

This is a preliminary transcript of a Committee hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statement within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

1 {York Stenographic Services, Inc.}

2 RPTS WITMER

3 HIF152.180

4 HEARING ON ``THE DEPARTMENT OF ENERGY'S ROLE IN MANAGING
5 CIVILIAN RADIOACTIVE WASTE''
6 WEDNESDAY, JUNE 1, 2011
7 House of Representatives,
8 Subcommittee on Environment and the Economy
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 1:15 p.m., in
12 Room 2322 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Barton,
15 Whitfield, Pitts, Murphy, Bass, Cassidy, Gardner, Dingell,
16 Green, Inslee, Butterfield, Barrow and Waxman (ex officio).

17 Staff present: Carl Anderson, Professional Staff
18 Member; Gary Andres, Staff Director; Charlotte Baker, Press

19 Secretary; Mike Bloomquist, Deputy General Counsel; Sean
20 Bonyun, Deputy Communications Director; Todd Harrison, Chief
21 Counsel, Oversight and Investigations; Cory Hicks, Policy
22 Coordinator, Energy and Power; Katie Novaria, Legislative
23 Clerk; Chris Sarley, Policy Coordinator, Environment and
24 Economy; Peter Spencer, Professional Staff Member, Oversight;
25 Kristin Amerling, Democratic Chief Counsel and Oversight
26 Staff Director; Tiffany Benjamin, Democratic Investigative
27 Counsel; Alison Cassady, Democratic Senior Professional Staff
28 Member; Jocelyn Gutierrez, DOE Detailee; and Caitlin
29 Haberman, Democratic Policy Analyst.

|
30 Mr. {Shimkus.} I call this hearing to order to
31 recognize myself. This is a part of our ongoing effort at
32 the committee to make certain we are providing safe and
33 sustainable long-term storage of high-level spent nuclear
34 fuel. Specifically today, we focus our attention on the part
35 the Department of Energy plays and the process by which
36 decisions have been made when it comes to a long-term
37 repository.

38 No matter if you support the continued use of nuclear
39 energy or if you don't, we have a responsibility to deal with
40 existing spent nuclear fuel and high-level waste materials
41 from our Nation's defense complex. As we sit in this room,
42 spent nuclear fuel from commercial power plants is piling up
43 and remains scattered around the country in two-thirds of our
44 States.

45 It was always the determination that the Federal
46 Government, not the individual states and not the utility
47 companies, would take responsibility for the safe storage of
48 spent fuel and other nuclear materials. After a careful
49 search, we found a scientifically proven, geologically ideal
50 site to store these materials that is on secure, federal
51 property, in a remote desert, deep under Yucca Mountain.

52 Now we are at a crossroads. Politics, not science, is

53 driving the debate. It is time for us to decide if we will
54 keep our end of the deal with the Nation's citizens by
55 delivering exactly what they have been paying for all these
56 years, or if we will waste ratepayers' and taxpayer money by
57 failing to deliver on our end of the contract.

58 Recently, the Government Accountability Office released
59 a report examining the results of the Obama Administration's
60 withdrawal of the Yucca Mountain license application. What
61 GAO found was this unilateral decision comes at a cost of \$15
62 billion so far, 9.5 billion of it directly collected from
63 every American's electricity bill. But the fleecing of
64 taxpayers won't end there. GAO estimates taxpayers are
65 already on the hook for \$15 billion and an additional \$500
66 million for each year the project is delayed beyond 2020.
67 Meanwhile, the U.S. Treasury will be paying out taxpayer
68 dollars, not ratepayer dollars, in judgments to utilities for
69 DOE's breach of contract.

70 Billions of dollars and over 30 years of research from
71 our Nation's top scientists were jettisoned, not for
72 technical or safety reasons, but as the GAO report stated,
73 ``social and political opposition to a permanent repository,
74 not technical issues, is the key obstacle.''

75 When I visited Yucca Mountain last month, I heard
76 firsthand the overwhelming support from local residents and

77 officials from the seven surrounding counties. We will hear
78 firsthand of that support today from those representing
79 locals closest to Yucca Mountain, locals who raise families
80 in that area and know it is safe. Those who would be
81 directly affected the most took it upon themselves to ensure
82 the safety of their children and grandchildren through an
83 independent scientific investigative program, and what they
84 found was high-level nuclear fuel could be stored at Yucca
85 Mountain while keeping their water supply safe, a major
86 concern, particularly for locals. They also know it has the
87 ability to infuse desperately needed jobs both directly and
88 indirectly related to the Yucca Mountain site.

89 We must not let the political games stop us from keeping
90 a promise to taxpayers. The licensing process for Yucca
91 Mountain must legally continue so that we can give the
92 American people the surety of a safe, centralized, permanent
93 storage site for spent nuclear fuel.

94 I want to thank all of our witnesses for being here
95 today to give us their perspective on moving forward. I look
96 forward to their verbal testimony and willingness to answer
97 any questions members may have.

98 [The prepared statement of Mr. Shimkus follows:]

99 ***** COMMITTEE INSERT *****

|
100 Mr. {Shimkus.} With that, I will yield back the balance
101 of my time and recognize the ranking member, Mr. Barrow from
102 Georgia.

103 Mr. {Barrow.} Thank you, Chairman Shimkus, for holding
104 this hearing, and I appreciate the participation of all of
105 our witnesses today.

106 Mr. Green has asked me to fill his chair in his absence,
107 and I would like to think that at least in part is because he
108 knows something about my district that makes this hearing
109 particularly important to me. Considering both the
110 commercial and the defense applications, I probably represent
111 as many people touched by the nuclear industry as anyone else
112 in Congress.

113 I am proud to represent the expanding Plant Vogtle in
114 Burke County, Georgia, and I also represent a large
115 percentage of people who work at the Savannah River site just
116 across the river in South Carolina. The workers, the
117 families and associated industries attached to those
118 facilities number many thousands, and other positive economic
119 impacts are very high. For example, Burke County collects
120 about 75 percent of all its tax revenues from just Plant
121 Vogtle. That is a lot of schoolbooks, police cars and trash
122 pickups from just one corporate citizen.

123 However, those benefits bring challenges. The nuclear
124 industry is only as safe as we make it. Up to this point, we
125 have managed the processes and the waste well, and we have
126 had a very safe industry. However, as the industry grows as
127 it is doing in Georgia and a couple of other places around
128 the country and as the waste accumulates, we need to have a
129 concerted waste management strategy.

130 I believe we are too far down the Yucca Mountain road in
131 time and in money to turn back now, but if we aren't going to
132 pursue Yucca, then we need to be working together on another
133 strategy and we need to stick with it. That is one reason
134 why I am disappointed that the Blue Ribbon Commission was
135 unable to participate today. The Blue Ribbon Commission was
136 recently in my district at Vogtle and at Savannah River site.
137 I am hopeful they will have some concrete consensus solutions
138 to offer, and I suggest that it is in the committee's best
139 interest to have them back as soon as possible.

140 I know the witnesses today will have some good insight
141 on the way forward. I want to thank them for their time, I
142 want to thank the chairman, and I yield back.

143 [The prepared statement of Mr. Barrow follows:]

144 ***** COMMITTEE INSERT *****

|
145 Mr. {Shimkus.} The gentleman yields back his time.

146 As Mr. Barton makes his way up here, the chair would
147 like to recognize the chairman emeritus, Mr. Barton, for the
148 5 minutes which hopefully he will apportion out to Mr.
149 Whitfield and Mr. Gardner if he shows.

