situation. For example, in
Illinois 50 percent of our electricity is from nuclear, and the city of Chicago is run by nuclear reactors. And, in fact, the local communities -- the reason they're so supportive of those facilities is because of the positive economic impact that it actually has on the people who are closest to those facilities.

And we find generally -- and the same is true with Yucca Mountain -- that the support for the project actually is closer to the site than further away. I think there's a number of reasons for that, but one is, of course, that they will reap the most economic benefit from the project.

But there certainly has been a lot of economic study, including study of the Yucca Mountain project, conducted by the local university. And you'll find different opinions. I can show you as to, you know, the stigma effects and what that might mean. But the experience certainly has been very positive.
MR. MULVEY: Dr. Redmond, you want to expand on that any?

DR. REDMOND: I agree with what Paul said. The economic benefits around nuclear power plants has been quite noticeable, and there are communities out there that are trying to get more nuclear plants that are very supportive of it. So there is a positive economic benefit associated with it.

MR. MULVEY: Thank you.

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

MR. BUTTREY: Thank you, Mr. Chairman. Mr. Redmond, I've been looking forward to having a nuclear expert here all day long. You've just about convinced me that these casks are pretty good -- I say just about.

DR. REDMOND: Okay.

MR. BUTTREY: And pretty good. But you don't seem to be saying that they are impregnable.
DR. REDMOND: No. There's --

MR. BUTTREY: What is their vulnerability if you could speak to that?

DR. REDMOND: I cannot really speak to the vulnerability. I know the Nuclear Regulatory Commission has done some work in that area, and I cannot speak to it. These casks are extremely robust. You're looking at, for example, more than nine inches of solid steel in some cases. In other cases you may have depleted uranium inside, which is extremely hard to penetrate. These are very large physical systems, both the truck and the rail, just of different magnitudes.

MR. BUTTREY: Did you say uranium or titanium?

DR. REDMOND: No, depleted uranium.

MR. BUTTREY: Depleted uranium.

Okay.

DR. REDMOND: Yes. Depleted uranium has been used in some casks for shielding material, and then also it provides
some structural support. But you have a lot
of steel in there and other materials. So
they're very robust and very hard to
penetrate.

MR. BUTTREY: If they're that
good -- and I'm just taking your word for it
that they are -- why do we care where we store
them?

DR. REDMOND: Well, again, back to
what I said earlier -- we have a
responsibility to ultimately dispose of the
fuel -- of the used fuel. And leaving it on
site is not ultimate disposal. Currently the
decommission of --

MR. BUTTREY: I'm sorry. Is not?

DR. REDMOND: It's not ultimate --
leaving it on site is not ultimate disposal.
That's not a final solution.

MR. BUTTREY: Are you talking
about disposal, which, to me, means it goes
away, or do you mean storage? When you use
the term disposal you really mean storage, do
you not, in some what you believe secure site?
DR. REDMOND: No. When I use the word disposal I mean deep geologic repository.

Storage --

MR. BUTTREY: Okay.

DR. REDMOND: -- interim storage --

MR. BUTTREY: Okay. That's like a warehouse for spent nuclear fuel.

DR. REDMOND: Well, interim storage --

MR. BUTTREY: That's not disposal. You know, the word disposal to me means that it ceases to exist. If I dispose of something it doesn't exist anymore.

DR. REDMOND: Okay.

MR. BUTTREY: So let's get our terminology -- see if we can get some agreement of what our terminology is here.

DR. REDMOND: Sure. What we currently do is we have interim storage at the sites where the fuel is stored in spent fuel pools and in dry cask storage systems. And at some sites that have been decommissioned the
fuel is still there at -- being stored on site in an interim fashion -- and I mean interim because it's not intended to be there forever.

MR. BUTTREY: Uh-huh.

DR. REDMOND: And that is stored in casks. Then the fuel is supposed to be shipped to a deep geologic repository where it will be stored, if you will, forever. Does that help answer your question?

MR. SEIDLER: I'll add the design of the repository is, as you indicate, makes for easy retrieval. I mean, the material will be stored in such a way that it could be removed because some estimate -- it depends upon some final decisions, but certainly up to 300 years is the current thought process for a period where it would be retrievable without backfill -- anything to prevent retrieval.

MR. BUTTREY: Thank you. Mr. Redmond, you're familiar with Nevada Test Site?

DR. REDMOND: No, I'm not terribly familiar with that.
MR. BUTTREY: Well, maybe you can
answer this question without being familiar
with it. I'm curious to know for the record
how many years it will be starting now if I've
got spent nuclear fuel that's no longer used
and after production of electricity or
whatever, and I'm going to put that in one of
those casks and I'm going to store it some
place. Does the fact that it's stored inside
this impregnable, quote, unquote, container
effect the half life of the material on the
inside or not? In other words, how many years
is it from that day until the time that it's
no longer harmful to come in contact with?

DR. REDMOND: The half life of the
material varies depending on the isotopes, and
you're talking many years before it decays
down.

MR. BUTTREY: Many -- can we
quantify many?

DR. REDMOND: The --

MR. BUTTREY: Is it a hundred
years? Is it a thousand years? Is it 10,000
years? Is it 20,000 years?

DR. REDMOND: It's in the order of thousands of years --

MR. BUTTREY: Thousands of years.

DR. REDMOND: -- depending on what you're talking about as far as the material that's in there.

MR. BUTTREY: Okay.

DR. REDMOND: The --

MR. BUTTREY: Well, let's take the average -- let's just take the average cask. Okay? Let's take the one -- let's just use the one -- since you brought it up in your testimony let's just use the one that's put on the train as just a good example of what you're talking about. What's -- how many years -- how many thousands of years is it before that material is no longer harmful to come in contact with? You know, no worse than a dental x-ray or whatever.

DR. REDMOND: No, I cannot give you an exact number on that.

MR. BUTTREY: But it is a very
long time.

DR. REDMOND: Before you could
take it out of the cask, yes. But in the cask
it is very safe.

MR. BUTTREY: If we decide to take
it out of the cask how do we get it out?

DR. REDMOND: You would get it out
the same way you put it into the casks.

Currently they're loaded in spent fuel pools
at the sites. So the cask is placed into the
spent fuel pool, the fuel is transferred into
it, and then the cask is brought up and welded
closed. These are the types of casks -- by
the way, what I'm mentioning, they're the
canisters that would be used for this project.

MR. BUTTREY: So the cap goes on,
and the cap is welded shut.

DR. REDMOND: Yes. What you have
is a transportation cask, and then you have an
inner canister, which has been referenced here
today as a TAD canister, transportation agent
and disposal canister. That's very similar to
our dual purpose canisters that are currently
in use at sites. So that inner canister has
a welded lid on it. So it is a welded
container. And the transportation agent
disposal canisters will go directly into Yucca
Mountain.

MR. BUTTREY: Is it -- would you
agree that most people are concerned about
their utility bill?

DR. REDMOND: Yes.

MR. BUTTREY: I am. Will you
agree that the cost of doing all of this which
is proposed here -- that there's a number out
there somewhere that represents the cost of
doing all this -- the loading, the welding,
the cask, the transportation, the storage,
armed guards, you know, GPS systems, RFID
tags -- I don't know.

It's just mind boggling when you
start thinking about it -- the cost of, you
know, testing to make sure that nothing's
leaking out of here, you know, either
underneath, around it, on top of it or
whatever. There's some cost associated with
Presumably, you know, in my world the person who's going to pay for all that is the rate payer -- eventually the rate payer -- the person who goes over and switches on the light switch, and right as soon as that light comes on they start paying. So the rate payer is eventually going to be paying the bill.

DR. REDMOND: The rate payer is currently paying the bill.

MR. BUTTREY: That's right, he is currently paying the bill. But when he goes over and switches that light switch on he probably doesn't think -- you know, before he starts cooking breakfast or something he doesn't think, Oh, my goodness, I'm going to have to pay for the storage of that spent nuclear fuel.

DR. REDMOND: Right.

MR. BUTTREY: You know, you just don't do that. I mean, most people just don't do that. Actually I've been doing it a lot here lately. When I turn on the lights I
think of Yucca Mountain. I don't know why,
but it just happens. It's one of those
natural responses that you get. When you turn
on the lights for some reason I think of Yucca
Mountain. It's bizarre.

But my colleague here, Mr. Mulvey,
has consistently asked this question about,
you know, who's going to -- who pays for
this -- what's the cost of all this. You
know, wouldn't it be a good alternative just
leave it where it is? Put it, you know, where
it -- let the rate payer in Sheboygan pay for
the nuclear spent fuel storage in Sheboygan
and the people in Las Vegas, since we're here,
pay for the spent nuclear fuel that's produced
in Las Vegas.

Because, you know, I suspect at
some point people in Las Vegas are going --
the consumers in Las Vegas or anywhere else
around the country that has a nuclear power
plant providing electricity is going to turn
on that light switch and they're going to
start paying as soon as it comes on. And
they're going to be paying for their storage, not the people in Sheboygan or the people in Hanford or Seattle, Washington, or the people in Memphis, Tennessee, or the people in Brooklyn, New York.

They're going to be paying for their nuclear spent fuel cost instead of -- it seems to me that if you don't have to add on to what they would be paying under those circumstances -- if you don't have to add on to that number, whatever it is, the cost of all of this other stuff that we've been talking about today, including transportation on rail to get it -- and transportation by rail is expensive. It is the most efficient -- it is absolutely the most efficient, but it is expensive. And it's going to be real expensive when you start talking about hazardous materials -- all kinds of hazardous materials, not just nuclear.

But when there's a chlorine release or an anhydrous ammonia release or some other kind of hazardous material inhalant
release or something like that there's an event. And it can be catastrophic or it can be small. But if you have a nuclear event you have an event of cataclysmic proportions. And you know what? It lasts a thousand years.

Now, I don't know -- but nobody can tell me -- nobody here yet today can tell me when you're going to open up the Nevada Test Site for golf courses and homes. But being a golfer I'd be interested in knowing the answer to that question.

But nobody has rendered an opinion about when they're going to open up the Test Site for human beings because right now you can't go near that place. And that is true. Correct? You can't get on the site because it's not healthy to do that.

MR. SEIDLER: You can get on the site and tour the site, and people and I have routinely toured not only Yucca Mountain but the Test Site. But you're right, the Site will never be open for a resort or any sort of public access. We detonated roughly 1,000

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nuclear weapons, 800 of those below ground, 800 above ground. And that area was set aside for that purpose.

MR. BUTTREY: Right.

DR. REDMOND: If I may in regards to the cost for a second, the -- currently the rate -- currently the utilities are paying 17 mil per kilowatt hour into the Nuclear Waste Fund, which is being paid for by the rate payers.

That fund, as was mentioned earlier, is sufficient to cover and will be to cover the cost of Yucca Mountain, including all of the transportation. So we are paying for the ultimate storage of this --

MR. BUTTREY: When you say we who are you talking about?

DR. REDMOND: We being the nuclear industry and the associated rate payers. So we are paying for it. And we're paying for it for storage of that --

MR. BUTTREY: When you say nuclear industry you're really just saying the rate
DR. REDMOND: Yes.

MR. BUTTREY: You know, separating out the utility companies from the rate payers, to me anyway, unless you can convince me otherwise, is sort of an unrealistic distinction. It's a distinction without a difference, so to speak.

DR. REDMOND: You're correct.

MR. BUTTREY: Because you're really talking about the rate payer.

DR. REDMOND: Absolutely. You're correct.

MR. BUTTREY: Either the public utility is discounting the rates and the rate payer is getting a discount or something and it gets folded back into the later rate or whatever.

The other interesting thing about this whole situation to me is is that we still have states regulating public utility rates in the states. The public utility authorities in the states -- maybe not all of them, but a lot
of them -- a lot of them -- probably most of
them -- maybe all of them -- regulate the
rates that people pay for their utilities.

So you've got potentially a
situation where you've got a public -- you've
got a utility company who's using nuclear fuel
and they can't get a rate increase from their
regulatory commission in the state. And so
they can go four, five, six, seven years --
Maryland just did it for five years -- the
state of Maryland prevented the public utility
compny in Maryland from raising the rates.

Now, I don't know how in the world
something like that can happen, but it did and
it is. And so you squeeze -- you keep
squeezing the public utility companies --
either publicly owned or privately owned
utility companies -- you squeeze them and
impinge upon their rates of return, their
ability to produce, their ability to
modernize, their ability to innovate and -- to
the point to where they're choked to death.
And they stop spending money on things that
they probably ought to be spending money on, one of which might be safety. That bothers me. And it probably bothers a lot of people -- not just me. I'm not unique in that regard.

But, you know, this -- you know, the more layers of the onion you peel off here the more complex and the more troubling it is. And this is not simply a matter of whether you build a railroad or not. It's a lot more complicated than that. It's a lot more complicated than that.

And I just hope that this process that we're going through is able to flush out of the tall grass some of these things that we need to be talking about that, frankly, haven't been addressed in many regards here today.

You've got a lot of people who are against it, you've got a lot of people who are for it. But, you know, you keep peeling away the layers of the onion and you get down to where, you know, it gets very complicated.
And I appreciate, Mr. Redmond, your being here today to answer some of these questions because up until right now these things have been, you know, bothering me and I needed to get some answers and I needed to get them on the record. This nice lady here is writing all this down for us so that it's on the record. And I really appreciate you all being here today to tell us what the real issue is here. And I appreciate it very much. And I'm glad that there are people like you out there who could help us. Thank you very much.

DR. REDMOND: Thank you for the opportunity.

