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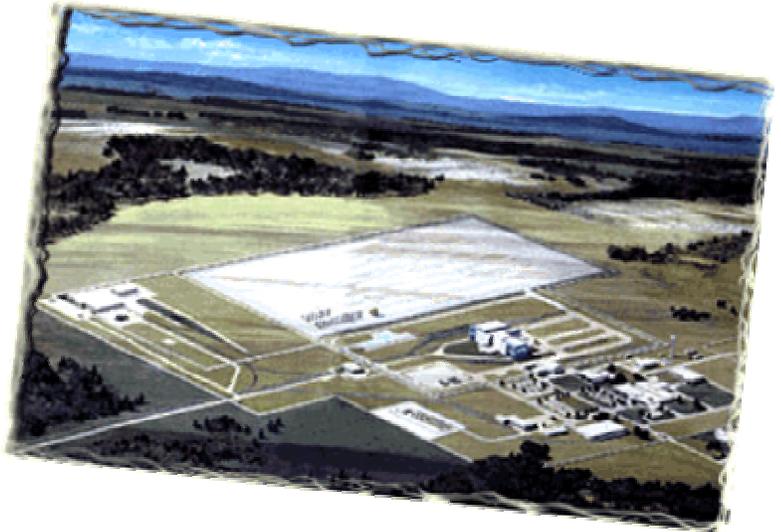
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Utah appeals nuclear waste ruling

The federal government has no business overruling state laws blocking the transportation of spent nuclear fuel into Utah, the governor and attorney general said, especially when the laws haven't even had a chance to be applied.

For that reason and others, the state is asking the U.S. Supreme Court to review a lower court's decision on the proposal to bring spent nuclear fuel to the Goshute reservation, Gov. Olene Walker and Attorney



General Mark Shurtleff announced in a joint appearance at the Capitol.

Stopping a nuclear waste storage facility on the Skull Valley reservation 45 miles southwest of Salt

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Government considers appealing Yucca ruling

WASHINGTON -- The federal government is maintaining its option to seek a Supreme Court review of a lower court ruling against Yucca Mountain.

The request for appeal remains unlikely and would contradict stances made by the Environmental Protection Agency and the Energy Department. The two agencies have signaled they have no interest in a Supreme Court appeal.

The Energy Department has said the best way to proceed "is not to engage in further litigation but to allow EPA to work to develop an appropriate regulatory response to address the issues raised by the courts," department spokesman Joe Davis said.

Still, a court document filed by the Justice Department on Sept. 23 asserts that the department's solicitor general is clinging to the Supreme Court option. The deadline to request an appeal is Nov. 30.

At issue is a July 9 ruling by the U.S. Court of Appeals for the District of Columbia Circuit. It said the

EPA's 10,000-year radiation standard for the proposed waste repository at Yucca unlawfully deviated from stricter National Academy of Sciences recommendations.

The ruling was a significant setback to the Energy Department plan to bury the nation's high-level nuclear waste at Yucca, Nevada officials said.

White House spokesman Ken Lisaius this week gave no new signal that President Bush wants to appeal to the nation's highest court.

"There is nothing changed" in Bush's stance, Lisaius said.

Lisaius noted that after the ruling Energy Secretary Spencer Abraham said his department would work with the Environmental Protection Agency and Congress -- he notably did not mention courts -- to respond to the ruling.

Both the Energy Department and the EPA declined to file appeals to the federal appeals court by an Aug. 24 deadline.

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Utah appeals nuclear waste ruling (Continued)

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Lake City is a states' rights issue, Walker said.

"My first priority is the safety of Utahns. I oppose high-level nuclear waste storage in Utah and hope the waste never comes here," she said. "But history has taught us that a strong framework of federal and state law is needed."

The state is petitioning the high court to review a 10th U.S. Circuit Court of Appeals ruling in August that said the state was wrong to pass laws in 1998 and 2001 intended to block the project because Congress already had decided it was the federal government, not the states, that is the authority on spent nuclear fuel.

The ruling upheld an earlier decision from U.S. District Judge Tena Campbell, and was considered a major setback in the fight to stop a plan by a consortium of eight electric utilities, known as Private Fuel Storage, to ship their deadly nuclear power plant waste to Utah for open-air storage until it could be taken to a permanent repository at Yucca Mountain, Nev.

The petition to the Supreme Court questions whether it was proper for the 10th Circuit to issue what Utah Assistant Attorney General Denise Chancellor called "an advisory position." Chancellor, the attorney who would present the case if the high court accepts it, said Utah also questions 10th Circuit intervention into a "totally local" issue of road transfers necessary to complete the PFS project.

The petition also asks for review of the project's potential unfunded liability and the nature

of PFS's limited liability business structure.