150 Mr. {Barton.} Well, thank you, Mr. Chairman, and thank
151 our distinguished first panel of Members. It is good to see
152 you and we are especially glad that Congressman Hastings is
153 back and we are hope you are healthy. Just remember, this is
154 the Energy and Commerce Committee. No more shenanigans like
155 you were trying earlier.

156 Mr. Chairman, our Nation is sitting on 13,000 metric
157 tons of spent nuclear fuel and high-level radioactive waste.
158 Our Nation is sitting on over 65,000 metric tons of spent
159 nuclear fuel from commercial nuclear power plants in 75 sites
160 in 33 States. That is 78,000 metric tons of spent nuclear
161 fuel in over 80 sites in over 33 States. Yucca Mountain was
162 approved by the previous Administration as a repository for
163 our nuclear waste. As you well know, we spent over \$15
164 billion in taxpayer and ratepayer funds through 2009. It is
165 clear that safe and permanent storage of nuclear waste is a
166 critical element of a long-term energy strategy. Study after
167 study has shown that Yucca Mountain is suitable for storage

168 of that waste.

169 We are now here today to discuss the Department of
170 Energy's reckless decision to terminate the Yucca Mountain
171 repository. In my opinion, the Administration decided to
172 ignore the science and circumvent the law. This
173 Administration has for what I think are political reasons
174 determined that Yucca is not a workable option and is
175 proposing that millions of taxpayer dollars be spent in
176 further studies. I think it is unsettling that DOE stopped
177 short of characterizing Yucca as unsuitable, instead choose
178 unworkable. It seems clear that this Administration did this
179 to circumvent the law as defined by the Nuclear Waste Policy
180 Act to avoid explaining to the Congress the basis for their
181 determination.

182 We know that the economic impact of DOE's decision is
183 tremendous. There is no guarantee that a more acceptable or
184 less costly alternative can be identified, which will only
185 prolong the need for interim storage of spent nuclear fuel at
186 existing reactor sites. Delays in opening a repository have
187 already created an estimated \$15.6 billion in taxpayer
188 liability plus an additional \$500 million for each year
189 beyond 2020. This is not only a financial issue but it is
190 also a national security issue. We cannot have over 78,000
191 tons of radioactive waste scattered across 75 sites. We need

192 a central repository. In my opinion, that repository is
193 Yucca Mountain.

194 [The prepared statement of Mr. Barton follows:]

195 ***** COMMITTEE INSERT *****

|
196 Mr. {Barton.} At this point I would like to yield to
197 the distinguished subcommittee chairman, Mr. Whitfield.

198 Mr. {Whitfield.} Thank you, Mr. Barton.

199 I would just like to say, this is, in my view, a perfect
200 example of a wasteful Federal Government on a very important
201 project. You have already heard about the amount of money
202 that has been spent, \$15 billion. You have heard about
203 65,000 tons located in 33 States and 75 sites. You have
204 heard about the legal liability of the Federal Government
205 being sued by nuclear power plants because the Federal
206 Government has not taken responsibility for this material,
207 and that is an ongoing liability. That liability is already
208 in excess of \$15 billion. Estimates could easily go up to
209 \$50 billion. And it is no wonder the American people are
210 frustrated with the Federal Government and this \$14 trillion
211 federal debt that we have.

212 So I want to thank Chairman Shimkus for having this
213 important hearing to bring attention to the predicament we
214 find ourselves in, and hopefully we can find a solution, and
215 I would yield back.

216 [The prepared statement of Mr. Whitfield follows:]

217 ***** COMMITTEE INSERT *****

|
218 Mr. {Barton.} I am supposed to yield to Mr. Gardner but
219 I don't see him.

220 Mr. {Shimkus.} If the chairman emeritus would yield to
221 Mr. Murphy from Pennsylvania?

222 Mr. {Barton.} Okay. I would yield the remaining time
223 to Dr. Murphy.

224 Mr. {Murphy.} Thank you very much.

225 We know that the States are suing the Department of
226 Energy because the mandate with an application approved waste
227 storage in Yucca Mountain, and the utilities have sued the
228 DOE to halt further collection of fees, arguing that the
229 country no longer has a disposal plan after ruling out Yucca
230 Mountain. Simply put, the Administration is acting in
231 violation of the law.

232 You have heard about other members about the 65,000
233 metric tons of spent fuel and the 75 different sites of
234 storage. While nuclear provides 20 percent of electricity in
235 this country and with superb advancements in technology like
236 small modular reactors and passive systems, it stands poised
237 for renaissance but only if the Administration gives the
238 taxpayers an explanation, offers to Congress a workable
239 solution, not saying this is unworkable, and also acts in
240 accordance with the law to apply the law, not to selectively

241 enforce the law, and I yield back.

242 [The prepared statement of Mr. Murphy follows:]

243 ***** COMMITTEE INSERT *****

|
244 Mr. {Shimkus.} The gentleman yields back his time.

245 The chair now recognizes the chairman emeritus, Mr.

246 Waxman, for 5 minutes.

247 Mr. {Waxman.} Thank you, Mr. Chairman.

248 I am a strong advocate for serious oversight.

249 Throughout my service on the Committee on Oversight and

250 Government Reform and this committee, I have led numerous

251 investigations into governmental agencies, private companies

252 and entire industrial sectors, and I take the role of

253 congressional investigator very seriously.

254 Today this committee is holding its second hearing on

255 the decision to shut down the Yucca Mountain waste repository

256 project. Questions have been raised about this decision, and

257 I support a fair and impartial inquiry. But that does not

258 appear to be what this committee is doing. Even before the

259 committee launched its investigation, Chairman Shimkus had

260 apparently already reached his own conclusions.

261 In January, the chairman told The Hill that he wanted to

262 ask questions about whether the decision to ``pull the plug''

263 on Yucca Mountain was ``all politics.'' He stated that he

264 thought people already knew the answer to that question, but

265 ``you should go through the process of asking the

266 questions.''

267 Then, last month, he called the decision to halt the
268 Yucca Mountain license application and review ``politics at
269 its worst at its highest levels.'' Full committee Chairman
270 Upton has made similar comments.

271 A Congressional investigation should be a genuine
272 inquiry, not a process of asking questions to reach a
273 predetermined conclusion.

274 At our first hearing, the chairman tried to prevent
275 members from asking relevant and important questions, and I
276 believe was off-base in his criticism of my right to question
277 the NRC chairman, Gregory Jaczko. The latest affront to
278 fairness is the effort to prevent Democratic staff from
279 attending committee interviews of fact witnesses. Ranking
280 Member Green and I wrote a letter today to Chairmen Upton and
281 Shimkus protesting this new policy, which I ask to be made
282 part of the hearing record.

283 Mr. {Shimkus.} Without objection, so ordered.

284 [The information follows:]

285 ***** COMMITTEE INSERT *****

|
286 Mr. {Waxman.} Excluding Democratic staff from committee
287 interviews is inappropriate and it is inconsistent with
288 committee precedents. The practice denies nearly half the
289 members of the committee equal access to relevant information
290 about the investigation. It wastes taxpayer resources by
291 necessitating duplicative interviews, and it calls into
292 question the basic fairness and credibility of the
293 committee's inquiry.

294 Our job should be to keep an open mind in the
295 investigation and follow the facts where they lead. If the
296 evidence shows that the Department of Energy decided to close
297 Yucca Mountain for invalid reasons, we should not hesitate to
298 be critical. But we should also not prejudge the facts or
299 use unfair and partisan procedures in conducting this
300 investigation.

301 Mr. Chairman, we are still at the early stages of this
302 investigation. I hope we can resolve these procedural
303 differences so we can focus on the work of the investigation.
304 We can do it together, and I think that is the best goal of
305 an oversight investigation, to work together to see if we can
306 get the facts and then follow them wherever they may lead.