MR. NOTTINGHAM: I believe there was at least a question or two in there, and it looked the witnesses leaned forward with an interest in actually responding, and I wanted to make sure you have a chance to do so. So if you want to say anything that's been said in the last five or ten minutes you want to respond to, please go ahead.
MR. SEIDLER: The only thing I would add is just a clarification -- that while the program is funded primarily by rate payers tax dollars are also involved because roughly 10 percent of the waste is related to the national defense program, and so tax dollars are also involved for roughly 10 percent of the cost of the program.

MR. BUTTREY: Because that fuel is actually produced by the Department of Defense. I mean, we use -- we have -- I don't know -- the number that sticks in head is like 13, but it's probably more than 5 or 6 nuclear powered submarines -- aircraft carriers and probably at least that many nuclear submarines at sea right now -- or could go to sea quickly if they had to.

That nuclear power has to go somewhere. I presume that's the power you're -- the spent fuel you're talking about.

MR. SEIDLER: It's both spent fuel from Naval reactors on board those ships, but also waste from actually part of the whole
defense mission and the defense process --
defense complex actually does reprocessing is
probably the weapons manufacturing process.
And that waste is then solidified in glass --
vitrified into glass and that's also a fairly
significant waste stream.

So it's that type of material that
we call high-level waste and then it's also
the spent fuel from the Naval reactors. Those
are examples of some of the federal waste
stream. Plus we have reactors -- research
reactors at universities and national
laboratories doing various research and
development -- also reactors at
radiopharmaceuticals and things like that.

MR. NOTTINGHAM: Again, thank you
very much. Appreciate it. I have a couple of
questions for this panel, if I could. The
panel -- and I think it was you, Mr. Seidler,
urged this Board's expeditious approval of the
application. And you mentioned the need to
actually move forward with the construction of
the Yucca Mountain facility and that the
proposed rail line would facilitate the construction because it could help bring in materials presumably and — do you know — and I probably should have asked this question to DOE witness, but I'll go ahead and ask it to you since I didn't to her. Can the construction process begin without an NRC license being granted?

MR. SEIDLER: No, sir.

MR. NOTTINGHAM: Okay. I knew the operation couldn't begin, but I wasn't sure. And is there a time line for that at this point? Has NRC announced when they're going to take this matter up or make a decision?

MR. SEIDLER: By law the NRC has three years with one additional year. That clock started fairly recently, so three to four years to complete the licensing process.

DR. REDMOND: If I may add something -- the construction of the facility -- of the Yucca Mountain facility cannot begin, but the construction of the railroad can. So the construction of the
railroad can begin before the application is approved by NRC.

MR. NOTTINGHAM: Okay. I don't have much -- I don't have any, I should say, experience working with the NRC. This is probably as close as I've ever gotten. You seem to have some experience observing at least and working with NRC. Are they likely to be -- how important do you think it would be to the NRC's deliberations what this agency decides to do now, next month, next year related to this application?

Is this a big factor to them whether or not we've decided this -- how we've decided it? I mean, is it -- are they looking at other issues primarily?

DR. REDMOND: I don't want to speak for the Agency since I'm not a representative of the Agency. But this decision here should not in my view have any effect on the license application that is in front of the Nuclear Regulatory Commission. They will review it upon its own merits.
MR. NOTTINGHAM: Okay. We've heard a lot today about risk and we've certainly understandably, given where we're having this hearing and where the new line is proposed to be sited and the new facility built at Yucca Mountain -- we've heard mostly today about risk -- potential risk to Nevada and this area. We've also heard about potential risks across the country.

We haven't heard so much today it seems to me about current risks that are real today under the status quo, which is my understanding -- which includes nuclear generating facilities scattered around the country producing spent nuclear waste -- that that is primarily kept on site at -- what? -- dozens of sites? Hundreds?

DR. REDMOND: There's 104 operating reactors at about -- well, the number of sites for spent fuel storage is in the thirties I think right now. I should know that number off the top of my head, but I apologize -- I don't.
MR. NOTTINGHAM: And we've heard today about hundreds and thousands of movements primarily by rail under current practice of spent nuclear waste. So we're not talking about a choice between no movement today and future that might include a lot of movement. We actually have movement by rail today.

DR. REDMOND: Yes.

MR. NOTTINGHAM: What -- both of you seem to have a lot of experience looking at these issues. Compare the relative -- I mean, obviously a lot of risk analysis went into the development of the Yucca Mountain project and concept -- a recognition I presume that there was a fair amount of risk that our nation as a whole, and especially the communities that are in and around the current nuclear generating facilities which are also storage facilities face today and trying to assess that risk and compare it with the -- of course, everything's risky.

It's risky for you to get out of
bed today and make your way here. I'm not
minimizing. Everything is almost -- you know, everything -- every decision we make, every step we take has a certain amount of risk. But there is risk today -- real risk that is impacting potentially real communities in America. And then that's offset presumably against the potential very real risk of proceeding with this project -- this rail line and ultimately with the Yucca Mountain project.

Can you speak to how -- you know, what the thinking is there and the relative risk analysis -- that presumably folks did not just come up with spending billions of dollars and many decades trying to build a Yucca Mountain facility and a railroad connecting to it just to accomplish the difficult -- or just to aggravate most of the people in Nevada.

I'm not that cynical to think that's what's going on here. I believe that there are actually -- I'd like to believe there's some well intentioned smart people who
actually think that it's less risky to continue on the path that the Energy Department's on than it is to not. But can you speak to that?

DR. REDMOND: There have been studies that have been done. The risk is extremely low for transportation.

MR. NOTTINGHAM: Excuse me?

DR. REDMOND: Extremely low for transportation of nuclear material. As I said before these containers are extremely robust and they're designed to contain the radioactive material. So the risk is extremely low. I cannot really give you any additional information beyond that though. I apologize.

MR. NOTTINGHAM: Well, help me though. There's -- my understanding is there's a very serious reason why the Energy Department does not recommend going forward with the status quo for the long term -- in other words, keeping -- having disparate storage facilities, temporary or interim, to
use your vernacular, storage facilities at 30-
something locations -- whatever the number
is -- because that's a problem presumably.
Can you elaborate on that?

    DR. REDMOND: It's not a safety
problem. It is safe to store the fuel where
it is. It is safe to transport the fuel, and
it is safe to store the fuel in Yucca
Mountain.

    It is an issue of responsibility
and ultimate responsibility for moving the
fuel and disposing -- sorry -- storing it in
Yucca Mountain. It's not a safety issue. It
is safe where it is.

    MR. SEIDLER: It's essentially a
policy call by the U.S. Government to take
responsibility for an issue now rather than
leave it to future generations, knowing that
the material has to be safely managed for a
very long period of time, a period of time
much longer than the operation of the
reactors.

    And the concept is is that at a
central site you could have central security forces, central safety capabilities, central management capabilities. And so it's both -- it's the smarter way to do it from both an economic standpoint and just an overall policy standpoint.

I don't know that anybody has looked at, you know, what you're trying to describe of -- you have to keep in mind -- and Everett could speak to what the regulatory standards are at reactors versus Yucca Mountain -- I don't know if that would help possibly --

MR. NOTTINGHAM: I guess what I'm getting at, I just assumed from a very basic layman's perspective that the main reason why the Energy Department was so keen on advancing this very expensive, very controversial project is to get to a safer outcome than what will happen if we just go in the same path we've been going, which is having -- I know the electric utility, the nuclear power industry, and its paid representatives who you
apparently are -- and I don't say that with
any negativity to it -- you're not -- I'm not
asking you to say that the current situation
is dangerous or horrible or something.

But I don't want you on the
worldwide -- I think this is going to be -- if
it's not being transmitted right now will be
on to tell people with bad intentions to our
country's security exactly how to crack open
one of these caskets or how to do something.
I don't want that -- you know, I'm not asking
that on the record.

But is it not the case that one of
the main objectives of the long-range -- the
Department of Energy's long-range plans for
storage of spent nuclear waste is to get to a
more secure situation than what we will have
if we don't move in the direction such as a
consolidated one- or two-site geologic
facility -- just under the theory that if
you've got to monitor 30 facilities things
happen?

Earthquakes, fires, terrorist
attacks -- you know, and it's a little trickier to guarantee the safe future of 30 place -- locations than it might be at one?

MR. SEIDLER: Yes, exactly. The whole idea is that you have to duplicate, albeit on a much smaller scale, a lot of the same safety systems. And like many other concepts it -- the decision by the federal government was to do on a centralized basis. That's not to suggest that it isn't safe where it is at present because it is safe.

But, again, those plants will operate -- they are originally licensed to operate for 40 years. Many of those plants are getting extensions for an additional 20 years. And that's a 60-year life. And then after that the plants will be decommissioned -- not all the plants are even being re-licensed so -- in fact, there's a need to decommission plants now.

And so you don't want to have to maintain all of the infrastructure and all the systems -- and security systems are very
extensive -- at those plants that are closed
down or will be closed down in the future.
And, again, it was policy call to do it on a
centralized basis.

We support -- the industry
supports the idea of recycling the material to
significantly reduce the size of the waste
stream and the toxicity of the waste stream.
You know, we support the use of advanced
recycling technologies that are different from
the technologies that are being used today in
France and Japan and elsewhere. Those are
actually technologies that have a basis in
U.S. technology -- technology that was
developed here.

But we feel that we need to use a
technology that is more advanced and that
doesn't present the same sort of nuclear
proliferation concerns of the old technology
and to develop a central system rather than
having many, many of these types of facilities
around the country -- to have these facilities
on a fairly centralized basis.
MR. NOTTINGHAM: One thing I think it's important to note is just -- maybe it's an interesting procedural to me, but I think it's worth noting. We're here today having this public hearing because there's a proposed federal action that's been proposed for this agency to take, which would be the consideration and possible approval of an application to build a new line of railroad. So it's a proposed federal action that triggers NEPA, triggers a process that we go through to look at that -- and public participation and comments are important.

It strikes me though -- and, of course, the Department has gone through -- the Department of Energy -- very extensive environmental and public participation processes for a period of years because of the series of federal actions they are contemplating taking.

And all that's important under the National Environmental Policy Act, but it occurs to me every day spent nuclear fuel
moves -- or could move -- if not every day, weekly -- across railroads and transportation routes around the country. And there are no public hearings about that. There are no public comments that I'm aware of.

We certainly don't get involved because it's not a new line of railroad. In fact, if a railroad contracted tomorrow with a lab or a facility to move a whole bunch of spent nuclear fuel across the country to another licensed facility I hazard to think we wouldn't even know anything about it and neither would the public that might be interested in that.

Can you elaborate on that at all? Is my description roughly accurate or --

MR. SEIDLER: Generally -- with large campaigns there is extensive public involvement on the front and -- of those campaigns. But after, you know, that period and after the shipping campaigns begin it tends to become a fairly routine process.

And then, of course, there are
regulations affecting -- providing the public
with detailed information about specific
movements. That's -- that information is
provided to the governors of states and to
appropriate emergency response folks within
the states. But that is not a public process,
so once you're into a shipping campaign
there's not an extensive amount of public
communication about those campaigns. It's
really on the front end of the process.

MR. NOTTINGHAM: Okay.

MR. SEIDLER: The WIPP campaign is
a great example. The Waste Isolation Project
in New Mexico for the country's transuranic
waste -- it's actually our country's first
geologic repository for a different type of
material; very extensive involvement with the
Western Governors Association and with the
states along the transportation corridors on
the front end of that process -- training
programs and extensive interaction. And now
those shipments are, like I said, becoming
fairly routine as the facility's been open for
a number of years.

MR. NOTTINGHAM: Okay. I'll loop back -- maybe try to rephrase the question I had a few minutes ago.

MR. SEIDLER: I'm sorry I didn't --

MR. NOTTINGHAM: Is it -- no, it's okay. This is my last question I promise for this panel. Is it the nuclear power -- the American nuclear power industry's position or not that advancing the Energy Department's spent nuclear fuel storage program, i.e. largely focused on Yucca Mountain, is based in large part on the objective of achieving a more secure and safer and wiser policy outcome? Or is it -- has nothing to do with safety in getting us towards a more safety-conscious and risk-based -- risk minimization outcome?

DR. REDMOND: I would say that it's -- we believe the fuel is safe stored where it is. It's stored safely in Yucca Mountain. And that ultimately the fuel should
and needs to go to a geologic disposal.

MR. SEIDLER: But certainly the concept of centralized geologic disposal is viewed as a safety issue. That is -- I mean, clearly the international consensus for roughly 50 years that the idea of having it in one place stored in an environment where people wouldn't have access -- easy access to it, including way off into the future -- is safety based.

MR. NOTTINGHAM: Than you. Vice Chairman Mulvey?

MR. MULVEY: Just quickly. You also mentioned that there were some cost advantages to centralizing it in a single facility. Just to the quick and dirty here -- 30 facilities have a staff of 50 guarding it 24/7. For the amount of money we're spending on this railroad we could hire these people for 1,000 years. That's about $2-1/2 million for 50 people and it's $2.6 billion to build the railroad. So it's a 1,000 years of payroll for these 50 people per plant or about
35 years for all the plants. Or you could
double the amount of people guarding it and
get 100 people guarding the plant and pay for
500 years of protection -- or about 17 years
for all the plants.

So I don't think the economics is
necessarily what's driving this. I think the
geological safety is probably a better good
rationale for it.

I have another question. That is,
you mentioned nuclear weapons and, of course,
nuclear waste or energy facility -- power
plants, some pharmaceutical research -- is
anything from nuclear medicine also going to
Yucca? Is that too low level radioactive
waste or also some nuclear medicine facilities
and hospitals, et cetera, would also be going
to Yucca Mountain?