Further, the appellate court "swept aside the Utah laws even though the laws have not yet been applied, may never be applied because the project still lacks the needed federal approvals" and could be applied without usurping federal laws, the petition claims.

PFS spokeswoman Sue Martin said she hadn't seen the state's petition but that the consortium's lawyers were reviewing it. "We understand it is certainly the state's right to appeal the decision of the appeals court," she said.

The proposed license for the



Dry spent fuel cask storage—Wisconsin Electric Power Company

facility at the Skull Valley reservation is now before the Atomic Safety Licensing Board, which in mid-September completed three weeks of closed-door hearings on the correctness of an earlier determination that the possibility of a fighter jet crashing on the canistered waste posed an unacceptable risk.

PFS wants to store as much as 44,000 tons of radioactive waste from the nation's 103 commercial reactors, nearly all such

waste that has been generated since utilities turned to nuclear power for cheap electricity.

The 4,000 steel-and-concrete casks would hold the waste on 100 acres of the reservation for up to 40 years. The transportation plan would require shipping by rail, truck and barge and the construction of a rail spur to the reservation.

The group has presented the project as a temporary solution to the problem of the waste, which by federal law was supposed to have been shipped to a permanent federal repository that was to open in 1998. Utah has no nuclear power plants.

Multiple problems with the Yucca Mountain project, including lawsuits, intractable opposition from the state of Nevada and a lack of funding has made the new 2010 opening deadline unlikely. Democratic presidential candidate John Kerry has vowed to kill the Yucca Mountain project if he is elected.

A more fundamental problem with the PFS proposal recently came to light: The contracts under which the Department of Energy will accept the nuclear waste don't allow for PFS to send the fuel to Yucca Mountain in sealed canisters. The PFS proposal doesn't include a facility in Skull Valley that would allow the private business to package the spent fuel to DOE specifications.

Additionally complicating the PFS agreement with the Goshutes are two federal indictments pending against tribal chairman Leon Bear for embezzlement.

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zlement and tax fraud. Bear has been embroiled in a leadership battle with the 121-member tribe since he signed the contract with PFS on behalf of the tribe in 1997.

Utah officials fear that if PFS receives its 20-year renewable license - and that could happen as early as January - and the facility is built, what gets shipped here will never leave.

Walker this week posted on her Web site a missive declaring, "If it comes here, it will not leave," and concluding the only way to



Depiction of transportation by rail

manage PFS was to block it.

"Moving this stuff is a huge enterprise," said Assistant Attorney General Jim Soper. "The attitude of the [nuclear] industry is, 'If we can send it to Utah it will be there for 40 years.' I think once it gets here, it won't leave."

Soper said the state sent a 200-plus page response to the Atomic Safety Licensing Board's deliberations. The state expected to receive a copy of PFS' response this month and both sides then have three weeks to rebut each others' positions.

Candidates for governor, Republican Jon Huntsman Jr. and Democrat Scott Matheson Jr., oppose the facility, as does all of Utah's congressional delegation.

Source: Salt Lake Tribune

Government considers appealing Yucca ruling (continued)

And on Sept. 7, in response to Sun questions about whether the EPA would appeal the ruling to the Supreme Court, the EPA issued a statement saying the agency "has elected not to seek further court review."

In addition, an EPA official told a National Academy of Sciences Board on Sept. 20 that the agency was reviewing how to best comply with the lower court. The official made no mention that the EPA considered a Supreme Court appeal an option.



Supreme Court Building, Washington DC

But "final authority" on Supreme Court appeals rests with the nation's Solicitor General, according to the Justice Department court document. And Acting Solicitor General Paul Clement has not signaled whether he would appeal, Justice Department spokesman Blain Rethmeier said.

Generally, the Solicitor General reserves the right to appeal whether he intends to or not.

The solicitor general is keeping his cards close to the vest by design, Nevada Senior Deputy Attorney General Marta Adams said. For strategy reasons lawyers often wait until the last minute to file a Supreme Court appeal, she said.

Source: Sun Washington Bureau



Nuclear waste to have armed escort

High-level radioactive nuclear waste slated to go to the proposed repository at Yucca Mountain will be transported by train or by truck, according to information from the U.S. Department of Energy. During the 25-year lifespan of the repository, approximately 3,200 train and 1,100 truck shipments are anticipated. The radioactive material will be placed in transportation "casks" whose design was approved by the Nuclear Regulatory Commission. These casks, made of stainless steel with lead shielding to prevent the escape of radioactivity, have been subjected to a variety of tests that include hitting a hard surface at a speed of 120 mph, attempting to puncture the container with a shaft 6 inches in diameter and setting the cask on fire and burning it at 1,450 degrees Fahrenheit for 30 minutes. Additional tests included running a truck carrying a cask into a brick wall at 80 mph and running a train into a truck carrying a cask. Failure rate of the casks was not specified in DOE material. During transport, trucks and trains will have armed escorts and will be tracked on satellite. *Source: Arizona Daily Sun*

Goshutes' waste plan hits a snag

A utility consortium planning a temporary high-level nuclear waste storage facility on the Goshute reservation in Utah's west desert is developing intricate plans for getting the waste from nuclear power facilities to the site.