307 I hope this hearing and the witnesses we will hear from
308 today will help get us back on track, and I yield back my

309 time.

310 [The prepared statement of Mr. Waxman follows:]

311 ***** COMMITTEE INSERT *****

|
312 Mr. {Shimkus.} The gentleman yields back his time.

313 Before we go to the witnesses, I would ask unanimous
314 consent for 1 minute to respond to the comment. Is there
315 objection?

316 Mr. {Waxman.} Reserving the right. Would you give me a
317 potential minute to respond if I feel it is appropriate?

318 Mr. {Shimkus.} I would, sir.

319 Mr. {Waxman.} Okay.

320 Mr. {Shimkus.} Thank you. First of all, the issue
321 raised is not timely with this hearing but the point we want
322 to raise is that the majority staff has been in discussion
323 with this issue in good faith with the minority staff but we
324 also have raised the issue that you are asking for a double
325 standard. It is my understanding that the minority has had
326 meetings with other witnesses during this session of Congress
327 and has not included the majority or provided notice to the
328 majority. If we are going to have a rule about this, it has
329 to apply to both sides equally, and I think if you agree to
330 allow us when you are questioning your folks, we can
331 reciprocate by having you with ours, and I think that would
332 be a great way to resolve this conflict.

333 It is my understanding that when you all were in control
334 in the last Congress, Republicans were not included in all

335 the discussions with potential witnesses and conducted
336 interviews without notifying members on our side. Having put
337 that on the table, I would just say if we can come to
338 agreement where when you are interviewing your witnesses, you
339 invite us, we will invite you when we are interviewing, and I
340 think that can resolve the conflict. I yield back my time.

341 Mr. {Waxman.} I thank you for yielding to me.

342 It is important to distinguish between consulting with
343 agency experts to understand policy issues and bringing in
344 fact witnesses to obtain information relating to an
345 investigation of alleged wrongdoing. There is no question
346 that the interviews of the NRC employees from which the
347 minority were excluded were in fact fact witnesses regarding
348 our investigation, and I think if we agree that when we
349 interview anybody who has pertinent information on the facts
350 of the investigation, that we all should be included, and I
351 think your suggestion would be appropriate.

352 My staff has spoken with the three of the individuals
353 who were interviewed, and each of them spent several hours in
354 these interviews, so in fact, as a reality, what we did is
355 spent more time with the same witnesses we should have been
356 there together. In the investigation relating to Yucca
357 Mountain licensing process, the minority has not conducted
358 any fact witness interviews either with or without the

359 majority. We have instead been focused on reviewing and
360 understanding the documents that have been produced to the
361 committee on this matter. In fact, we identified a fact
362 witness we believe to be important for the committee to
363 interview, and we will discuss that with you.

364 But I think you lay out a compromise that should help us
365 reach an agreement. If we are going to have witnesses that
366 are pertinent to the investigation, give us facts that we
367 want to know about. Just as we share documents, we should
368 interview those witnesses together.

369 Mr. {Shimkus.} If the gentleman would yield his time, I
370 would just say as he knows real well, I am not the chairman
371 of the full committee so I am speaking as the chairman of the
372 subcommittee, but I will have to run this all through
373 Chairman Upton.

374 Mr. {Waxman.} Well, I will certainly have to run it
375 through my subcommittee ranking member. Mr. Barrow will
376 certainly be involved in that. He is sitting in the chair of
377 the ranking member.

378 My last point is, I thought you said we had identified.
379 The point was, if we identify, we will share it with you, and
380 we think we should work together in interviewing them, and I
381 hope the full committee chairman shares the position that you
382 put out and that I have suggested affirmative response to.

383 Mr. {Shimkus.} Is the gentleman yielding back his time?

384 The gentleman yields back his time.

385 Now we will welcome our colleagues. If it is okay with

386 my colleagues, we will start from the left and go to the

387 right, or ladies first. It may be not politically correct,

388 but with that, we would like to recognize the Hon. Shelley

389 Berkley from the great State of Nevada, and you are

390 recognized for 5 minutes. Your full statement can be

391 submitted into the record, and so the time is yours.

|
392 ^STATEMENTS OF HON. SHELLEY BERKLEY, A REPRESENTATIVE IN
393 CONGRESS FROM THE STATE OF NEVADA; HON. DOC HASTINGS, A
394 REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON; AND
395 HON. MIKE SIMPSON, A REPRESENTATIVE IN CONGRESS FROM THE
396 STATE OF IDAHO

|
397 ^STATEMENT OF SHELLY BERKLEY

398 } Ms. {Berkley.} Thank you very much, Chairman Shimkus,
399 Ranking Member Barrow and members of the committee. Thank
400 you for inviting me to testify today.

401 Let us get right to the point. Nevadans have been
402 saying no to Yucca Mountain for decades, and we will continue
403 shouting no at the top of our lungs until this effort to
404 shove nuclear waste down our throats has ended. I don't know
405 who you met with but I can tell you the latest polls show
406 that 77 percent of the people of the State of Nevada don't
407 want nuclear waste stored at Yucca Mountain. Why? Because
408 we don't want our home turned into a nuclear garbage dump,
409 and we oppose more wasteful spending on a \$100 billion
410 dinosaur in the Nevada desert that should have gone extinct
411 years ago.

412 I know members of this committee will hear today from

413 others who will say that Nevada's efforts to stop the dump is
414 all political and has nothing to do with science. Hogwash.
415 The truth is that Nevada's opposition has always been based
416 on the danger that Yucca Mountain poses to our State and our
417 Nation, and Nevada's resolve only hardened in the face of
418 renewed efforts to force us to accept this fatally flawed
419 dump, given the true risk it represents.

420 Make no mistake: the Yucca Mountain project was born of
421 politics starting with the infamous 1987 screw Nevada bill,
422 and why was it politics? Because the State of Nevada had a
423 very small delegation at that time and we were unable to
424 protect the State from the 49 others. You want to talk about
425 science? There are no radiation standards that currently
426 exist because there is no way to create radiation standards
427 to protect the public from nuclear waste with 300,000-year
428 half shelf life, and there is a GAO report that shows
429 thousands of e-mails that make a mockery of so-called
430 scientific studies. I would be glad to present those to you
431 as well. Originally, they were going to store nuclear waste
432 at Yucca Mountain. Then they realized there were groundwater
433 problems so we were going to store it in containers with a
434 titanium shield to protect it from the dripping water. Then
435 they realized that wasn't enough because the titanium shields
436 were going to erode. So then they were going to build

437 concrete bunkers to contain the titanium shields that
438 contained the canisters, and then the last Secretary of
439 Energy in the Bush Administration actually said he was going
440 to create an army of robots that were going to go down to
441 Yucca Mountain because man can't go down there to be able to
442 protect us from the nuclear waste leakage.

443 This legislation, the screw Nevada bill, did away with
444 any pretense of science and it eliminated every other site
445 under consideration as a dump location. At the same time,
446 the nuclear industry and its allies have worked for years to
447 silence Nevada's criticism and to minimize the fact that the
448 proposed dump is located smack in the middle of an active
449 earthquake zone. This is an area that has been rocked by
450 violent earthquakes in the recent past and we know the risk
451 it creates. Proponents of the dump have also sought to
452 dismiss scientific findings showing that water will enter
453 Yucca Mountain, causing rapid corrosion of waste canisters
454 and resulting in release of dangerous radioactive materials,
455 and dump backers have worked tirelessly to downplay the risk
456 to millions of Americans living along the transportation
457 routes from decades of waste shipments barreling down our
458 Nation's roads and railways with each canister a potential
459 terrorist target or accident waiting to happen. Whether
460 caused by human error, mechanical failure or a deliberate

461 strike, a massive release of these deadly materials threatens
462 to kill or injure Americans, to release radioactive
463 contamination and to shut down major portions of our
464 interstate highway system and rail system.