MR. SEIDLER: The -- I believe
that the operating radiopharmaceutical
reactors are in Canada at present. I don't
believe we have -- I believe that's true. As
far as a reactor --
MR. MULVEY: I meant the waste from nuclear medicine -- is there any waste from that that --

MR. SEIDLER: Absolutely. Yes, certainly there's -- medicine generates a fairly significant waste stream, and that waste is low-level waste.

MR. MULVEY: So that would not be going to Yucca Mountain then.

MR. SEIDLER: No, sir.

MR. MULVEY: Okay. Thank you.

MR. SEIDLER: And point of just clarification because I want to make sure I was clear. The safety -- the security force is only one consideration in managing the material at a site. There's infrastructure. There are many other components, and the security force is just one component.

MR. MULVEY: Thank you.

MR. NOTTINGHAM: Any further questions for this panel? (No response.) Thank you, panel. You've been very patient and we appreciate your being here today. We
will dismiss you now and we'll call forward
the next panel, which is a diverse group of
businesses.

Mr. John Huston of the Caliente
Hot Springs Resort, Mr. Robert Alan Kemp of
the Nevada Central Railroad, Mr. Gene Kolkman
of the Triple Aught business -- and if you
could please come forward now. And we will
start momentarily. We have some name tags --
place marks coming.

(Pause.)

MR. NOTTINGHAM: Mr. Huston,
whenever you're ready we will start with you.
Thank you for being here.

MR. HUSTON: Well, thank you, Mr.
Chairman and thank the Board for the
opportunity for me to speak with you today.

My name's John Huston. My wife,
Jan Cole, and I own the Caliente Hot Springs
Resort in Caliente, Nevada. I'm a geologist,
a water rights attorney, and past owner --
proud owner of the Great Western Railway in
northern Colorado.
My father was a physicist and a geologist and owned and operated uranium mines in the 1950s, which I frequented as a child. I'm a fourth generation Coloradan, but I've lived here in Nevada for 14 years.

In addition to the hot springs in Caliente my wife and own a ranch there and also a farm in Montana and, as perhaps Commissioner Buttrey would appreciate, I wish I were on my tractor this afternoon.

I do not appear before you to complain about Yucca Mountain or the proposed Caliente Rail Line in general or the argue the pros and cons of rail haul to storage of high-level nuclear waste. I made the request to speak to you because I want to focus your attention on a specific problem with the proposed Caliente Rail Line as determined by DOE in its Record of Decision.

The problem I want to talk about is that DOE wants to build this railroad to haul high-level radioactive waste right into and through, with major switching and staging
in, the very center of Caliente, Nevada. I find it ironic that DOE would move the railroad route in Garden Valley to avoid a land sculpture three miles, but would decide that they need to run the railroad through the middle of Caliente when they have identified a very practical -- and engineered it -- alternative to connect with Union Pacific Railroad four miles outside of Caliente at Eccles.

Why has DOE chosen to build and operate its radioactive waste hauling railroad into and through the very center of a group of human beings living in Caliente? We believe mistakes have been made because the decision to build into Caliente cannot reasonably -- can reasonably and safely be avoided, and so is patently wrong and violates common sense.

I ask this Board not to adopt DOE's FEIS on the Caliente Rail Line because of mistakes and shortcomings in it, and that those shortcomings are patent and obvious and of record here. In short, I implore you to
make DOE correct the problem by your refusal to issue a certificate until DOE completes a full and adequate environmental impact disclosure.

Mistakes of record to which I refer: DOE's mistakes before this Board began with the application and notices thereof, which state that DOE's proposed Caliente Rail Line will connect with the Union Pacific Railroad "near Caliente." This statement was and is false and is misleading, both to this Board and to the public.

DOE's Record of Decision filed in this matter and after the deadline for filing of comments by interested persons, government agencies, and the public, and filed even after the DOE's reply to comments opts for the so-called "Caliente alternative segment." The DOE has decided that it wants to connect with the Union Pacific Railroad not near Caliente but in the very center of the city.

DOE has a reasonable and very viable alternative to connect with the Union
Pacific Railroad that DOE has studied and designed in detail -- the Eccles Alternative Segment is what they call it -- whereby the DOE's proposed railroad is -- would connect outside Caliente four miles east.

Eccles would avoid risk, damage to, and destruction of life, health, property, and environment posed by the Caliente alternative segment. No one living or working in Caliente needs to be exposed to the physical dangers, potential accidents, noise, dust, and air pollution at the Caliente alternative segment bring right to the doorsteps of the very homes, churches, businesses, and civic buildings.

Eccles would avoid the known and unknown risks, the defined and undefined risks to the lives and health of Calienteans that will result from close, repeated, and even prolonged exposure to radiation from DOE cargos.

This is especially true in the event that DOE is not required to use
dedicated trains from point of origin to Yucca Mountain since increased switching and waiting time in downtown Caliente will result with carloads of radioactive waste to sit by general freight.

Eccles will avoid running across the active and commercially important Caliente geothermal field, the risk attendant thereto which DOE has not studied and has refused to address it in its EIS and Record of Decision.

Most importantly, when DOE, in its reply to the comments attached to a letter from the EPA, which purports to approve of the Caliente alternative segment, was conditioned upon the DOE including in its ROD a detailed environmental restoration -- or riparian restoration plan, but the ROD fails to include that.

So the -- absolutely of record there is a tremendous deficiency in the representations the DOE's made to this Board with regard to the environmental impacts and the restoration to which it is committed.
Thanks very much.

MR. NOTTINGHAM: Thank you, Mr. Huston. We'll now hear from Mr. Gene Kolkman.

MR. KOLKMAN: I got stuck with double duty here today. I was asked by Gracian Uhalde to represent him. Would you prefer I read Gracian's testimony?

MR. NOTTINGHAM: Oh, yes, Mr. Uhalde was on our witness list, and I understand he's not able to be here but you're able to -- if you could summarize his remarks if you'd like, and then also your own.

MR. KOLKMAN: Thank you.

MR. NOTTINGHAM: Thanks.

MR. KOLKMAN: I'll start with Mr. Uhalde and then read in with the Triple Aught Foundation. Thank you.

For the record, my name is Gene Kolkman. I'm here today representing the John Uhalde Company. Mr. Gracian Uhalde asked me to share his views regarding the potential construction and operation of the proposed railroad in Garden and Cole Valleys. And he
sincerely apologizes for not being able to be here himself.

The entire family is opposed to this proposed action, and they really would like you to understand why. And it's not about the science, it's not whether it's technically feasible, it's not whether it's economically feasible -- it's just fundamentally wrong -- it's bad U.S. policy from my point of view and from Mr. Uhalde's point of view.

John Uhalde and Company started to own and operate a livestock operation in eastern Nevada four generations ago. They talk about their founding father, if you will, earning his first stake of a mule and a tent by packing -- herding a herd of sheep across northern Nevada, and then he was rewarded with a mule and a tent. And on his way back to start in eastern Nevada a bear killed the mule so he had to leave the tent and he walked on into eastern Nevada.

These are Basque people. They are
the salt of the earth. They're hard working people and they overcame many trials and tribulations to get going what they have going today.

The Uhalde ranch operates from Garden Valley in Lincoln County up into Summers in White Pine County, which is about -- I don't know -- 150 miles, 175 miles north of there. They've been operating in an -- you know, we've been looking out looking in. And the way the Uhaldes I think would try to explain it to you is they're in looking out.

And they've been in these areas that are remote and isolated by choice. It's not a dollars and cents business. It's not one where they lay out a profit stream and they make some rational economic decision that they can't make a buck at it so they go do something else. It's a way of life. It's who they are. It's part of our history in the west, and we all care about them, and many times they're our friends.
Either route would dissect Mr. Uhalde's allotment, just as Mr. Higbee stated. And it essentially renders his livestock operation unoperable. And the reason it's important to understand the difference in types of livestock, what they eat, what times of year they eat it, where the water supplies are, how storms run, mobility and the ability to drift back and forth and over large spaces is extremely important.

The needs during a lambing season, for example, are different than the needs are during a wintering season. And weather dictates where you end up and the rate of growth -- you get the amount of moisture you get one spring and where you get it dictates where you are at that time. It's just that simple. And they've been operating for a long time in a very arid environment. They're good at it.

But all of a sudden all of these outside forces come to play on them and completely tip their family over, starting
with the nuclear tests -- they too are some of the downwinders. There are studies today I know by the Department of Energy for various forms of cancers and tumors and have been identified to me personally as interesting subjects by virtue of the numbers of tumors they can have on tumors.

And they've carried that insult with them since then. And in Gracian's case -- he's my age -- 80 -- he's carried that insult on him and his family his entire life.

Now, here we come again, United States, and we're going to build a railroad -- some of us it call it the Chernobyl Choo-Choo and various other names. But the point is -- we make light of it, but, here again, it's insult on a top of insult. As Gracian asked me to say, This is equivalent to rubbing salt in an open sore wound. It just is almost too much to bear.

And I'd just like to say that it's -- again, it's not about -- they might argue mitigation, we might argue dollars and
cents -- we like to figure out solutions and
how we make these work or fit in tight places.
But this really isn't about this. It's about
caring about do we as a country care about
individuals anymore, do we worry about
people's individual ways of life that are
disappearing before our very eyes, do we feel
any obligation to them, or are we down to the
bottom line where it's just a matter of what's
technically feasible, what would the law allow
us to get away with, and we're off to the
races. And that's my testimony for Mr.
Uhalde.

MR. NOTTINGHAM: Thank you. That
will be duly noted.

MR. KOLKMAN: Thank you. And,
again, he apologizes for not being here.

For the record, again, my name is
Gene Kolkman. I am here today -- my first
purpose is here today to represent the Triple
Aught Foundation. The Triple Aught Foundation
is a nonprofit foundation responsible for the
construction, protection, and maintenance of
a nationally significant sculpture in Lincoln
County, Nevada, internationally known as City.

In 1970 Michael Heizer completed a
search for a remote piece of property in
Nevada to begin building City. After
extensive exploration he located about 2,000
acres of private property in Garden Valley,
homesteaded around 1880, and he began to
assemble all these little private property
pieces into a block.

The area was undeveloped except
for an unsuccessful earthen dam built on the
edge of the property at the beginning of the
century. The dam is virtually out of sight
and it remains intact.

Garden Valley was home to no one,
used solely by local ranchers for livestock
grazing. Mr. Heizer considered this isolated
pristine environment to be the ideal condition
for building City.

City is an earth and concrete
structure over one mile long and one-quarter
mile wide. Although large for a sculpture,
City is dwarfed by the size and magnificence of Garden Valley. One cannot approach the sculpture without being aware of its spacious natural location.

Like the sculpture, the openness of the Valley reduces the viewer's experience to the basic elements of form. This environment is a necessary basic foundation to a sculpture with such scale and dimension.

The experience of City conveys stillness and solitude. For this reason it is necessary to protect Cole Valley as it is the only valley between Highway 318 and City. And it is the entry into Garden Valley and is an introduction to the sculpture and its environs.

The two valleys are connected by ancient water flow channels, flora and fauna, livestock grazing, geologic transitional zones, and near primordial conditions in our view.

Cole Valley and Garden Valley are part of a basin and range ecosystem worthy of
protection. Garden Valley is flanked by the Quinn Canyon, Grant, Worthington, and Golden Gate Ranges. At 11,299 feet Troy Peak is home to an ancient stand of bristlecone pine, Ponderosa pines, and mountain mahogany. Herds of deers, antelope, and big horn sheep graze in these ranges and on the desert floor.

About 30,000 acres of the Worthington Mountains has been designated by the United States Congress as wilderness, and there is over 70,000 acres of wilderness again designated by the U.S. Congress in the Grant and Quinn Ranges.

These mountains were designated by Congress as wilderness because of their generally wild undisturbed condition. These valleys are undeniably a part of this broader ecosystem. The basin and range is interconnected as one system, and the integrity of these landscapes should be sustained.

Economically, the future management of City will favorably impact small
businesses within Lincoln, as well as Nye and White Pine Counties. For these counties will be continued employment on construction and maintenance of the sculpture. We expect visitors to come throughout centuries to come. Today City is one of the largest employers in Lincoln County -- one of the largest. When open to the public visitors to the site will bring revenue to the general region.

Since building began on City in the early seventies the sculpture has gained national and international recognition as a unique American artwork. Thirty years of labor and over $23 million has been contributed towards its construction.

The Triple Aught Foundation, which I represent, is a nonprofit foundation established to oversee construction and future maintenance of City. The foundation must now look into the future to protect its legacy and its gift to the American people.

I covered this background today because the reader of the EIS the Department
of Energy put out cannot gather this information from that EIS. In fact, the DOE compares the impacts of building this railroad as nearly identical across alternatives. Yet we know for a fact that there is no sculpture with the magnificence of City within proximity of any of these other routes.

As such, this is just one example of the way that DOE's evaluation falls short -- because they made their decision, in our view, before fully developing an analysis of impacts, before disclosing those impacts to the public, and before fully considering public comment.

Moreover, no expert of any kind was brought in by the Department of Energy to evaluate City and explain the significance of this work of art to the public and to the decision maker. Much of this pertinent information was provided to DOE staff, but they chose to ignore it.

Worst yet there is no analysis of impact anywhere in DOE's document that
compares building a railroad line somewhere else, completely avoiding Garden and Cole Valley, and saving a nationally significant work of art. There is no disclosure of the positive impacts to the nation that would be derived by protecting City instead of destroying it. The document does not disclose the beneficial impacts that protection would have on Lincoln County, nor does it show the beneficial impacts that protection would have on the world of art and the nation.