But a federal Department of Energy official says a planned permanent repository at Yucca Mountain, Nev., could not accept the deadly waste, meaning that Private Fuel Storage may not be able to keep its promise that the waste would be in Utah for only a few decades.

For all the effort to relocate the nuclear waste to the Skull Valley reservation, there may not be an exit strategy.

During interviews Gary Lanthrum, director of the DOE's transportation program, told *The Salt Lake Tribune* that federal Nuclear Regulatory Agency (NRC) rules say any radioactive waste headed for Yucca Mountain must be freshly packed by nuclear power plants before the DOE takes ownership of it.

PFS, however, plans to receive waste in welded casks because that is the way the plants store it on site, Lanthrum said. For that reason, "the current contracts for how we receive fuel makes their plan unacceptable," he said.

The revelation startled Utah officials, including Gov. Olene Walker, and led to questions about bad communication between the DOE and the NRC, which are responsible for approving both the Yucca and PFS plans while ensuring public safety.

"It would be ludicrous to make shipment to a temporary facility

and then not be able to transport it again," Dianne Nielsen, executive director of Utah's Department of Environmental Quality, said in an interview. "To find there isn't even agreement between NRC and DOE is disturbing. [The casks] shouldn't move until they have the answer."

Walker, speaking to members of the federal Nuclear Waste Technical Review Board who met for two days in Salt Lake City, said the state doesn't want any nuclear waste passing through - or staying in - Utah.

"Once again, the citizens in Utah . . . will be asked to trust the federal government, at the same

Yucca Mountain may reject spent nuclear fuel from proposed Skull Valley site

time the government is testing the reliability of that commitment," she said.

John Parkyn, PFS chairman and CEO, told the board the radioactive waste should be handled just once at the reactor site, then shipped to the Skull Valley Goshute Reservation facility.

Because rehandling the waste poses unacceptable risk, that won't happen at the PFS site. The utilities that generated the waste would continue to own the material until the DOE takes title to it, "whenever that might be," Parkyn told the board, an advisory body Congress established to oversee Yucca Mountain planning. The board has no jurisdiction over the PFS proposal.

After his presentation, Parkyn said that the DOE "has an open invitation to join us" at the nuclear power sites when the waste is packaged in the storage casks.

"Hopefully DOE will try to meet our standards," he said, adding Lanthrum's notion that Yucca wouldn't take welded casks from PFS "is not an accurate interpretation," and that the DOE has no regulatory authority over PFS waste.

But according to Lanthrum, who testified on the DOE's nuclear waste transportation plans at the hearings, that department has no obligation to take waste from PFS, a private company.

Under federal law, the DOE is required to take waste from utilities for permanent storage at a federal repository. It will do so by delivering approved storage casks to the nuclear power plant, where utility personnel load the casks according to NRC rules. Then, the DOE will arrive with either a rail car or truck.

"DOE owns [the waste] from that point on," Lanthrum said.

The law had required the DOE to open Yucca Mountain, located about 90 miles northwest of Las Vegas, by 1998. A series of lawsuits and technical troubles stalled the project, which Nevada is vehemently opposing.

Congress now is refusing to fund Yucca in its omnibus spending bill, leaving all planning in limbo and probably pushing its opening date beyond the new deadline of 2010.

Meanwhile, PFS plans to ship waste on its own to Skull Valley for open-air storage before going to a permanent repository.

Skull Valley Band of Goshutes Chairman Leon Bear in 1997

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Goshutes (continued)

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signed a lease with PFS to allow the company to store up to 44,000 tons of spent nuclear fuel on Goshute land 45 miles west of Salt Lake City. The containers would sit on concrete pads spread across 100 acres while waiting for transport.

Connie Nakahara, special assistant state attorney general working on the PFS issue, said she wasn't sure how the state could respond to Lanthrum's assertions. "We've always been concerned with PFS's lack of ability to repack fuel in case of an emergency," she said.

Nuclear regulatory officials also have rebuffed state questions about the waste packing procedure at the nuclear facilities. "Basically, NRC has said DOE will be there to pick it up," Nakahara said.

Not according to Lanthrum, who said that because the waste will be shipped and accepted at PFS in welded casks, the DOE won't take it at Yucca Mountain.

And the DOE is not willing to renegotiate its rules on this single issue, he said. Unless some other agency changes the rules, that means the material would either have to be repacked at PFS or be sent back to the nuclear plant from which it came.

Technical Review Board members asked Parkyn how closely PFS was working with the Yucca planners. Parkyn replied that PFS has "tried" to provide Yucca officials with documentation.