465 When it comes to plans for Yucca Mountain, the fact
466 remains that you could never eliminate the risks that will
467 accompany shipping nuclear waste across more than 40 States
468 through communities utterly unprepared to deal with
469 radioactive contamination. We are talking about shipments
470 passing homes, hospitals, schools every single day for four
471 decades, and even more incredible, at the end of those 40
472 years, there will even be more waste in the cooling ponds
473 than there were when the shipments began, and that is because
474 as long as a plant is operating, some amount of nuclear waste
475 will always remain at the nuclear facility, and that is why
476 the threat posed by Yucca Mountain must be weighed against
477 the availability of dry cask storage as an affordable
478 solution to this problem and it is available today. Using
479 this method, we can secure waste at existing sites in
480 hardened containers where they can remain for the next 100
481 years until we figure out what to do with this garbage.

482 The nuclear industry is already utilizing dry cask
483 storage at various locations around the United States. There
484 is no reason we should not require plants to begin moving

485 waste right now from cooling pools into hardened containers.
486 This would also give our Nation time to find a true solution
487 to addressing the nuclear waste issue that does not involve
488 dumping \$100 billion down a hole in the middle of the Nevada
489 desert, particularly at a time that we can ill afford it.
490 Surely, we can do better than a dump plan that is incredibly
491 dangerous, decades behind schedule and whose budget has
492 ballooned with every passing year to a staggering sum, even
493 by Washington standards. At the end of the day, the cost to
494 build and operate Yucca Mountain will exceed the amount it
495 would cost to settle lawsuits by plant operators seeking
496 payment for the cost of moving waste into dry casks.

497 It is also extremely important to remember that moving
498 ahead on Yucca Mountain won't mean savings for families in
499 nuclear States. Instead, they will continue paying the Yucca
500 Mountain tax that is slapped on power bills each and every
501 month. At a time when our Nation is debating spending cuts,
502 I am truly amazed that those that favor Yucca Mountain
503 continue to demand that we open the floodgates and let tens
504 of billions of dollars in additional spending come pouring
505 out.

506 The good news is that we do not have to go down this
507 fiscally irresponsible path. Earlier this year, Congress
508 passed a package that fully eliminates funding for the Yucca

509 Mountain project. The time has come to let this boondoggle
510 die and to permanently end efforts to breathe life back into
511 a program that is too dangerous and too costly for our
512 Nation.

513 In conclusion, Nevada remains, in case you don't already
514 know, opposed to more wasteful spending on a failed \$100
515 billion project that threatens lives, the environment and the
516 economy of my community and others across the Nation. I will
517 lay my body down on those railroad tracks to prevent any
518 train that has nuclear waste in it from going to Yucca
519 Mountain. I make that pledge to you and the people I
520 represent. Nuclear waste can remain on existing sites in dry
521 cask storage for the next century, giving us time to find an
522 actual solution to replace the failed Yucca Mountain project,
523 and if anybody watched what was happening in Japan and still
524 has the audacity to suggest this for the people of our
525 country, shame on us all, and Germany just announced that
526 they were ending their nuclear program because they have no
527 way to safely store nuclear waste. If Germany can figure
528 that out, by gosh, the United States of America should be
529 able to figure that out too.

530 I yield back the balance of my time.

531 [The prepared statement of Ms. Berkley follows:]

532 ***** COMMITTEE INSERT *****

|
533 Mr. {Shimkus.} It is a good thing I have a great
534 relationship with the trucking industry. Thank you.
535 Obviously, all Members will have as much time as they need
536 for their statements. We do appreciate your time, and we do
537 appreciate your passion, and we have been opponents on this
538 issue for many, many years.

539 Ms. {Berkley.} Yes, I am hoping to bring you on to the
540 right side of this issue.

541 Mr. {Shimkus.} I think I am.

542 Now I would like to recognize the chairman of the
543 Interior Committee, Doc Hastings, for as much time as he may
544 consume, around 5 minutes, and welcome back to Washington and
545 welcome to the committee.

|
546 ^STATEMENT OF DOC HASTINGS

547 } Mr. {Hastings.} Thank you very much, Mr. Chairman, and
548 thank you for inviting me to go second.

549 Thank you, Mr. Chairman and members of the committee,
550 for the opportunity to testify regarding the importance of
551 Yucca Mountain project to my district and to the Nation as a
552 whole, and my concerns regarding the Department of Energy's
553 action to illegally dismantle this program.

554 First and foremost, there should be no disputing that
555 Yucca Mountain is a national repository for high-level
556 defense waste and commercial spent nuclear fuel. Congress
557 has voted to reaffirm this decision several times. Billions
558 of dollars and many years have been spent studying what to do
559 with nuclear waste, and Yucca Mountain was determined to be
560 the answer. It is the law, period. Now, some may disagree
561 with the law but it is the law.

562 For more than 16 months, the Obama Administration acting
563 through the Department of Energy has acted outside the scope
564 of the law in order to pursue a purely politically driven
565 mission to shut down the Yucca Mountain project. Time and
566 time again DOE has been asked to provide technical scientific
567 evidence to justify their reasons to withdraw the license

568 application for Yucca Mountain. They have been unable to
569 provide any reason, only stating that Yucca Mountain is no
570 longer ``workable.''

571 What is truly not workable is the uncertainty that faces
572 our commercial nuclear power industry as they look to a
573 future that may require them to house spent nuclear fuel on a
574 site for decades because there is no geological repository
575 ready to accept it. The same is true for the communities
576 across the Nation that are hard at work cleaning up the high-
577 level defense waste that is the legacy of our country's
578 nuclear weapons production program. Commercial spent fuel
579 and high-level defense waste are to be stored alongside each
580 other at Yucca Mountain, and it made sense to talk about them
581 together.

582 The State of Washington, the State of South Carolina and
583 leaders in my hometown community have failed a lawsuit
584 challenging Department of Energy's ability to withdraw the
585 Yucca Mountain license application yet the Administration
586 continues to rush to terminate the project before the courts
587 rule or before the Nuclear Regulatory Commission's vote is
588 released on this matter. In addition, the GAO recently
589 released a report that determined that the decision to
590 dismantle the Yucca Mountain project was political and not
591 based on sound science.

592 My district in central Washington is home to the Hanford
593 nuclear site, part of the top-secret Manhattan Project that
594 developed and constructed the first atomic bomb. The work
595 done at Hanford helped win World War II and later provided
596 the nuclear deterrence that helped defeat communism and end
597 the Cold War. Today, Hanford is the world's largest
598 environmental cleanup project, and the high-level defense
599 nuclear waste at Hanford is slated to be shipped to the
600 national repository at Yucca Mountain. Right now, the
601 Department of Energy is building a critical \$12 billion plant
602 that will treat 53 million gallons of high-level defense
603 waste currently stored in underground tanks at Hanford and
604 turn it into safe, stable, glass logs that are scheduled to
605 be stored at Yucca Mountain. The waste treatment plant,
606 which is a \$12 billion plant, which is over halfway done, is
607 being built to meet specifications designed to match the
608 geological structure and makeup of Yucca Mountain. The
609 Department of Energy is requesting increased funds to reduce
610 the risk and complete the waste treatment plants sooner than
611 the expected 2016 time frame. Changing the goal posts at
612 halftime will unnecessarily add risk to the project and has
613 the potential to waste limited cleanup dollars that are
614 already difficult to secure.