We know of no way of mitigating the devastating impacts of this proposal of building this railroad other than moving the railroad route somewhere out of Cole and Garden Valley -- and, for my personal view, out of Nevada. Thank you for allowing me to present this information. Respectfully, Gene Kolkman. Thank you.

MR. NOTTINGHAM: Thank you, Mr. Kolkman. We'll now hear from Mr. Robert Alan Kemp of the Nevada Central Railroad.

MR. KEMP: Mr. Chairman, members
of the Board, thank you very much for this
time. I'm here under lawful objection. The
Nevada Central Railroad is actually giving
notice of claim of 20 USC based on the remarks
provided today by the applicant, DOE, under
2675 for suit.

STB regulations were specifically
created by Congress to protect and also
regulate railroads, not federal agencies that
are federally preempted from interfering with
railroads such as the DOE.

I'm the chairman and CEO of Nevada
Central Railroad, a Nevada corporation, and
chairman and CEO of Aviation Technologies
Limited Corporation of Nevada. The Nevada
Central Railroad construction project,
publicly described by trademark named Nevada
Central Bypass or NCR Bypass, filed on July
14, 2003, to the STB, five years prior to
DOE's decision to construct the Caliente Rail
Line, under FD 34382, is superior to and
federally preempts all of the actions by the
Department of Energy within the current DOE
Docket FD 35106 for which today I'm now participating for purposes of lawful notice. NCR staff in 2003 have already provided legal description and mapping to the STB with additional mapping submitted again to -- in DOE public hearings in 2004 and BLM hearings concerning DOE land withdrawal in 2005. The DOE hearing occurred in Las Vegas, Nevada. The BLM hearing occurred in Reno, Nevada.

1996, prior to NCR's 2003 notice to STB of Construction of the NCR Bypass, U. S. Department of Energy, DOE, contacted NCR staff -- not the other way around -- regarding the NCR railroad construction project, the NCR Bypass, in order to obtain a sole source contractual will-serve commitment by NCR.

In order to meet any and all requirements for the transportation requirements of DOE within the state of Nevada, meetings with DOE in Las Vegas totaled seven each from 1996 through 1998. Meetings with USAF, the United States Air Force,
toted four each and were conducted from '96 through '99.

Communications and correspondence with DOE has been maintained by NCR to date. DOE has authorized NCR, as late as 2003, to utilize the EIS completed by DOE for studies relating to the construction of rail systems within the state for purposes of submission by NCR to STB under the lawful doctrine of identicality, in order to enable the NCR to construct the NCR Bypass, which is approximately 458 miles of main line high-speed heavy rail system. NCR delayed a warranted will-serve letter until 1999, served again in 2003 to DOE. The provision was based on the provision of rail service at the request of DOE in 1996.

NCR executed three meetings in person at the STB HQ from 2003 through 2008 in relation to DOE regulations for construction and pre-notice requirements. Two additional meetings in person were executed within the state of Nevada with DOE staff.
The NCR has noticed the Secretary of the Interior, then Gale Norton in 2003, of the lawful notice and application for right of way for the construction of the NCR Bypass within the state of Nevada. NCR has filed preliminary comments with the STB following application by DOE for rail construction of the Caliente route.

STB FCA has failed to lawfully respond to any lawfully submitted information by NCR, including and not limited to the mapping, financial information, EIS, operational data, and procedural violations as a result of instituted federal claims against STB director FCA Victoria Rutson and her assistant David Navecky, relating to fraud, industrial economic espionage, theft of trade secrets, conspiracy regarding all public and public corruption charges and falsification of public records.

We are now considering both execution of federal criminal and civil charges against the director of proceedings of
the STB. NCR will petition the President to act under Congressional federal preemption to terminate this application.

No construction agreement can be executed by the DOE that would not violate the preexisting NCR contracts for the manufacture of both steel rail, specifically high technology railroad tie systems, and would violate the confidentially basis of the proprietary railroad operational elements of the construction of the NCR.

The EIS, according to the STB FCA, was only viable in terms of dedicated shipments solely executed by U.S. Government and does not apply emphasis or not apply -- to any commercial application of the Caliente route for the execution of commercial interstate commerce.

Now DOE states it will initiate withdrawal -- excuse me -- unlawful execution of commercial interstate commerce on the same line specifically mapped out and lawfully pre-identified by NCR. In other words, the terms
of the operations of interference and
operations of interstate operations, including
interference, for which DOE assured NCR staff
that would not happen, relating to multiple
meetings that DOE would not interfere with the
commercial execution of the construction and
operation of the NCR Bypass; that this was
nothing more than a sole-source government
line. No commercial interstate commerce would
ever be interfered with. As a result, NCR
released and subsequently provided DOE with
privileged, confidential, proprietary, and
confidential information.

Now NCR discovers that DOE has
essentially converted its entire sole
government requirement for future
transportation of government materials to the
subcontract execution of same by converting as
a subcontractor a rail to be operated and
constructed for the sole private use of Union
Pacific, in direct contravention of the Board
regulations concerning unlawful construction,
competitive operations, as well as the Board's
responsibilities in regulating the national railroad system.

MR. NOTTINGHAM: Mr. Kemp --

MR. KEMP: I'm going to shorten my comments --

MR. NOTTINGHAM: If you can just wrap up -- 15 seconds, because --

MR. KEMP: Well, I object to the context -- the format of the meeting. The fact that now you've already dismissed DOE from having to respond to your questions related to my testimony today.

In summary, I want to say this. I worked five years, moved to West Hampton, New York, in order to execute a $3.995 billion bond guarantee with one of the leading security firms in the United States -- that was completed by 2003 -- so we could build a privately-funded railroad in the state Nevada for which I worked on for 33 years. We now have 85 shareholders that are completely waiting as we speak for application to be completed.
This is a complete interference under federal preemption. There is no authorization. There is no jurisdiction for DOE under federal regulation of the STB 10901 to execute not only the application to continue its operation, execution and procedure, including this hearing today.

Thank you very much.

MR. NOTTINGHAM: Thank you, Mr. Kemp. We appreciate all the witnesses being here today.

Commissioner Buttrey, do you have any questions for this panel?

MR. BUTTREY: I have no questions for this panel.

MR. NOTTINGHAM: Commissioner Mulvey?

MR. MULVEY: I might have just one.

MR. KEMP: Yes, sir.

MR. MULVEY: If we were to approve this line and DOE was to go ahead and build it, could you bid to be the builder and
operator of the line?

MR. KEMP: I believe that there are no bidding restrictions. However, the problem is this: By executing a bid, it is a subversion of our lawful rights since we've already mapped out, through lawful process, the execution of a construction project for over half of the line that DOE is presently applying to construct.

Our line -- the overlap starts just above Tonopah, goes on down past Indian Springs near Yucca Mountain. We are the individuals that are building, quote, a commercial bypass -- commercial route to Primm near Jean. We are the individuals that connect that through Mina all the way back up to Flanigan and then head straight up to Vancouver and Washington state.

We are the individuals that then connect from Primm due south through a tract rights agreement that's already been -- this has all been outlined to the STB on federal record. We then go over the Parker Dam; we
connect with a short line that we would -- feeder line that we build directly to the Mexican border at Naco and connect up the largest city-pair portion of rate-based activity in terms of interstate rail commerce, city-pair based, in the world.

This is a completely sole source project under federal preemption. Under Article VI of the Constitution it is supremacy and supreme to any other application currently on file.

Now, what's so interesting is that all the maps have disappeared at DOE, all the maps have disappeared at STB, all the mapping has disappeared at the BLM and virtually every other mode for which we have provided all of our official documentation, including evidentiary proofs.

And the most important thing we find in this case -- and I would like to conclude quickly because -- I'd love to answer a million questions; I'll stay here till hell freezes over to do that with you.
The key is this: DOE is stopping the first worldwide heavy high-speed railroad transportation project to be constructed in the entire world within the United States that would provide massive jobs in terms of patentable trademarked technology to the citizens of the United States.

This is an electrified railroad. It is operated through gas technology. It's trademarked and patented so I can't continue to explain this, but it's virtually pollutionless. It is 82 percent more efficient than any locomotive operated by any railroad Class 1 operated in the United States today.

Why would DOE even dream of blocking a virtually pollutionless intermodal heavy high-speed freight system that would conduct freight operations at roughly three times the average speed of any Class 1 railroad today in terms of efficiency?

MR. MULVEY: Would you be moving their casks to Yucca Mountain?
MR. KEMP: We have no choice if DOE decides to move the casks.

MR. MULVEY: As a common carrier.

MR. KEMP: Yes, sir. And as a common carrier, as you know, we have no choice. Furthermore, we could do that safer -- 300 percent safer based upon the engineering specifications -- operational specifications of our line -- than any Class 1 carrier in the entire United States.

MR. MULVEY: Just one question to Mr. Kolkman, and that is in regard to City, didn't DOE address the problem of City by agreeing to move the track three or four miles from City so it was no longer in the view of City and no longer affect the view and the aesthetics?

MR. KOLKMAN: It is in the view of City still. It's -- Garden Valley is maybe -- I don't know -- 10 or 15 miles wide, and you can see their horizon some 20 miles or so I guess. In that kind of an environment any intrusion like that is noticeable, whether
its -- you know, I think Michael Heizer has
said three miles is better than one, but it's
still destroys the work as far as the artist
is concerned and others.

MR. MULVEY: Thank you.

MR. KOLKMANN: You bet.

MR. NOTTINGHAM: Thank you. We
appreciate this panel's patience. We'll
dismiss you now. Thank you. And we will now
call up the next panel.

The next panel initially was a
long list of names. We're going to divide it
into two segments for seating purposes. I'm
going to call up now -- we'll call it Panel A
of the sixth panel. From Citizen Alert, Ms.
Peggy Maze Johnson, from the Dia Art
Foundation, Ms. Katie Sonnenbern, from the 9
Group, Ms. Jenna Morton, from the Nevada
Nuclear Waste Task Force, Louis Benazet, from
the Progressive Leadership Alliance of Nevada,
Launce Rake, and from the Toiyabe Chapter of
the Sierra Club, Ms. Jane Feldman.

We have several more witnesses
beyond these. The hour is getting late, so I will ask -- including some witnesses who came to us today and asked for special dispensation to be put on the list at the last minute.

And we want to try to accommodate all of those people who we have now signed up, but we can only do that if we all stay strict on our time allocations. I believe you've each been allocated five minutes. And I appreciate your patience. You've been here all day listening to a lot, and I'm sorry that you're near the end -- I guess somebody has to be near the end -- it's just one of those realities.

But we will start with Peggy Maze Johnson. Can we have a mike on the far side?

MS. JOHNSON: Chairman Hollingsworth, Commissioner Mulvey and Commissioner Buttrey, thank you very much.

Thank you for the opportunity to address you today. And on behalf of the people of Clark County thank you for agreeing to hold this very critical hearing in our
county in this state.

I am here representing Citizen Alert, an organization that began in the state of Nevada in 1974. They've been bandied about 1982 and 1987. 1974 is when Nevada first appeared on the radar in Washington, D.C. for receiving -- possibly receiving nuclear waste.

It was then that the talk stated in Washington that there was going to be a determination made about where to repose tons of nuclear waste from nuclear sites around the country, sites mostly in the eastern and middle sections of the country, by the way. Many possible sites were going to be considered, and Nevada in the west was one of those states.

A group of concerned citizens decided that they needed to alert our neighbors and friends here in Nevada of this impending possible danger to our safety. Citizen Alert was born and incorporated in 1975 and we started our work educating Nevadans.
Unfortunately we were a small state with little or no power in the Congress of the United States. And the decision was made that Nevada should have the honor of hosting this horrible waste at a site sacred to the native people in our state, primarily the Shoshones and other tribes. The Congressional action was referred to as the Screw Nevada Bill.

In 1987 Citizen Alert, recognizing the menace of putting this most dangerous material known to humankind on the rails and roads of this country, formed the National Nuclear Waste Transportation Task Force. We built two mock nuke waste casks and started to tour the country to let people in other states understand that there was a menace that would possibly come to a road near them and also put them at risk.

I understand that you are not here today to discuss the merits of the Yucca Mountain project or the suitability of siting a repository holding thousands of tons of
dangerous nuclear waste in a totally unsuitable and dangerous site. I do understand that you are here to hear our comments on siting a rail line in a totally unsuitable manner through three counties that will be negatively impacted.

You will hear some residents and paid representatives of those counties come before you and tell you that this might be a great boon for their distressed areas. In these times of economic downturns that are almost unprecedented in a state that is near the top of the list of home foreclosures and unemployment there might be a sentiment to take anything that might help. I disagree. Citizen Alert believes that the safety of our citizens must be first and foremost. You will hear from the experts that will go into the technical and scientific reasons why this is a bad idea. That is not my role here today.

I thank you for coming to Nevada and now I'm going to challenge you to extend
the same courtesy to the other counties around
the country that will have the same exposure
as Nevadans living in the exposure areas of
the transportation routes.

I believe that is your
responsibility. People around this country
know about Yucca Mountain, but are totally
unaware how they might be affected by the
transport of this terrible stuff.

I am submitting two reports that
were prepared for the Nevada State Agency for
Nuclear Projects. One details every county
and the number of residents that will be
impacted. The second report is a listing of
every Congressional district. There are
approximately three-quarters of the
Congressional district that will be impacted
by this transport.