"I would say there is dialogue," he said. "We're not in competition with them."

In his presentation, Parkyn said PFS would ship waste only by rail, in custom-built cars, and would build a rail line on the

Goshute reservation. "Putting a rail line in costs more than shipping by truck," he said. "We are not going the cheapest way."

The presentation on PFS safety and transportation plans left Nielsen fuming.

"John Parkyn put up a wonderful list of things it's going to do," she said. "But PFS has not committed to any of those as license conditions. Every time we have asked them to, they have refused."

The NRC held hearings from Aug. 9 to mid-September on the PFS license, in particular on whether to reconsider a finding that the potential of an F-16 fighter jet crash into the casks poses an unacceptable risk. Parkyn said he expected a decision on the renewable 20-year license by January and predicted PFS would begin to receive shipments in 2007.

Utah's state and federal leaders oppose the Skull Valley proposal, but have no oversight because the Goshutes are a sovereign tribe.

Source: Salt Lake Tribune

Yucca Mountain to be at capacity before opening

More nuclear waste than the planned repository at Yucca Mountain can hold will pile up at reactor sites as the government continues to approve license extensions for power plants, an environmental research organization claimed in a study to be released this month.

If a repository is built by 2010 in the mountain, 90 miles northwest of Las Vegas, its 77,000-ton capacity will be filled by existing spent fuel awaiting shipment. That's not counting another 9,900 tons that will have

accumulated in the meantime from license extensions, according to the study by the Environmental Working Group.

"A more realistic estimate based on the 20-year average license extensions being granted, means that over 18,000 more metric tons (19,800 tons) of nuclear waste will cross the country to Nevada for disposal than estimated," the group's report states, referring to estimates by DOE.

"To accommodate all this high-level nuclear waste, Yucca Mountain will have to be expanded, and getting it there, by whatever means, will take decades longer than even the government's longest predictions," according to the study.

The increased inventory of spent fuel stems from reactor license extensions that were "quickly and quietly approved" by the Nuclear Regulatory Commission, the group claims.

The group said nuclear power plant re-licensing doubled after Congress approved the Yucca Mountain repository in 2002. There are renewal applications pending for 18 more reactors.

That means there will be more waste to store at reactor sites or above-ground facilities and more risks involved with thousands of more waste shipments than DOE has calculated, said Richard Wiles, senior vice president of the nonprofit group.

"The risk compounds itself, and they're not being truthful with the public about what their real plans are for the waste," Wiles said.

Allen Benson, a spokesman for DOE's Office of Repository Development in Las Vegas, noted that between 2007 and 2010 the agency is required to report to Congress on the need for additional disposal capacity.

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Yucca Mountain (continued)

In September 2002, two months after Congress approved the repository, DOE officials acknowledged there will be more high-level waste than space for it in Yucca Mountain as liquid waste in tanks at nuclear weapons facilities is converted into glass logs. Agency spokesman Joe Davis said at the time that Congress would have

decide on expanding the repository, if it's built, or finding a site for a second one.

DOE figures show that once the conversion task is completed in 2035, only 8,275 glass logs out of 23,475 will fit in the repository. The cost of converting liquid waste into glass logs will be \$9 billion more than the repository's \$58 billion price tag.

Wiles said the solution to the capacity dilemma is to stop making more waste and explore on-site storage at reactors as compared to risks involved with hauling it to Yucca Mountain.

Reliance on nuclear power can be reduced through more efficient

use of electrical power and through environmentally sound operation of coal and natural gas plants until alternative energy sources are developed, he said.

The DOE contends that for security reasons it's better to put all the waste at a single location rather than have it scattered across the country.

Critics, including Nevada's delegation, have said that logic is flawed because some amount of spent fuel always will be at reactor sites as they continue to operate. *Source: Review Journal*

This newsletter is a publication of the Lander County Repository Planning and Oversight Program. Lander County is one of ten affected units of local government involved in the proposed Yucca Mountain Repository. Funding provided to Lander County is paid by users of electricity generated by nuclear power plants. Under a general contract with nuclear generating utilities, the federal government collects a fee of one mill (one-tenth of a cent) per kilowatt-hour from utility com-

panies for nuclear generated electricity. The money goes into the Nuclear Waste fund which is used to fund all program related activities. Articles in this newsletter do not necessarily reflect the opinions or views of the Lander County Board of Commissioners.

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tional information on the repository program can be obtained from the U.S. Department of Energy. Yucca Mountain, Site Characterization Project Office at (702) 794-1444 or contact them at www.ymp.gov, or the Nevada Agency for Nuclear Project, Nuclear Waste Project Office, Capital Complex, Carson City, Nevada 89570, (775) 687-3744 or visit them at their web site at www.state.nv.us/nucwaste.

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