615 The waste treatment plant must move forward, but that

616 requires more than proper funding. It requires Yucca
617 Mountain. And I have an article I would like to submit for
618 the record detailing this, if I may, Mr. Chairman, an article
619 on this issue.

620 Mr. {Shimkus.} Is there objection? Hearing none, so
621 ordered.

622 Mr. {Hastings.} Thank you. I will submit that.

623 [The information follows:]

624 ***** COMMITTEE INSERT *****

|

625 Mr. {Hastings.} Delaying or abandoning Yucca Mountain
626 means that Hanford will be home to high-level defense waste
627 even longer, the Federal Government's legal commitment to our
628 State won't be kept, and cleanup progress at Hanford will be
629 jeopardized. With more defense waste slated to go to Yucca
630 Mountain than any other State in the union, the stakes for my
631 State of Washington cannot be higher and the risks could not
632 be more real.

633 In addition, Richland, which is just south of the
634 Hanford project, is the home to the Pacific Northwest's only
635 commercial nuclear power plant, the Columbia generating
636 station. The spent nuclear fuel from this plant is also
637 slated to go to Yucca Mountain but without Yucca opening, the
638 spent fuel will have to be kept on site for an unknown amount
639 of time at great expense to the taxpayers and ratepayers. In
640 my district, we understand that nuclear power is safe and
641 that it provides good-paying jobs but all of this being
642 jeopardized by the Administration's decision to shut down
643 Yucca Mountain. At a time of record debt, massive bailouts
644 and trillion-dollar deficits, our country cannot afford to
645 waste billions of dollars going back to the drawing board on
646 a national repository. It is time for the Administration to
647 follow the letter of the law, as I pointed out in my opening

648 remarks, and to bring the Yucca Mountain project online and
649 accept the shipments of the spent nuclear fuel and high-level
650 defense waste.

651 I would like to again thank you very much for the
652 opportunity to be here, and with that, I yield back my time.

653 [The prepared statement of Mr. Hastings follows:]

654 ***** COMMITTEE INSERT *****

|
655 Mr. {Shimkus.} Thank you very much, Doc, for joining
656 us.

657 Now, I would like to recognize appropriator cardinal,
658 Mr. Simpson, from the great State of Idaho.

|
659 ^STATEMENT OF MIKE SIMPSON

660 } Mr. {Simpson.} Before I start, let me just say for the
661 record that I haven't been questioned by either the majority
662 or the minority staff.

663 Mr. {Shimkus.} And I am not sure you would want to be.

664 Mr. {Simpson.} Mr. Chairman and members of the
665 committee, I thank you for the opportunity to testify before
666 your committee on the Department of Energy's Yucca Mountain
667 decision.

668 I have been now in Congress for 12-1/2 years. For 8-1/2
669 years, I have served on the Appropriations Committee and the
670 Subcommittee on Energy and Water Development, which funds the
671 DOE including the DOE's nuclear energy division. In my short
672 time in Congress, there have been three Administrations, four
673 or five Secretaries of Energy and numerous nuclear energy
674 administrators and under secretaries. Each Administration
675 has its own priorities concerning the direction the
676 department takes with respect to addressing the energy needs
677 of our country, particularly nuclear energy. I lived through
678 the IFR bubble, the GNEP bubble, the NGNP bubble and the
679 current SMR bubble. The most frustrating dilemma I faced is
680 this: After spending billions of dollars going into ever-

681 changing directions, how do you sustain a program with a 20-
682 to 30-year lifetime frame in an environment of ever-changing
683 policies? What can we show the taxpayers for our
684 investments? To make it clear, it is not a problem that I
685 blame on the DOE. New Administrations and Secretaries are
686 elected and appointed to enact their vision of the future but
687 it is a reality that the short-term nature of our political
688 cycles does not lend itself to solving long-term problems.

689 One of the ways we address this dilemma is by enacting
690 statutes passed by Congress and signed by the President.
691 These statutes become the law of the land, binding on future
692 Congresses and Administrations. No Administration or
693 Congress can unilaterally decide the law doesn't apply to
694 them. If the Administration or Congress decides it doesn't
695 like the current law, there are ways to change it: enact a
696 new law. Absent that, the current law binds us all.

697 One of the most glaring decisions by the Administration
698 to ignore this fundamental principal of law is the attempt by
699 the Administration to unilaterally withdraw the license
700 application for Yucca Mountain currently before the NRC and
701 to mothball Yucca Mountain. Let me be perfectly clear here.
702 We all know why this decision was made. It wasn't about
703 science or the suitability of Yucca Mountain or even the need
704 for a geological repository for high-level nuclear waste. It

705 was a promise made during the heat of a presidential
706 campaign. It was pure politics.

707 We could spend days debating the suitability of Yucca
708 Mountain as a geological waste repository or the over 50
709 scientific studies that have been done on Yucca Mountain. We
710 know more about this patch of earth than probably any other
711 patch of earth in the world. We could talk about the \$15
712 billion already spent on Yucca Mountain, the \$9.5 billion
713 collected from the utility consumers for the nuclear waste
714 fund and whether that should be paid back to the consumers as
715 well as the \$956 million paid out as the result of the 74
716 lawsuits resulting from the government's failure to receive
717 spent fuel or the GAO investigation which concluded ``DOE's
718 decision to terminate the Yucca Mountain repository program
719 was made for policy reasons, not technical or safety
720 reasons'' or the fact that this interpretation is supported
721 by volume 3 of the NRC's safety evaluation report.

722 But all of this really isn't the point. The point is,
723 the President is obligated to follow the law of the land as
724 enacted by Congress and signed by a previous President. The
725 Nuclear Waste Policy Act was amended in 1987 to designate
726 Yucca Mountain as the repository for high-level nuclear waste
727 for whatever reason. I was not a Member of Congress at the
728 time but that law passed and Yucca Mountain became the law of

729 the land. Following a veto by the Governor of Nevada, the
730 House voted to override the Governor's veto by a 306-117
731 vote, and the Senate followed suit by a 60-36 vote. Yucca
732 Mountain is still the law of the land.

733 Congress has reaffirmed its position. In fact, I have
734 with me here, and I want to ask to put them in the record
735 because they are available, 34 recorded votes in recent years
736 assembled by the CRS in which Congress has reaffirmed its
737 support for Yucca Mountain.

738 I can't fault Secretary Chu or Secretary Lyons for
739 pursuing this policy decision. After all, they work for the
740 President and he made this misguided decision to ignore the
741 law. Based on these simple facts, the NRC licensing board
742 reviewed the Administration's request to withdraw the Yucca
743 Mountain licensing application and denied that request nearly
744 one year ago, June 29, 2010. The commission reviewed and
745 voted on the licensing board decision but has yet to release
746 its ruling nearly a year later. The NRC is supposed to serve
747 as an independent watchdog which is driven by science, not
748 politics. Unfortunately, the chairman of the NRC has lost
749 sight of its mission in order to effect a political outcome
750 that has eroded the reputation of the NRC at a time when the
751 public confidence is needed most, and he should be replaced.

752 Again, I repeat, the issue of siting the Nation's

753 nuclear waste repository at Yucca Mountain is a matter of
754 law, not politics. It serves as the clearest example of an
755 ever-changing policy which is costing the taxpayers billions
756 of dollars and diminishing our ability to advance a long-term
757 energy policy for our country, and I thank you, Mr. Chairman,
758 for inviting us here today.

759 [The prepared statement of Mr. Simpson follows:]

760 ***** COMMITTEE INSERT *****

|
761 Mr. {Shimkus.} I want to thank my colleague, Mr.
762 Simpson, and my colleagues for joining us.