Some of the Congresspersons listed
with their political affiliation noted will
not be serving in this next Congress, but this
will be updated. But you can be sure that
these elected officials are going to be
apprised of this situation and know about the risks their constituents will be facing if this project is allowed to go further.

Therefore, Citizen Alert is requesting and strongly urging you to extend the same consideration to the rest of the country you are to us by holding these hearings along the proposed routes.

We believe that this scheme of transporting this deadly material could result in tragic accidents, and even more troubling in these times when terrorism is on everyone's mind, that the risk of this material in the hands of terrorists would pose a risk that is incomprehensible to contemplate.

And, you know, I had two really nice typed pages, but then listening to everybody else here today I have been scribbling notes, and so I certainly hope you ask me questions. Thank you very much.

MR. NOTTINGHAM: Thank you. We'll now hear from Ms. Katie Sonnenbern. Is it Dia Art or --
MS. SONNENBERN: It's -- actually it's the Dia Art Foundation.

MR. NOTTINGHAM: Dia Art -- I apologize. Dia Art Foundation.

MS. SONNENBERN: Thank you for hearing us. I am the director of external affairs at Dia. And I'm here to speak on the behalf of our foundation.

Dia was founded in 1974 to support the work of exceptional artists. We're based in New York City, but Dia is a national organization with international acclaim.

A renowned collection of artworks from the sixties and seventies is housed at the Dia Beacon Museum in New York's Hudson Valley, which is actually the country's largest center for contemporary art, spanning some 300,000 square feet. Additionally, we present art projects in New York City and we maintain several large-scale art permanent projects which are sited directly in the landscape in New Mexico and in Utah.

Today I want to address an issue
of national cultural patrimony, the profound negative impacts that the Caliente Rail Corridor will have on Michael Heizer's City. This is a singular and irreplaceable American artwork with Dia has served as a primary conduit of the funding for.

If built as proposed construction and operation of this rail will irrevocably violate one of the most important artworks of our time and render a devastating blow to the future of America's cultural history.

Heizer is among the great artists alive today. His artwork is included in collections around the world and inspired such national monuments as Maya Lin's Viet Nam Memorial in Washington, D.C.

He is most well known, however, for the one project that cannot exist within museum walls, the Nevada sculpture complex, City. Spanning over a mile by 500 feet City is just that. It's the distance of the Washington Mall, if you can imagine.

It comprises a series of abstract
forms made of earth, rock, and concrete and it is also the culmination of the pioneering and uniquely American qualities that have created such renown for Heizer. His architectural scale and his use of industrial materials, such as concrete, and construction techniques, such as bulldozers, for the construction of his sculptures.

Moreover, City synthesizes Heizer's artistic vocabulary within a transcendent and timeless setting -- Garden Valley -- which is a majestic example of the basin and range topography unique to Nevada. This confluence of natural and manmade beauty is rare, and it is in grave peril if the Caliente Corridor proceeds as planned. The noise, traffic, intrusion of noxious weeds, and visual disruption, in addition to the myriad health and security risks which have been addressed at length today, will irreparably intrude on visitors' experience of this site, which is selected for its grandeur and isolation.
Inspired by the ancient monuments of Egypt, Peru, Mexico, and Bolivia, which Heizer visited as a young adult, he sought to create a powerful masterpiece in this spirit and history, and Garden Valley conveyed a sense of timeliness, which today's City is imbued with.

Despite these ancient writs, Heizer's monumental project is also uniquely local and modern. City is being built by residents of the region using contemporary construction techniques and materials which are wholly procured at the site. Additionally, the project has helped provide significant local economic benefit to Lincoln and Nye Counties totally over $23 million in private funding.

Equally important, philanthropists are committed to future expenditures of private resources to maintain this sculpture and to provide public access. It is without doubt that when complete City will create economic benefit for these counties by drawing
national and international visitors.

As evidence, City is internationally renowned even in its unfinished state. It graced the cover of Art in America in 1976 shortly after the beginning of its construction and has since been known as an icon of post-war art. When the rail was proposed experts across the country expressed shock and dismay at the prospect of losing a monument of this nature and its potential contributions to world culture when open.

Additionally, the New York Times profiled the issue on the cover of its national Sunday magazine as one example among many of the level of international significance that this has drawn.

Together with Dia, opposition to the Caliente Corridor has been posed by some -- voiced by some of today's more preeminent cultural leaders -- among them, Michael Govan, director of the Los Angeles County Museum of Art, Glenn Lowry, director of the New York's Museum of Modern Art, Kathy
Halbreich, former director of the Walker Arts Center, Minneapolis, Josef Helfenstein, director of the Neal Collection, Houston, and James Wood, president and CEO of the Getty Trust in Los Angeles.

Each publicly testified to the enormous cultural significance of City and the fundamental responsibility to protect it as a national treasure. Their letters and others have been submitted as part of our formal testimony.

Echoing their support was a unanimous resolution passed by the Association of American Art Museum Directors toward the long-term protection of City. Representing 148 directors from 39 states, Washington, D.C., and Puerto Rico the AAMD's resolution predicted -- and I quote -- a great cultural loss for the nation if the Caliente Corridor were to proceed as planned. The College Art Association published a similar declaration.

Dia has regularly submitted -- I'm almost done.
MR. NOTTINGHAM: Good.

MS. SONNENBERN: Dia has regularly submitted comments expressing our points of contention against the Corridor, most recently to STB on July 15. Nevertheless, DOE has not made any significant efforts to directly engage Dia or our colleagues in the expert community that have testified to the unequivocal cultural importance of City, nor has the agency addressed the potential cultural and economic benefits of preserving City. As we have previously stated we welcome the opportunity to participate in any such analysis.

Today, however, I would like to firmly reiterate our opposition to the rail line as currently planned and to represent for STB the sincere concern held by many Americans about the proposed route among the cultural community.

We request the Caliente Corridor and any alternative rail line traversing Garden Valley be rerouted to protect this
major cultural contribution to our country.

Thank you.

MR. NOTTINGHAM: Thank you, Ms. Sonnenbern. We will now hear from Ms. Jenna Morton.

MS. MORTON: Thank you. I echo the incredulity of Brad Jerbic from earlier. I find it really refreshing to have somebody who speaks so candidly about our objections. And that incredulity is also echoed in the community where I live and at the school where my children attend. Many of my counterparts there find this process inaccessible and intimidating, so they sort of count on me to be here, and I think you guys are okay so I'm here. But thank you so much for hearing our voices. It means a lot to us. You probably won't hear a whole lot that's new from me, but hopefully what I am saying will serve as a relative summary of some of the objections you've heard earlier.

I'm speaking to you today on behalf of my 1,200 employees. I am a business
person in Las Vegas. Las Vegas is the number one tourist destination in the United States. We got that way by creating the greatest brand in the world. The Las Vegas business community has gone to great lengths to develop and guard that brand.

Our success is based both on perception and experience. The Las Vegas experience is one of a complete mental escape. My employees work very hard to provide that experience. Their livelihood depends on it. Currently the experience matches the perception we've created.

Nuclear waste destroys that perception. Nuclear waste does not belong here. Our success is responsible for dramatic population growth in Nevada. Las Vegas -- the Las Vegas Valley alone is now home to 2 million people and is one of the populous cities in the American west. We are no longer a stopover on the pioneer trail. With nearly 40 million visitors per year, during any given week we are also home to an additional 800,000
people.

This growth and success is based on maintaining the experience that we have put our hearts and souls into. We believe we are -- I believe we are well aware of the very real risks associated with the Yucca Mountain project itself from radiation leeching into our precious groundwater to Yucca's unviable location in an earthquake zone and its status as an early volcano. These risks alone should have ruled Yucca Mountain out as a nuclear waste dump from the get go.

I know that today we are focusing specifically on a relatively small rail line necessary to ultimately deliver this deadly waste to Yucca Mountain -- small, that is, relative to the distances the wastes would have to travel on various existing lines prior to reaching the Caliente line.

I submit to you that in doing an environment impact study there are various environments that must be taken into consideration. While the focus may initially
be the immediate physical environment of the rail line itself that environment, while also precious, does not exist in isolation.

While considering the consequences of building this piece of rail you must be aware that any decision has repercussions extending from one coast of the United States to the other. There's a map over there indicating all the locations of the nuclear power plants with waste, and then the big spot in Nevada is representing Yucca Mountain. And you can that's not a place where we actually produce waste. But those clearly aren't rail lines, but those are long distances that this waste would need to travel.

To reach Yucca Mountain by rail nuclear waste would have to travel through nearly every major metropolitan area in our country, exposing literally millions of people to, in the best case scenario, a dose of radiation equivalent to an x-ray with each of thousands of shipments. Other scenarios range from disruption of commerce by utilizing
existing rail lines that carry a number of
other goods to dire consequences of a
potential accident.

Any consideration of the Caliente
line must take into account the potential
environmental impact on each of these
communities. Truly, prior to approval, each
of these communities that may be negatively
impacted ought to be offered this same
opportunity to comment as you have graciously
offered us today.

In addition to the vast physical
environment you must also consider the
economic environment. Speaking on behalf of
the Las Vegas business community I tell you
that even if we ignores the potentially dire
physical consequences of the transportation of
deadly nuclear waste through our community the
mere perception of any risk associated with
its transport to Yucca Mountain severely
damages Nevada's economic engine.

Deutsche Bank gaming analyst Bill
Lerner puts it this way -- and I quote him --
The prospect of Yucca Mountain as a sole nuclear waste repository carries great economic risk for Nevada. We believe both inbound travel and population migration would be materially hampered by the simple prospect of Yucca transport and storage risk.

Well, let me just wrap up by saying land identity and carefree gestalt may have a disproportionate value for a Las Vegas community, but every other community including my beloved Chicago, the home of my company's flagship, through which that nuclear fuel will have to travel prior to reaching the Caliente line, could make a similar claim to the potential negative economic impact of the perception of threat.

In addition to my responsibility to my employees, both here and in Chicago, I am also a mother. So I urge you on behalf of my three children and, indeed, every one of the millions of people who live along the transportation routes across America, to find that both the physical and economic
environmental impacts of the Caliente line are too great.

Nuclear waste is deadly and it belongs neither in Nevada nor on our rail lines throughout the country. Thank you.

MR. NOTTINGHAM: Thank you, Ms. Morton. We'll now hear from Mr. Louis Benazet.

MR. BENAZET: Yes. Thank you.

Thank you all for providing the opportunity to comment and for coming to Nevada. And I want to also thank Mrs. Judy Treichel of the Nevada Nuclear Waste Task Force for giving me her time.

In the interest of having somebody from -- who's an ordinary citizen from Lincoln County address you people, I live in -- near Pioche -- actually on the west side of the Pioche hills -- the old Prince Mine. Looking down the valley it's about 25 miles to Caliente if you could see it, but it disappears into a canyon down there.

It's an original terminus of a
railroad line that Mayor Kevin Phillips talked about that was built in the early days that ran up to the town of Pioche. That line was actually abandoned about 1985 by the Union Pacific Railroad.

The proposed Yucca Mountain Rail Line originating in Caliente would not actually restore anything like the old line that was -- that came up Middle Valley since it cuts off to the west about maybe ten miles north of Caliente, goes out through Bennett Pass, and on out to where Mr. Heizer has his artwork and some of these other very remote areas.

The -- when I came to this hearing I kind of thought it was going to be an NRC hearing. And one of the things I wanted to say was that I'm concerned about the possibility that a decision for Yucca Mountain would be compartmentalized so that you don't really get to see everything that you're dealing with here.

I'm disabused of this fear
actually by the questions you people have asked. You've gone far beyond just concerning yourself with the question of how do you move a substance from Caliente to the vicinity of Tonopah or Yucca Mountain. You're looking at a lot of issues.

I would like to add to the question of the mammoth unprecedented transportation project that this is likely to set in motion and the unprecedented establishment of a high-level nuclear waste repository for all the nation's most dangerous materials.

Other issues that are related to this -- we heard from Paul Seidler of the NEI. One of the things he didn't comment to you is that the NEI sees Yucca Mountain as the roadblock that stands in the way of creating a nuclear power renaissance in this country. So we're talking about the potential of really getting into nuclear power in a big way if we can deal with the waste problem.

The trouble is that bad as the
waste problem is -- and I think it's insurmountable -- we also have the problems of the limited resource, which -- unrenewable resource, which uranium represents, and all the hazards associated with the production of nuclear fuel, including mine tailings and the waste associated with that.

As an opponent of Yucca Mountain projected I've felt that I'm really an anti-nuclear person, you know. But I think that my opposition to the Yucca Mountain was really galvanized -- my awareness took over in 1987 when what seemed to be a more or less dispassionate scientific fair process of finding a repository turned into a political process whereby all the other places that didn't want a repository said stick it on Nevada, got that through Congress, created the Screw Nevada Bill.

There were other sites being considered, and some of them had a far better potential for being a good repository site. All the sites in the east were in granite
formations, granite -- old rocks that have
been there forever, never been moved.

The western sites they were
considering by contrast, Yucca Mountain -- the
Yucca Mountain tuff, the basalt of the Hanford
region are in tectonically active areas.

The third area in the west was
actually in Texas. It was a salt formation
near Deaf Smith Country. What happened,
however, was that an important senator from
Louisiana, who was also in the area affected
by potential choice of a salt formation,
staged the Yucca Mountain Screw Nevada Bill,
which we have been dealing with ever since.

This illuminated an alternative.
So the decision that's going to be made for
Yucca Mountain is going to be made in the
absence of a really viable alternative. We're
trying to make a round peg go into a square
hole here and make it work.

I have had other difficulties in
my opposition to the Yucca Mountain project,
and that has been the effort on part of some
local officials to see it entirely as an economic boon potentially to the county. And I feel that because this has happened some of the information that has come out of our local government oversight programs has not addressed the real issues that you'll be having to deal with in the case of the Yucca Mountain Railroad from Caliente.

And if I could just quickly list them, because I know my time is up --

MR. NOTTINGHAM: If you could just wrap up please. Thanks.

MR. BENAZET: Yes. The major potential for flooding in the Meadow Valley, Clover Valley area where the city of Caliente is located -- the rail line comes in Clover Valley and would turn up Meadow Valley.

The fact that no analysis has been done of a potential incident in the city of Caliente -- the mayor and his folks have said, Well, that's just not something that's going to happen -- we're not going to look at that. It's very important.
The fact that we are the downwinder communities from the nuclear waste -- nuclear atomic testing and we need compensation for that as well.

So those are the issues. Thank you very much.

MR. NOTTINGHAM: Thank you, Mr. Benazet. We'll now hear from Ms. Jane Feldman of the Toiyabe -- please help me with the pronunciation -- Chapter of the Sierra Club.

MS. FELDMAN: Thank you so much, gentlemen, for convening this hearing here.

It is, however, unfortunate that we're here today talking to you, unfortunate because the need for a 300-mile railroad through the heart of Nevada is disputed, questionable, and thoroughly unwanted.

There should be no talk of additional rail line across virgin territory for several core reasons. I have six of them.

The end point of the rail line is a proposed facility. The proposed facility has an incomplete design. The transportation
canisters for high-level nuclear waste are not yet prototyped. The transportation of high-level nuclear waste is deeply controversial, as you've seen today, and it continues to draw strong opposition from many corridors. Fifth, the cost of nuclear power is skyrocketing. And, sixth, the new federal administration that we're waiting for is already reevaluating and re-prioritizing our national energy landscape.

There's a solid probability, and the probability is strengthening every day, that the proposed repository at Yucca Mountain for high-level nuclear waste will never be built.

There are too many questions, too much opposition to creating and transporting the most dangerous toxin ever known to man, too many concerns about global warming, too many profound changes in energy technology and financing that will impact the decision of whether a high-level nuclear waste repository will ever be built.
There is absolutely no public convenience or necessity for this rail line. The public, in fact, is highly inconvenienced in several different ways by the transportation of high-level nuclear waste thousands of miles through every urban center in the continental United States to Yucca Mountain. And there is abjectly no necessity to do that. A new rail line through Nevada should not be approved at this time because its need is in question.

As an environmental organization, the Sierra Club is intensely interested in the specific routing of any proposed disturbance to the landscape and the ecosystems that would be affected by it. A large proportion of Nevada -- you've already heard this, too. Over 80 percent of Nevada is managed as public land. It's managed by federal or state agencies as national forest, wildlife refuges, areas of critical environmental concern, critical habitat under the U.S. Fish and Wildlife Service Habitat Conservation Plans.
for Endangered and Threatened Species, National Park Service sites, wilderness, wilderness study areas, national conservation areas, national rec areas, and state parks.

Any place in our desert where there is surface water is a precious place where plant and animals thrive, biodiversity is high, and people treasure.

In Nevada, whether we're in the Mojave Desert or the Great Basin Desert, we fiercely protect our places with surface water. Surface water includes washes that have water only when the infrequent rains reach it.

Surface water here in the desert include seeps and springs that slowly express water from between rock layers where plants and animals congregate. Surface water is not lakes and rivers of the wetter places of our nation.

I live here in Las Vegas, and my son is a junior at the University of Nevada in Reno. That's 450 miles from here up Highway
95, past Mercury and Yucca Mountain and Beatty through Tonopah, past Luning and Mina, through Hawthorne and Yerington and Fernley.

Every time I drive that route, I see wetlands, wildlife refuges, and state parks. In the cold winter months I watch the cottonwoods turn gold and the creeks steam across the valleys with geothermal heat. I watch migrating birds search out the wet places to rest overnight. Nevada is a beautiful place for living things.

There must be a careful examination in the EIS -- the supplemental EIS of specific resources along the proposed 300-mile corridor from Caliente to Tonopah and then south to Beatty into Yucca Mountain to determine what kinds of lands, what kinds of habitats, plants, and animals will be affected by the disturbance there. A new rail line through Nevada should not approved at this time because the environmental impacts need to be more carefully quantified.

Let me end by saying that the
Sierra Club has said for the last 25 years about what we should be doing. First, we should stop creating high-level nuclear waste. That means that we should close the nuclear power plants that we already have and we should not build any more.

Second, we should make the high-level nuclear waste that already exists as safe as possible and keep it as close as possible to the site where it's generated. That's how to minimize the exposure of both people and the environment to the risk and threats presented by the most dangerous material known to man.

And particular, the proposed C-22 storage casks need to have design, manufacture, quality control, and monitoring procedures tested and finalized. These storage casks are meant to store high-level nuclear waste in Yucca Mountain, but these engineered barriers could be used to store safely nuclear waste at the sites of generation.
Additionally, DOE and the nuclear industry should be working on better monitoring and maintenance for dry casks and pool storage. This should include vastly better procedures for monitoring and inspecting dry casks and procedures for transferring waste from them if and when they start to deteriorate. There is presently only limited ability to monitor and no ability at all to transfer from defective casks.

Finally, sites close to every nuclear power plant need to be identified and secured for long-term storage. Right now these places are short-term storage sites and they need to be managed for long-term storage.

In summary, instead of wasting money on premature and unwarranted rail lines with the STB, the DOE should instead be working on fuel storage and dry cask design and management and on-site safety. Thank you.

MR. NOTTINGHAM: Thank you, Ms. Feldman. We'll now hear from Mr. Rake.

MR. RAKE: Thank you, Chairman and
Board members. I really appreciate the opportunity to speak today.

Again, my name is Launce Rake. I'm with the Progressive Leadership Alliance of Nevada. We're actually a coalition of about 30 groups here, including the major labor unions here in the state of Nevada, conservation groups, groups that are working for social-economic equity and justice throughout the service state.

We've also partnered with national organizations, including my friends from the Sierra Club and the Friends of the Earth in a recent advertising campaign nationally and locally that points out the fact that we believe that this Caliente Rail Line and Yucca Mountain generally is profoundly bad public policy initiative by the Department of Energy.

And on that subject I'd just like to briefly refer to Ms. Neumayr's testimony earlier from the Department. She referred to the Yucca Mountain as a geologic barrier -- is her rationale for putting nuclear waste there.
The problem is that Yucca Mountain itself is not a geologic barrier. The barrier that we're talking about is an engineered barrier. That's why we spent, you know, hundreds of millions of dollars devising casks to contain this nuclear material.

And I think that's significant, because if we have an engineered barrier that is this cask it doesn't have to be in Yucca Mountain. In fact, it doesn't make any sense at all to transport it across the country and stick it in a hole in the ground in our backyards. It would be better to have those casks on site wherever they are.

And that's where the transportation element is that you have to deal with. So I think you really do have to think about this issue of does it even make sense to transport this material on the Caliente Rail Line or on any railroad across this country. So I think that's important.

But there's another element of her testimony that I found problematic, and that
was her -- a dismissal -- I think fairly
cavalier dismissal -- of the legal concerns of
the Shoshone people. And I think that her
reference was that the federal government and
the Department of Energy provided some
gracious grant of land for the Shoshone to
continue living in Nevada.

The fact is that I think that's
representative of the Department of Energy's
relationship to the people of Nevada and, in
fact, people throughout this country. And
that is that they're -- the Department of
Energy's concerns trump the legal, political,
and historical concerns of the people that
they live with -- and their neighbors. And
that's true in Savannah River, it's true in
Hanford, Washington, it's true in Nevada.

We've had a terrible experience
with them over the years. The Department of
Energy and its predecessor agency, the Atomic
Energy Commission, of course, is responsible
for the development and explosion of nuclear
weapons at the Nevada Test Site above and
below ground. You've heard a little bit about that today.

But I think it's an example of the relationship that that Department has to the people here. And that is that people I think believe -- and I think they have some evidence to suggest -- that they are suffering from disease because of the activities of the Department of Energy.

So we don't really trust them, and I don't think we have good reason to trust them based on the record of their scientific and technical work over the years on Yucca Mountain either, which has been profoundly troubled and in some cases fraudulent I would suggest.

So there we are. The fact is I think that Ms. Neumayr's comments about the legal rights of the Shoshones -- it's more than just ignorance. It's probably malicious as well. And I say malicious because it's -- it strains of credibility to suggest that the counsel for the Department of Energy is
unaware of the 150 years of historic political
and legal relationship to the Shoshone to the
federal and state governments. It's quite
complex.

But, additionally, the Department
of Energy and the Atomic Energy Commission has
been dealing with issues with the Shoshone for
60 years. So she's aware that there are
complex issues out there. And to dismiss them
so easily is troublesome.

I'd like to kind of change tracks
a little bit and just say that I love Lincoln
County. I think it's a beautiful place. I
like to spend my money up there. I like to
encourage people to do tourism up here. As
much as I like Las Vegas -- I'm a Las Vegas
resident on the federal land grant that we
call metropolitan or county.

But the point is that Lincoln
County is a beautiful place but is an
environmentally sensitive place. I can wrap
up very quickly.

MR. NOTTINGHAM: Thank you.
MR. RAKE: A few years ago the -- in Rainbow Canyon, one of the environmental treasures I think of the Great Basin, a flood came along that knocked out the Union Pacific Railroad. The fact is that Lincoln County did not have the ability to respond -- the state of Nevada did not have the ability to immediately respond to those needs, and that's the same sort of event that could affect some rail line in Caliente.

That's kind of a nightmare scenario obviously, but I think that we need to take into account the fact that we just don't have the resources -- the infrastructure to respond to some sort of disaster on a statewide basis or certainly on a Lincoln County basis.

Again, I want to thank you for your time and your patience today. And thank you very much.

MR. NOTTINGHAM: Thank you, Mr. Rake. And thanks to everyone on the panel.

I just have a couple of quick comments. Ms.
Sonnenbern, I wanted to thank you especially for your very eloquent testimony. You echoed some of the testimony we also heard from Mr. Kolkman. I wanted to thank him too -- I didn't remember to do so after his testimony.

We do a lot on this Board with some things that for non-transportation folks would probably sound pretty dry -- proposed abandonments of rail lines. Every once in a while we may get a merger that's kind of a big deal in our little world. But you've kind of helped elevate the tone here to help come --

did you come all the way from New York, by the way?

MS. SONNENBERN: I did, yes.

MR. NOTTINGHAM: That says a lot in itself. And we don't get exposed to the world of sculpture and the arts too often in our work. Although we can certainly throw a stone and probably hit some of the great museums of our country from our office we probably don't spend much time actually entering those doors as we'd like.
So thanks -- to thank you for
elevating the tone here and educating us a
little bit speaks volumes about your
commitment to this and all the people you
mentioned that you represent.

MS. SONNENBERN: Well, I'd be
happy to send you some additional information
about the sculpture if that would be useful
and also to help situate perhaps Michael
Heizer's place in our history, because I
really can't under-emphasize how important he
has been in terms of defining the landscape of
art in the last 30 years.

In the sixties the United States
experienced a kind of resurgence of cultural
energy and there was a generation of whom
Michael was sort of among the pioneers who
moved outside of the galleries and came to the
American west to make artwork.

And, you know, other works which
are in Dia's collection -- Robert Smithson's
Spiral Jetty, which is in the Great Salt Lake,
Walter De Maria's Lightning Field, which is in
rural New Mexico. These are the artworks that are covering art history books that are being taught today. They have an international renown and they are inspiring artists or historians, designers, to fashion people -- I mean, I can't -- the breadth of influence -- writers -- is profound.

And Heizer's project is particularly difficult in the sense that it isn't yet complete. And so we don't have the thousands of visitors to show you who have been there and who can stand in testimony to its importance. All we can represent is the legacy that he already has, that the work already has, and the desire that exists for people to see that work complete and available to the world.

MR. NOTTINGHAM: Well, thank you. And I can assure you that the record is very full of strong statements about the importance of that work of art and what it symbolizes, and we welcome anything else that you'd want to send us. The record will be closed I
believe today but -- the official record --

but, you know, we're always open to receive --

    MS. SONNENBERN: Good.

    MR. NOTTINGHAM: -- mail from
taxpayers any time. And thank you. Ms.

Morton, just -- the 9 Group -- is that your
business name?

    MS. MORTON: Yes.

    MR. NOTTINGHAM: And are you in
the hospitality industry?

    MS. MORTON: We are -- restaurants
and nightclubs. We have restaurants in
Chicago, Dallas, and Las Vegas and nightclubs
here.

    MR. NOTTINGHAM: Very good.

Colleagues, any questions for this panel?

    MR. MULVEY: Yes, I have a couple
of questions. Ms. Sonnenbern, I've been to
your operation up in Beacon. My wife takes me
all these places. But it would be good to
actually -- if you could send something on
this because I think the visual would be very,
very helpful. And --
MS. SONNENBERN: Yes, I didn't realize that that was an option today.

MR. MULVEY: Let me ask something about this. I mean, it's -- this railroad would be a distraction -- would be an intrusion. And it's one mile long if I'm not mistaken. Would sinking the railroad for the one mile so it was below eye level -- would that be helpful because it is three miles away now. But if it's three miles away and also below eye level would that be good enough or --

MS. SONNENBERN: You know, I'm concerned about responding to that. I know that one of the primary concerns that the artist has is the degradation of the Valley from an ecological perspective. And I suspect that digging down in that way would be extremely intrusive.