763 It is the tradition of this committee not to follow up
764 with questions but to move. We have two more panels that we
765 have to meet with and so we want to thank you for your time,
766 and we will see you on the Floor for votes.

767 Without objection, the vote totals that Mr. Simpson had
768 mentioned will be entered into the record. Having no
769 objection, so ordered.

770 [The information follows:]

771 ***** COMMITTEE INSERT *****

|

772 Mr. {Shimkus.} I would like to place the first panel,
773 Mr. Gaffigan, Mr. Friedman and Mr. Lyons. We want to thank
774 you for joining us. As per the previous panel, we will start
775 from my left, your right, and each of you will be recognized
776 for 5 minutes. Your full statement can be submitted for the
777 record. To begin with, I would like to ask Mr. Mark
778 Gaffigan, Managing Director of Natural Resources and
779 Environment for the U.S. Government Accountability Office.
780 Thank you for your attendance, and you are recognized for 5
781 minutes.

|
782 ^STATEMENTS OF DR. MARK E. GAFFIGAN, MANAGING DIRECTOR,
783 NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT
784 ACCOUNTABILITY OFFICE (GAO); GREGORY H. FRIEDMAN, INSPECTOR
785 GENERAL, DEPARTMENT OF ENERGY; AND DR. PETER B. LYONS,
786 ASSISTANT SECRETARY FOR NUCLEAR ENERGY, DEPARTMENT OF ENERGY

|
787 ^STATEMENT OF MARK E. GAFFIGAN

788 } Mr. {Gaffigan.} Mr. Chairman and members of the
789 committee, I am pleased to be here.

790 First of all, I want to summarize my remarks in three
791 areas, basically the current status of Yucca Mountain and the
792 Nation's nuclear waste policy, the nuclear waste policy
793 alternatives that have been discussed, and lastly, sort of
794 lessons learned from past experience that may help inform our
795 future as we go forward.

796 First, the Nation's policy for nuclear waste disposal is
797 in dispute, creating great uncertainty about its future
798 direction. In 1957, the National Academies of Science first
799 endorsed nuclear waste disposal in a geological repository as
800 the means for permanently disposing of nuclear waste.
801 However, achieving a permanent policy leading to an
802 acceptable repository has proven to be both costly and

803 difficult. Under the Nuclear Waste Policy Act from the
804 1980s, the Federal Government made a commitment to take the
805 Nation's nuclear waste and DOE has been investigating Yucca
806 Mountain a permanent repository, culminating in a license
807 application to the NRC in 2008.

808 However, after decades of work and expenditures of about
809 \$15 billion in today's dollars, DOE is now seeking to
810 withdraw its application. DOE has not cited any technical or
811 safety issues but has stated that Yucca Mountain is not a
812 workable option, in large part because of the lack of public
813 acceptance by the people of Nevada. This decision is being
814 challenged both in the courts and by a board ruling that the
815 Nuclear Waste Policy Act requires DOE to continue with the
816 application. While these matters remain unresolved, DOE has
817 proceeded to terminate Yucca Mountain in a definitive manner
818 that will make it more difficult to reprise should they be
819 compelled to do so.

820 In lieu of pursuing Yucca Mountain, DOE established a
821 Blue Ribbon Commission to consider alternative waste disposal
822 strategies. Based on past work, we have identified three
823 categories of alternatives. The first alternative is keeping
824 the waste on site at about 80 different sites, both
825 commercial and defense sites in the United States. This is
826 the path of least resistance option since it is our current

827 de facto policy for disposal. However, it does not address
828 the commitment of the U.S. government to take possession of
829 the waste. As has been pointed out, taxpayers have already
830 paid nearly \$1 billion in legal judgments because of the
831 government's inability to meet its obligation. Estimates are
832 that another \$15 billion will be paid out by 2020 with the
833 bill estimated to be another \$500 million per year after
834 that, again, coming from the taxpayers through the Department
835 of Justice's judgment fund. Also, with continued onsite
836 storage, DOE may not be able to meet commitments to States to
837 remove defense-related waste. This could have negative
838 impacts such as jeopardizing Navy shipments of spent fuel and
839 the refueling of Navy warships.

840 A second general alternative is centralized interim
841 storage. While this may offer some relief from onsite
842 storage, such a facility faces the same siting challenges,
843 and DOE states it does not have the authority to implement
844 such a facility.

845 Finally, the third option remains a geological
846 repository, the goal of the Yucca Mountain project. Despite
847 the promise of future technology that may reduce the demands
848 on a geological repository, the best thinking of experts
849 today is that no matter what, there will be some amount of
850 waste in need of permanent disposal and that a geological

851 repository is the only feasible option for permanently
852 disposing of nuclear waste.

853 Lastly, I would like to address lessons learned that
854 might be instructive for future nuclear waste policy. DOE's
855 recent policy decision to terminate Yucca Mountain due to a
856 lack of public acceptance has been criticized because it was
857 not based on any technical or safety reasons. However, if we
858 are to learn anything from the Nation's struggle to implement
859 nuclear waste policy, it is the lesson that public acceptance
860 is just as important a consideration as any technical or
861 safety issues. Transparency, economic incentives and
862 education are important tools in achieving public acceptance
863 of any future nuclear waste policy.

864 A second broad lesson is that consistent policy, funding
865 and leadership will be crucial in successful nuclear waste
866 management. Many stakeholders have suggested that an
867 independent organization not subject to political changes
868 with a predictable funding stream may be best suited to carry
869 out this policy.

870 In closing, let me emphasize that any nuclear waste
871 policy option whether it be continued onsite storage,
872 centralized interim storage or a move to a permanent
873 repository will offer benefits but face serious costs and
874 challenges. With the current uncertainty in the Nation's

875 nuclear waste policy direction and potential competing
876 directions of that policy, those costs and challenges only
877 increase with little additional benefit.

878 Thank you, Mr. Chairman. That concludes my opening
879 statement. I have submitted a formal statement for the
880 record, and I welcome your questions.

881 [The prepared statement of Mr. Gaffigan follows:]

882 ***** INSERT 1 *****

|
883 Mr. {Shimkus.} Thank you very much.

884 Now, I would like to turn to Mr. Gregory Friedman,

885 Inspector General at the Department of Energy. Welcome, sir.

|
886 ^STATEMENT OF GREGORY H. FREIDMAN

887 } Mr. {Friedman.} Thank you, Mr. Chairman.

888 Rather than repeat many of the statistical points and
889 data that has been provided already, let me abbreviate my
890 already abbreviated statement, which contains a synopsis of
891 the work that we have done in Yucca Mountain over time and it
892 is more expanded in my full statement, which I hope will be
893 submitted for the record.

894 Getting down to the nub of the matter, our work to date
895 has highlighted a number of issues that require the continued
896 attention of department management. For example, as has been
897 mentioned, delays in the opening of Yucca Mountain have, as
898 demonstrated by a number of financial and performance
899 reviews, increased the ultimate cost of disposal of waste
900 intended for Yucca Mountain. Closure of the project could
901 significantly impact the department's future environmental
902 remediation liability currently estimated to be \$250 billion.
903 We will further evaluate the impact of the closure as part of
904 the ongoing financial work that we do at the Department of
905 Energy. Further, unless the repository or other alternative
906 strategy becomes available in the near term, the department
907 may miss a number of deadlines which are part of tri-party

908 settlement agreements. As a result, the department may be
909 subject to significant assessments due to missed deadlines.
910 As of September 30, 2010, more than \$800 million has been
911 expended from the Treasury's judgment fund for payments to
912 commercial nuclear waste producers for delayed acceptance of
913 nuclear waste. In addition, the department has estimated its
914 contingent liability for spent nuclear fuel litigation to be
915 approximately \$15.4 billion.