It's worth noting that he -- I mean, it is -- he is doing construction in the Valley, but has done it with the utmost respect and integrity for the natural
ecosystem of the site. I mean, he's in --
Nevada and California roots. His grandfathers
were geologists. His father was an
anthropologist.

He has a very complete sense of
the environment, and it's only recently that
he's even been using large-scale construction
machinery. Most of the work was done really
at a small local level.

So I think that there's a very big
cconcern from our perspective about the
disruption of the natural environment with the
submerging of a railroad. And that -- you
know, perhaps from a visual perspective there
could be some mitigation there. But I think
that there would still be really significant
oral impacts.

One of the things that Dia has
done is conducted a natural soundscape study
at the site. And based on our analysis we've
determined that Garden Valley is among the
quietest places in the entire country. We had
to get special equipment out there to measure
the sound. And if you imagine honking a horn from -- I believe it was either a mile-and-a-half or two miles you could hear that horn across the entire Valley. They estimate that every train that goes by will be audible for at least 20 minutes before and 20 minutes after it's in the Valley itself.

So I think that these are issues that I'm not sure could be mitigated by submerging the rail. And the cost of that would make me ask the question of whether just relocating it would be equally beneficial.

MR. MULVEY: Okay. It would be more costly. There are sound deadening approaches, but, again, they raise the cost. Ms. Johnson --

MS. JOHNSON: Yes.

MR. MULVEY: -- you were talking about the potential for terrorists who attack the train and to I guess steal the casks. But these things weigh five tons. And wouldn't it be easier to protect these casks in transit and protect them at a place like Yucca
Mountain than trying to protect them at 30 places around the nation? If indeed you're afraid of terrorists actually breaking in and getting the materials isn't it more vulnerable when it's spread around the country?

MS. JOHNSON: Well, I have to tell you that by simply the act of bringing it to Yucca Mountain does not dissolve the effect of it being still on site, because once it comes out of the reactor it has to stay outside for five years. So it's there. It's going to be there.

So it isn't going to reduce the number of sites because once they start closing the ones -- if they start closing them the proposal, which I totally disagree with, is to build more.

Ward Sproat from the Yucca Mountain project just a month or so ago talked about the fact that they weren't looking at a second site; that they were just going to expand Yucca Mountain.

You know, two years ago NEI came
out with this little thing that came out in the paper that said, Oops, we made a mistake; Yucca Mountain can hold nine times the amount of waste that we originally said that it could hold.

So you have to understand that those of us in Nevada and other groups that I have worked with around the country have a tendency not to believe what we are hearing, you know. And, Commissioner Buttrey, you asked -- or you spoke to the man from NEI -- the scientist -- and you told him how glad you were that there was a scientist that you could ask these questions.

And I would tell you, you know, that this is a project that has not been peer reviewed, which is almost unheard of in the scientific community. And rather than talking to scientists from the NRC, the NEI, DOE, even the state of Nevada, you need to seek out scientists that are independent.

People like Dr. Allison McFarland, that until a year or so ago was at MIT, that
has studied this project extensively since 1987 and has said that Yucca Mountain is absolutely the worst place to have a repository.

Now, that's somebody that's not paid by the government, not paid by the nuclear industry, and not paid by the state of Nevada, but is actually doing this on an independent basis.

You know, I think that those are the people you need to talk to. You know, when the man from NEI said, Well, you know, they can't start the repository until they get the license application but you all can start, you know, doing the railroad.

Well, you know, that seems to be me a little bit backwards. Why would you build a railroad and put all that money into something that you might not need unless you want to cart all those vegetables and fruit that Congresswoman Berkley was talking about? I mean, we would appreciate it.

MR. MULVEY: And I'm a great
believer in independent assessments by people who are not hired guns. And I think there is a problem that you get too much from people with vested interests on both sides of issues. It's always good if we can hear from people like university professors and people from think tanks, et cetera, who don't have any preconceived notions.

One of the studies that you mentioned from Deutsche Bank, Ms. Morton, that looked at something that I'm interested in -- and that is what is the overall economic impact of siting these kinds of things.

We have another project we're looking right now and an issue there as well. And the data, I must tell you, are very, very scant. So if you have a copy of that Deutsche Bank report and you could send it to us I would be greatly appreciative of that.

MS. MORTON: It's actually not a specific report. It's an opinion of a gaming analyst who focuses on specific -- gaming in Nevada and other locations around the country.
And -- but I can check with --

MR. MULVEY: Because a gaming analyst at least I assume is a statistician.

MS. MORTON: Excuse me?

MR. MULVEY: At least I assume he's a statistician if he's a gaming analyst.

MS. MORTON: Yes, I'm assuming so too. But I can get some more information from him.

MR. MULVEY: Ms. Feldman, you were talking about an overall opposition to nuclear power in general, and you mentioned global warming. But isn't it true that some of the environmental community now have backed away from opposition to nuclear power because of global warming -- that nuclear power does not create the greenhouse gases that coal-fired power plants and others do, or, for that matter, natural gas? And, therefore, nuclear power is considered by some to be an answer to our most pressing problem?

MS. FELDMAN: The Sierra Club has not backed away from that position at all.
MR. MULVEY: I know the Sierra Club has not, but I'm thinking --

MS. FELDMAN: Neither has the national --

MR. MULVEY: -- Greenpeace, for example, has backed away.

MS. FELDMAN: The Nuclear Information and Research Service has not backed away from that position. And the bottom line fact is that nuclear power is not carbon free. Mining uranium, processing the uranium, mining the plutonium, processing the plutonium, transporting it is not carbon free.

MR. MULVEY: Transporting coal --

MS. FELDMAN: There are greenhouse gases --

MR. MULVEY: Transporting coal is not carbon free either. So, I mean --

MS. FELDMAN: You betcha.

MR. MULVEY: -- transportation isn't the problem.

MS. FELDMAN: That's why we are maintaining that the energy future that this
nation needs relies on energy efficiency --
wind, solar, and geothermal, which are clean
energy sources. And we cannot afford to go
down the nuclear track.

MS. JOHNSON: Commissioner Mulvey,
may I say -- may I correct you for just a
moment? Greenpeace has not taken away their
opposition to nuclear power. A lower luminary
who was involved in Greenpeace at the very
beginning is now being paid by the nuclear
industry to say, Ooh, nuclear power is great,
you know, for dealing with global warming. It
is not Greenpeace that has withdrawn its
opposition to nuclear power.

MR. MULVEY: He was a long-time
spokesman for them so that's -- so it's been
affiliated with him and Greenpeace.

MS. JOHNSON: I know. But he got
paid now for what he's saying.

MR. MULVEY: Gets back to my hired
gun issue before.

MS. JOHNSON: Yes, he is.

MR. NOTTINGHAM: Mr. Mulvey, we
have one other panel.

MR. MULVEY: I'm going -- we do?

MR. NOTTINGHAM: Yes, we do.

MR. MULVEY: Oh, I'm sorry. Yes, 

that's my last question, then.

MR. NOTTINGHAM: That's all right. 

I just wanted to make sure you knew that we do 
have five more names to try to accommodate. 

But you've been very patient, Mr. 

Buttrey. I didn't want to cut you off. 

You're certainly entitled to ask questions. 

MR. BUTTREY: Thank you. I'll be 
brief. Ms. Feldman -- 

MS. FELDMAN: Yes, sir. 

MR. BUTTREY: -- I hear a 
criticism -- not that I believe it or I 
subscribe to it necessary -- but I hear the 
criticism from time to time that the Sierra 
Club is against a lot of things and it's not 
for anything -- that you're not -- that your 
organization doesn't come forward with 
meaningful, logical, reasonable alternatives 
to things that you're opposed to.
But I can tell you I heard today refreshing news from you -- and I want to make sure that I heard and it's on the record clearly exactly what it is you do favor as an alternative to the proposal that's being made here in general.

Because under the environmental laws in this country they clearly require that all reasonable alternatives be considered -- given serious consideration. And I want to be sure I understood for myself and for the record exactly what it is you do favor in this regard.

MS. FELDMAN: You bet. This has been our -- the Sierra Club position for 25 years and is posted on our website, www.sierraclub.org. And it has two parts. The first part is don't make any nuclear waste, which means shut down the nuclear power plants that we have now and don't build anymore.

The second part is make the nuclear waste that we have created as safe as
possible and keep it as close as possible --
as can be safely done -- near the site that
it's been generated.

    When you start containerizing and
transporting nuclear waste and putting it into
Yucca Mountain that's when you increase the
exposure, the risk, the threats to people,
plants, and animal exponentially, and we can't
afford to do that.

    And we believe that there's a
magic cask. It hasn't been prototyped,
tested, designed, quality controlled, but we
do believe that the nuclear industry is
creating this magic cask that was talked about
earlier today and we should use those for on-
site storage -- or storage very, very close to
the site of generation. And that is the
safest answer for people and places, plants,
and animals.

    MR. BUTTREY: Thank you very much.

    MS. FELDMAN: You're welcome.

    MR. NOTTINGHAM: We thank this
panel again. We will dismiss you now. Thank
you for your patience. We have this last panel I'll call up -- and as I do so just say that we are really facing the clock here. We did promise our landlord here that we would be finished at five o'clock. And there's overtime and security issues involved.

But we do want to hear from Rollin Kim Lee, Moe Truman, Stuart Waymire, Juan Manuel Gutierrez, and Jennifer Viereck. And you've each been allocated time amounts. Mr. Lee and Mr. Truman, five minutes. Mr. Waymire, five minutes. And Mr. Gutierrez and Ms. Viereck, three minutes.

We would appreciate any summarizing you can do. Your full statements will definitely be put in the record. And unlike the motto we hear that what happens in Las Vegas stays in Las Vegas, I can assure you what happens today will stay in the record and will be with us all over the country. And I'm sure despite our best efforts will be in the courts one way or another which is case with most of our significant work.
MR. BUTTREY: If we don't finish by five we all have to stay here overnight. Right?

MR. NOTTINGHAM: Yes, the lock --

MR. BUTTREY: They lock the building down. I don't know about the rest of you but I want to be out of here before five o'clock.

MR. NOTTINGHAM: Mr. Truman, would you like to go first?

MR. TRUMAN: Sure. I was quite concerned if I was at the right dance as I thought we had to talk about the necessity of commerce on the line to Caliente. So now I understand that that might be part of the dance I'm quite comfortable being here.

This is probably my first experience with being a democratic republic. As I've talked to or listened to one of the fine spokesmen from the great state of Tennessee he talked about what Oak Ridge had done for the National Defense Department and how it had gave lots of time and lots of
energy and lots of real estate to that.

And the statesman who spoke at the conference we were at talked about the fact that Tennessee's called the Volunteer State. And I'm quite embarrassed about my state in -- as we talk and listen to about the things that we don't want to do for the betterment of the democratic republic.

Everything that we buy here in Nevada comes from other states. So we buy our petrochemicals, we buy our pantihose, we buy our medicines -- that has been made, manufactured -- and its waste is being held in other states.

So as we look at our responsibility to shoulder our fair share of the states' -- and the nation's -- waste that we are the beneficiary of I'm ashamed of what we have portrayed to the STB.

Getting on to my comment, in commerce Las Vegas is a large deterrent because of our cost of real estate here. Caliente has the vast potential, because of
the of real estate in that fair city, to actually be a major driver for economics.
Cedar City, Utah, right now is stealing a lot of businesses that should come to Las Vegas because of rail service and also because of the price of the property.

So I would commend to this to be to understand that there is economic drivers to go through and have businesses thrive in the Caliente region. Some of those that have left our facility -- left Las Vegas and had to relocate other places -- there's a company called Heritage Plastic.

They would take resin that would come by rail cars out of the chemical alley into their facility, manufacture it into plastic pipe. It would be destined for the eighth largest economy in the world, which is the southern California region, and get there by truck.

So, I mean, we could go on for several minutes about the businesses looking to relocate on a cusp around that southern
California market, and they're relocating to other facilities. So the political side of the nuclear waste aside, there is commerce that could be driven to Caliente and use the rail line for beneficial goods.

At the present time the railroad does not have service into Caliente for manifest service. So the businesses that we have worked with the local economic development companies, which would be City of Henderson, City of North Las Vegas, the State, and the NDA have all looked at bringing businesses to Caliente. But because the rail service does not exist, they've had to go through to other locales.

So my testimony to the STB is there is economic industry that could go to that area if it was approved. Thank you for your time.

MR. NOTTINGHAM: Thank you, Mr. Truman. We'll now hear from Mr. Stuart Waymire.

MR. WAYMIRE: Stuart Waymire. I'm
a mechanical engineer. By default, over the years I've also become sort of a historian of the Yucca Mountain project, specifically the Nuclear Waste Project office, which is now the agency for nuclear projects.

I was with ANEC, which is American Nuclear Energy Council, in 1991. I worked for them as a walk-on, because my engineering professors -- they told me that they were always afraid the federales would show up. That's in regard to some of the things that the Nuclear Waste Project Office was doing with a couple of companies called Mountain West, Decision Research, and some of the other people that dealt with the stigma effects and the -- some of the other concerns you had with perception stuff.

Before I get into some more of what was going on there I wanted to address Mr. Buttrey's question and some of your others because we've missed this -- on why those casks don't want to -- we don't want to store them on site. It's never been answered here.
There's something called corrosion that occurs. It occurs even at Yucca Mountain. When you have hot casks they're hot for long periods of times, hundreds of years -- they tend to take the humidity; the humidity goes to steam essentially. That steam cools and then it drips down on the different casks.

So if you're prepared to have on-site storage that you can guarantee for the next few hundred years where there is no precipitation, no humidity, and no corrosion of the casks, well, then please go ahead and do so. But, otherwise, you could very well end up with 35 sites with massive amounts of nuclear ceramics sitting there essentially loose on the ground.

That also brings up the other point. We've heard numerous times here "most dangerous substance in the world," "cataclysmic." It's a ceramic; it's like plates. It's uranium oxides -- various uranium oxides. They're also radioactive.
Things called Geiger counters can be used to find those things.

You've mentioned we've got sodium hydroxide, chlorine, hydrochloric acid, sulphuric acid, titanium -- those things are all coming through the Valley. If you have a problem with those things, you really can't find that stuff. I mean, it can disburse -- it can be in the air.

So of all the different disasters possible -- we had also a recent scare; about this much ricin sent the Valley into paroxysm. But just imagine 75,000 tons of ricin and then kind of compare that when people say this is most dangerous substance anywhere.

But to go back, I ended up writing a book, a 200,000 word book, on -- as a whistleblower on the Nuclear Waste Project Office. It's online at yuccamountainexpose.com -- yuccamountainexpose all one word.

It's well worth your while, because just recently Mr. Bob Lux was fired
from the agency. The reason he was fired was because he embezzled half a million dollars. We don't call it embezzlement here in Nevada, because it also goes to the intimidation factor because you've got certain politicians who kept Mr. Lux in power for 30 years.

That was certainly not the only time he played fast and furious. There are GAO reports; I have quite a few different things. Some of the people here have benefitted also from his money. In fact, one of the people who testified was pandering for a grant earlier. He was also involved in some of that.

So my point there is that a lot of the things that come from the Nuclear Waste Project Office and from the current nuclear projects group are not to be totally believed. They have a vested interest from way back in trying to promote an anti-nuclear position.

When the Mountain West and the -- when Decision Research came in, Decision Research did a lot of the perceived-risk kind
of things. The availability -- I think you
might hear about that sometimes if you're
really nerdy and kinky about it, but that's
the idea that you can never learn to accept
risk; no one can.

Well, those are the theories that
came out in '87 when the socioeconomic studies
were done. 15 million went to socioeconomic
studies here. 14 million went out of state.
Roger Casperson, one of the people who led up
some of the stuff with -- from Clark
University, I caught him writing in '74 a
Maoist/Marxist anarchist decentralist paper
that said social scientists do not need to be
objective.

That carried through when they
came here. It followed through through a
number of different things. They became
advocates for the position. That's carried
through when Mr. Lux ended up having kind of
a fiefdom where he was in control of a number
of different things. He sort of appointed
people and things happened as he wanted.
Now, the way you know that he was corrupt is because he isn't taken out for embezzlement and in prison right now. He's been protected by Senator Bryan, Senator Reid, and a number of other people too. Anyone else who did something like that would be long gone.

So I just suggest you look at www.yuccamountainexpose.com. And I think you'll find quite a few eyeopeners for you.

MR. NOTTINGHAM: Thank you, Mr. Waymire.

We'll now hear from Mr. Lee.

MR. LEE: Thank you. I appreciate this opportunity. I'm Rollin Kim Lee. I live in Panaca, Nevada. My grandfather four generations back settled Panaca, Nevada, in 1864. I'm married to Linda O'Connor, also a direct descendant of one of the pioneers who settled that community. We have seven children and 18 grandchildren. And because of this we feel like we have a right to have an opinion of what's going to happen to our
little community around Panaca.

Concerns about a railroad in Lincoln County -- there's some bullets here that I'd like to cover if I can get through this. How are we doing without it now? Did rail access benefit our community during the decades it was available? What impact could construction have on our community and its future? What about our rural way of life?

What benefit would there be in having a railroad if our community couldn't use it?

How are we doing without it?

Well, we have zero chance of receiving equipment or materials that cannot be economically transported without being on a highway in a truck. We have zero opportunity to ship materials or finished products out that cannot be moved economically without a truck.

Consequently, there is no interest in any firm or company to establish an operation near Panaca or in Lincoln County.

We cannot develop our national resources
requiring rail transportation to market. But we do have the lowest number of railroad-related employment opportunities in Lincoln County since the railroad was established over a hundred years ago.

Did the railroad benefit our community when it was here? I can only speak from personal experience. Before the four companies were in Lincoln County that I personally worked for and received a paycheck and took care of my family from that depended on the rail to ship its product out of Lincoln County.

During the construction of the Glen Canyon Dam, pozzolan was shipped from two miles north of Panaca on rail to Glen Canyon Dam's construction. That rail has been removed, and we'd like it back.

Many residents, including myself, supported their families through the employment of these companies. Many people I know made their living working directly for that railroad that is now gone.
Combine Metals Reduction Company, Bunker Hill Mining, Sierra Chemical, Panaca Pozzolan Plant -- these are the four companies that I personally worked for. And I know for a fact they needed the rail to ship their product.

Due to these companies and the employment they provided I believe each and every business in Lincoln County benefitted in one way or another. Our school enrollment was up, the tax base was larger, the merchants sold more product, and the list goes on.

What impact could the construction of this railroad have on our community and our future? Well, increased employment, increased tax revenue, increased business for each and every merchant and business in our community, an incentive for youth to remain in the area with good employment, and have a renewed sense of pride that has not existed for years in our community.

What about our rural way of life? I grew up on a farm four miles below Panaca,
Nevada. It's probably within a mile-and-a-half of where this proposed rail is going to go. We had cattle. My father and I moved cattle back and forth across the tracks that were there dozens of times in my lifetime. Those rails were 150 yards from our front door.

The tracks nor the train were ever an issue in my family or our lifestyle. In fact, that train rolling past our house, hearing the whistle blow, and seeing the people that you knew working on that train are a fond memory and a part of our rural community that I know and love.

What benefits are there in having a railroad that we cannot use ourselves -- as they talked about dedicated trains? Absolutely zero. This railroad should be constructed and made available to Lincoln County's economic possibilities and growth.

Scientifically, economically, and realistically it is absurd to consider any other location for nuclear waste than Yucca
Mountain. That's my opinion based on all the reading I've done so far.

The route to this repository is one that's been picked by people that are knowledgeable and have the expertise to do so; that being the Caliente Line that we discussed today. To not allow the public to utilize this tremendous opportunity for progress and growth is beyond reason.

As a resident of Lincoln County, having grown up and spent most of my life here, I am in complete support of this rail line and appeal to this Board to provide access to it for the commercial transportation development and growth of our great community. It may be the most important puzzle piece we can acquire to ensure a positive financial future for Lincoln County's children.

A point I'd like to add: I have intimate knowledge of a firm who has purchased 9,000 acres north of Panaca about two miles for the resource pozzolan. It's a rhyolitic ash that is deposited after a volcano. This
ash is ages old. It's a unique commodity as an admix to concrete. It is a green additive to concrete that reduces the amount of Portland cement that must be used and, therefore, reduces the carbon footprint of the cement industry.

They bought 9,000 acres of this product with the intent of developing it and selling it at a rate of 50 tons per hour. That's 300 rail cars a month. So this one firm is among the mix that doesn't happen to be the lettuce and tomatoes and fruit that's been made fun of this morning about the commercial use of this train.

I thank you very much for this opportunity and your time.

MR. NOTTINGHAM: Thank you, Mr. Lee. We'll now hear from Mr. Gutierrez for three minutes.

MR. GUTIERREZ: I'm Juan Manuel Gutierrez. I'm on the Board of Directors for the Shundahai Network.

MR. NOTTINGHAM: Oh, Mr.
Gutierrez, I think there's a button to depress on your -- makes sure the mike goes on.

MR. GUTIERREZ: Hello?

MR. NOTTINGHAM: Perfect. Thank you.

MR. GUTIERREZ: Hello. My name is Juan Manuel Gutierrez. I'm on the Board of Directors with the Shundahai Network. And I came here to speak with everybody else.

Now, some of the things I've heard here -- a lot of this has started because of a mandate from Congress to the Department of Energy. Congress gets its mandates from politicians making laws or the lobbyists from companies coming in to say we want this. So it's the Department of Energy, the Department of Defense ordering Congress to put all of this over here.

The United States of America's mandate is to protect U.S. citizens. By bringing nuclear waste through every community in this nation is not protecting U.S. citizens. We have a scientist who would not say this cask will last 10,000 years. Bar him
saying that I think the Congress was sold. The Yucca Mountain nuclear kitty waste box -- very smart people telling you how a cat takes a dump and this is doing to keep us safe.

And I think that that is not science. I think that it was a con. And I think science would be trying to figure out how to render nuclear waste inert, thereby keeping all people safe forever.

I've heard people talk about art and I've heard people talk about the dismissal of the Shoshone. And I would submit to you that every valley, even the valley where this art piece is going, contains the art that the Shoshone have valued the most -- the art of creator. Every bird, every fish, every tree, every insect, the air, the water, and the dirt, and the rocks itself all are alive. The Shoshone view this as God's art and they worship it.

Now Mount Tenabo is being taken down for gold. And I just hope that the United States would honor all people's
religions, not just Christian and Muslim and Jewish and all the major religions, but all religions.

Now, the Shoshone have been -- signed a treaty of peace and friendship with the United States. Now for the United States to come back and say we're going to give you $15 an acre and we're going to take it from this pocket and put it into this pocket and you guys sold your land when it is against their philosophy to sell their mother. You cannot sell God. You cannot sell the mother.

MR. NOTTINGHAM: Mr. Gutierrez, if you could wrap up whenever you --

MR. GUTIERREZ: Yes, go ahead.

Thank you.

MR. NOTTINGHAM: Thank you. And now we'll hear from Ms. Jennifer Viereck. And thank you for your patience. I think you're the last witness today. And please know that that's just random luck, and we expect the best for last, so we'll close with you.

MS. VIERECK: Well, we've got a
lot of hard acts to follow today. Minor

correction -- my name is Jennifer Olorano

Viereck, and I'm the executive director of an
organization called H.O.M.E.; that's for
Healing Ourselves and Mother Earth. We're a
grassroots stakeholder group with offices in
Nevada and California.

Personally, I live in California.

I may live closer to Yucca Mountain than
anyone we've heard today. I live 50 miles
directly south in the immediate watershed of
both the western portion of the proposed
railroad and the repository itself. I work 50
feet from the current nuclear waste route on
a tiny paved road in California -- Route 127.

H.O.M.E. has done independent
studies of baseline radiochemistry for the
water that we felt were not being done by DOE
and other science studies there. I've
conducted a HAZMAT transportation study on
this current route for the local first
responder district. And that route already
includes two different kinds of nuclear waste.
I've also collected an extensive archive of the impact of flooding in this area on transportation. And as someone noted earlier, we may only get a couple of inches a year, but we can get it in 25 minutes. The most recent incident was when our one and only police car was washed off the road earlier this year on this route that we're discussing.

In 1951 the Atomic Energy Commission relevant to the Nevada Test Site referred to local stakeholders as a low-use segment of society. I have that document. Currently we're talked about as potential human dose receptors and maximally exposed individuals. None of this is really particularly charming from our perspective.

H.O.M.E. strongly supports the Treaty of Ruby Valley, as well as the United Nations Committee to end racial discrimination's decision several years ago to order the United States to cease and desist all Yucca Mountain activities as part of the racial discrimination against Shoshone people.
There's been a lot of really excellent comments made earlier today, and I don't want to repeat them, nor do I have the time. But I'd like to particularly show appreciation for the comments of Congresswoman Berkley, for the Nevada and California state representatives, and for all of the Native speakers today, and by reference incorporate them into my own comments.

I would also like to commend the mayor's representative -- who I don't recall his name -- and particularly appreciate his comments on the magic cask scenario and the magnitude of stupidity reflective in this transportation proposal.

I think that he summed up fairly accurately why we believe that the application to put a railroad in the state of Nevada at this point is extremely premature. And we also think that this meeting itself has been premature because a lot of the NEPA issues that we've commented on extensively over the years have not been resolved yet. And until
they are I'm not sure in what context we can
address this proposal. Thank you.

MR. NOTTINGHAM: Thank you. Vice
Chairman Mulvey, do you have any concluding
remarks?

MR. MULVEY: No, I don't. I just
want to apologize to this panel because I
didn't realize there was one more panel coming
up. I thought -- my comments to the last
panels would have been more brief if I would
have known I you were going to be here. But
thank you very much for your excellent
testimony -- all of you. Thank you.

MR. NOTTINGHAM: Mr. Buttrey, any
questions or closing remarks?

(No response.)

MR. NOTTINGHAM: I want to thank
this panel and all the panelists and just also
thank our hosts here at the Nuclear Regulatory
Commission for making this space available us.

We recognize these are some
difficult issues -- a lot of emotion, a lot of
science. We pledge -- it's my personal pledge
on behalf of my colleagues and our agency that
we will remain independent, as we always have
been. We do not work for the Department of
Energy. We don't take orders from anybody on
this matter or any matter. And we were
created by Congress to be bipartisan and to be
independent, and we will conduct ourselves in
that manner.

At the same time we have some
important statutory obligations to consider --
matters that are brought to us such as this,
and we will be doing so. And, again, thank
you for being here today. Many of you came
long distances and waited many hours to speak,
and we appreciate that.

Hearings are not worth much if we
don't have the public engaged. And I think it
speaks good things about the people of this
region and folks from around the country who
came all this way to contribute to this
hearing. So we appreciate that. Thank you
and we are adjourned.

(Whereupon, at 5:12 p.m., the
hearing was concluded.)