916 In summary, in our judgment, the need to develop a
917 viable, effective and acceptable path forward for nuclear
918 waste disposal becomes more pressing day by day. The United
919 States has announced plans to dismantle a significant part of
920 its nuclear waste stockpile with the unavoidable reality of
921 increasing the volume of defense nuclear waste. Further,
922 commercial nuclear waste, which was to represent 90 percent
923 of the high-level waste stored at Yucca Mountain, continues
924 to be generated at nuclear power facilities across the
925 Nation.

926 To paraphrase one draft recommendation from the Blue
927 Ribbon Commission on America's Nuclear Future, which was
928 established by the Secretary of Energy at the request of the
929 President in January 2010, the United States should proceed
930 expeditiously to develop an integrated, comprehensive plan
931 for managing the back end of the nuclear fuel cycle.

932 Mr. Chairman, this concludes my statement. I would be
933 pleased to answer any questions that you or the subcommittee
934 may have.

935 [The prepared statement of Mr. Friedman follows:]

936 ***** INSERT 2 *****

|
937 Mr. {Shimkus.} Thank you, Mr. Friedman.

938 Last but not least on the first panel is Dr. Peter

939 Lyons, Assistant Secretary for Nuclear Energy at the

940 Department of Energy. Sir, welcome, and you have 5 minutes.

|
941 ^STATEMENT OF PETER B. LYONS

942 } Mr. {Lyons.} Thank you, Mr. Chairman, Mr. Ranking
943 Member and members of the committee. Thank you for the
944 opportunity to testify before you today.

945 By way of introduction, I grew up in Nevada. I worked
946 at the Los Alamos National Laboratory with frequent
947 assignments at the Nevada Test Site. When I led the lab's
948 energy and environmental programs, all work on Yucca Mountain
949 and reprocessing of fuel reported to me. More recently, I
950 visited the Tunnel Complex many times while working for
951 Senator Pete Domenici and as an NRC commissioner. I have
952 devoted 42 years of public service to the Nation's needs for
953 and uses of nuclear technology. I am convinced that nuclear
954 energy must remain a part of our Nation's clean energy
955 portfolio, an acceptable solution to the Nation's management
956 of used nuclear fuel and high-level defense waste as a
957 prerequisite for nuclear power to play this role.

958 Secretary Chu has emphasized that a successful
959 management significant for used fuel must be founded on
960 strong technical criteria and public acceptance. The GAO
961 made the similar conversation that overcoming social and
962 political opposition is crucial. For example, there are

963 successful repository programs in Switzerland, Finland,
964 Sweden and France where public involvement and consultation
965 are heavily emphasized. Our own experience with the Waste
966 Isolation Pilot Plant, or WIPP, illustrates our success with
967 achieving social and political acceptance for a permanent
968 repository and stands in stark contrast to the Yucca Mountain
969 project. As the Secretary has stated, it is time to move
970 beyond the 25-year-old stalemate over Yucca Mountain. I
971 agree, and I accepted this position with full support for the
972 Administration's position.

973 Let me turn to two interrelated statements made in the
974 GAO report with which the department has very serious
975 concerns. First, the GAO presumes that the Yucca Mountain
976 repository would have opened on a date certain, and second,
977 GAO presumes that an alternative would take longer than the
978 Yucca Mountain repository to implement. The GAO report uses
979 2020 for operations as a firm date and expresses concern that
980 the department did not provide GAO with a more precise date.
981 Yet the department has consistently stated that the 2020 date
982 was subject to a number of contingencies over which the
983 department has no control. Thus, there was always
984 considerable uncertainty about when or whether the Yucca
985 Mountain repository would open. Among other things, that
986 opening would require new legislation for land withdrawal, a

987 second NRC license, presuming the first one were issued, and
988 a new 300-mile railroad, and many related actions hinging on
989 availability of State-issued permits. All of these would
990 have faced persistent opposition from the State in Nevada.

991 In shutting down the Yucca Mountain project, DOE is
992 committed to building better, more workable alternatives. In
993 fact, as the GAO report notes, if a more widely accepted
994 alternative is identified, it carries the potential for
995 avoiding costly delays experienced by the Yucca Mountain
996 repository program. That is a point that Secretary Chu has
997 emphasized. Thus, the department disagrees with the GAO
998 statement that the proposed termination of Yucca Mountain,
999 which had been planned to be opened in 2020, will likely
1000 prolong storage at reactor sites, which would increase onsite
1001 storage costs. There is simply no basis to assume that the
1002 termination of Yucca Mountain will prolong this process.
1003 There may be other alternatives that can be put in place
1004 sooner than Yucca Mountain might have opened.

1005 I would also like to highlight another statement in the
1006 report to which the department takes exception, namely that a
1007 final impact of terminating Yucca Mountain is that
1008 communities may be even less willing to host nuclear fuel
1009 repositories or other storage sites in the future due to
1010 further erosion of DOE's credibility. Quite to the contrary,

1011 a new start with Secretary Chu's emphasis on public
1012 acceptance I believe can lead to enhanced credibility of the
1013 department, and as further proof, the department's leadership
1014 of the WIPP program enjoys very strong support from the local
1015 community.

1016 In conclusion, the department is acting responsibly in
1017 terminating the Yucca Mountain project. We can and we should
1018 do better than the Yucca Mountain project. Working together,
1019 the Administration and the Congress can seize an opportunity
1020 to craft a new option with a higher certainty of success. I
1021 personally look forward to the chance to put a successful
1022 used nuclear fuel management program into practice that will
1023 serve future generations and above all enable them to enjoy
1024 the benefits of clean, safe nuclear power.

1025 Thank you, and I look forward to your questions.

1026 [The prepared statement of Mr. Lyons follows:]

1027 ***** INSERT 3 *****

|
1028 Mr. {Shimkus.} Thank you, Dr. Lyons, and I would
1029 encourage the first panel to stick around for the second
1030 panel because you will have some local folks from the State
1031 of Nevada who probably already have some acceptance of this
1032 position.

1033 I would like to begin my first round of questioning and
1034 recognize myself for 5 minutes, and I will start with Mr.
1035 Gaffigan. How much has been expended on Yucca Mountain
1036 development? How much money have we spent?

1037 Mr. {Gaffigan.} About \$15 billion in today's dollars.

1038 Mr. {Shimkus.} And where did that money come from?

1039 Mr. {Gaffigan.} About 10 from the nuclear waste fund
1040 and another \$5 billion from appropriations.

1041 Mr. {Shimkus.} And how does the nuclear waste fund get
1042 its money?

1043 Mr. {Gaffigan.} It is a tax on the ratepayers, pay a
1044 one-tenth of a cent.

1045 Mr. {Shimkus.} Which ratepayers? Just those that--

1046 Mr. {Gaffigan.} Those who benefit from nuclear power.

1047 Mr. {Shimkus.} Of the money from ratepayers, are those
1048 fees still being collected?

1049 Mr. {Gaffigan.} Absolutely.

1050 Mr. {Shimkus.} Of the taxpayer funds, what happens to

1051 taxpayer spending if Yucca Mountain is terminated?

1052 Mr. {Gaffigan.} The taxpayer spending continues.

1053 Current estimates are \$15 billion through 2020.

1054 Mr. {Shimkus.} And what happens to this liability for
1055 each year a repository is not accepting waste past 2020?

1056 Mr. {Gaffigan.} Current estimates are \$500 million per
1057 year. Those are DOE's estimates.

1058 Mr. {Shimkus.} And what other costs might the taxpayer
1059 face if this nuclear waste issue is delayed?

1060 Mr. {Gaffigan.} There will be costs associated with the
1061 judgments. There are about 72 lawsuits currently brought and
1062 about six have settled, so there will be Department of
1063 Justice costs involved with it. There will be costs
1064 associated with the waste on the defense side in terms of
1065 perhaps more storage needed at these various defense
1066 facilities because Yucca Mountain is not available or some
1067 other repository.

1068 Mr. {Shimkus.} Great. Thank you.

1069 Dr. Lyons, the Nuclear Waste Policy Act is the law that
1070 governs nuclear waste and spent fuel disposal policy, is it
1071 not?

1072 Mr. {Lyons.} Yes.

1073 Mr. {Shimkus.} And the law says that the Department of
1074 Energy must study, characterize for suitability and develop a

1075 repository at Yucca Mountain, correct?

1076 Mr. {Lyons.} That is correct.

1077 Mr. {Shimkus.} That is what the law says. The law says
1078 further that DOE shall file an application for a license to
1079 construct the repository, correct?

1080 Mr. {Lyons.} Yes, sir.

1081 Mr. {Shimkus.} The law also established the Office of
1082 Civilian Radioactive Waste Management and a director for that
1083 office, correct?

1084 Mr. {Lyons.} Yes.

1085 Mr. {Shimkus.} The law actually makes clear DOE's--and
1086 I want to note for the record for the transcript, all these
1087 questions have been responded to affirmatively by Dr. Lyons.

1088 The law actually makes clear DOE's duties and
1089 obligations in the development of Yucca Mountain, and those
1090 obligations presently are to support the application pending
1091 before the Nuclear Regulatory Commission, correct? I am
1092 talking about the law.

1093 Mr. {Lyons.} As you know, sir--

1094 Mr. {Shimkus.} I am talking about the law so be very,
1095 very careful how you answer this. What does the law say?

1096 Mr. {Lyons.} That is what the laws, and--

1097 Mr. {Shimkus.} Thank you very much. Now I will go to
1098 the next question. What provision of the Nuclear Waste

1099 Policy Act, what provision of the law is the Secretary
1100 relying on to withdraw the application?

1101 Mr. {Lyons.} I am not a lawyer, sir. Our general
1102 counsel has reviewed that and believes that the Secretary has
1103 the authority to withdraw the application.

1104 Mr. {Shimkus.} I think you might need to get with your
1105 general counsel, and you better be very careful in answering
1106 these questions.

1107 And I am out of time--I am not out of time but I have
1108 finished my questions. I will now turn to the ranking
1109 member, Mr. Green.

1110 Mr. {Green.} Thank you, Mr. Chairman, and I apologize
1111 for being late. I know we finished opening statements and I
1112 would like to ask unanimous consent to place an opening
1113 statement into the record.

1114 Mr. {Shimkus.} Without objection, so ordered.

1115 [The prepared statement of Mr. Green follows:]

1116 ***** COMMITTEE INSERT *****

|
1117 Mr. {Green.} I would also like to ask unanimous consent
1118 to place into the record a letter from the Blue Ribbon
1119 Commission on America's Nuclear Future, and also from the
1120 chair of the Board of County Commissioners of Clark County,
1121 Nevada.

1122 Mr. {Shimkus.} Without objection, so ordered.

1123 [The information follows:]

1124 ***** COMMITTEE INSERT *****

|
1125 Mr. {Green.} I thank our panel for being here. I think
1126 most of you know that a number of us did a Congressional trip
1127 to Yucca Mountain last month, and I appreciate the
1128 opportunity to view up close what are the decisions or what
1129 has been going on since the 1980s, and I appreciate the
1130 opportunity the folks from the local county to express their
1131 concern or their interest in reopening Yucca Mountain from
1132 the decision. While on the trip, I heard various reports on
1133 the actual cost of building Yucca Mountain, and I know from
1134 the testimony of Mr. Gaffigan, it was \$14 billion?

1135 Mr. {Gaffigan.} We put it all in today's dollars, about
1136 \$15.4 billion.

1137 Mr. {Green.} Okay. Is there any of that that could be
1138 recouped if we decided to, you know, forget about it and look
1139 for another long-term facility?

1140 Mr. {Gaffigan.} That money is spent.

1141 Mr. {Green.} Any opinion from any other witnesses on
1142 the panel?

1143 Mr. {Friedman.} Well, Mr. Green, we pointed out in our
1144 Lessons Learned report that the retention of the intellectual
1145 property derived as a result of the expenditures associated
1146 with Yucca Mountain is an extremely important focus of the
1147 department, should be an important focus of the department,

1148 so hopefully if the decision is sustained to terminate the
1149 site, there will be a tremendous body of knowledge that will
1150 be useful going forward. That is certainly our anticipation
1151 and our hope.

1152 Mr. {Lyons.} I would agree with Mr. Friedman.

1153 Mr. {Green.} Do each of you agree that we should have
1154 some long-term storage facility?

1155 Mr. {Gaffigan.} I would say that the National Academies
1156 of Science back to 1957 has said we are going to need some
1157 form of permanent repository, no matter--and that is the
1158 current thinking today, even if we go to some new
1159 technologies, there will be some waste and we will need to
1160 dispose of it in a permanent solution.

1161 Mr. {Friedman.} I would agree with Mr. Gaffigan's
1162 comments, Mr. Green.

1163 Mr. {Lyons.} I would also agree, and the Blue Ribbon
1164 Commission recently in their draft recommendations so stated
1165 as well.

1166 Mr. {Green.} Well, I guess I have some concern because
1167 I know the only other alternative is along the Texas border
1168 and New Mexico, and we could just be opening another can of
1169 worms if we started out there. Obviously in Nevada, nobody
1170 runs for office out there saying they support Yucca Mountain.
1171 I don't know if anybody would run for office in New Mexico if

1172 they would say they want to support a high-level nuclear
1173 storage facility in New Mexico. That is one of my concerns
1174 about it, that we need one, and we spent \$15.4 billion and
1175 now in the last year and a half the decision has been made to
1176 literally put a fence across it and shut it down.

1177 How long would it take us if we started anew right now?
1178 Did Yucca Mountain actually start in 1982, the discussion of
1179 it, or the decision on the site or the pathway to get to the
1180 decision?

1181 Mr. {Gaffigan.} I think early on it was one of nine
1182 sites that was considered, and eventually that was winnowed
1183 down to about three sites by 1987 and then the 1987 amendment
1184 directed that only Yucca Mountain be considered, so it is
1185 fair to say at least--

1186 Mr. {Green.} When did the decision-making start?

1187 Mr. {Gaffigan.} You know, it is fair to say we have
1188 been at this since the mid-1980s. I don't know if Dr. Lyons
1189 would like to elaborate.

1190 Mr. {Lyons.} No, I would agree that there some
1191 characterization work that probably started even before 1982.

1192 Mr. {Green.} So we are talking about 25 years to where
1193 we are now, and do you think if we decided to do something
1194 that it would take another 25 years to get there?

1195 Mr. {Lyons.} I think it is important to note, sir, that

1196 as the Blue Ribbon Commission works through this process and
1197 evaluates successful models from both within the country,
1198 WIPP, and in the international community that there may well
1199 be approaches to the management as well as the selection that
1200 will be suggested by the BRC that can lead to a much more
1201 expeditious movement on this.

1202 Mr. {Shimkus.} Would the gentleman yield on that real
1203 quick?

1204 Mr. {Green.} I would be glad to yield.

1205 Mr. {Shimkus.} Dr. Lyons, is it true that the Blue
1206 Ribbon Commission was given a mandate not to consider Yucca
1207 Mountain?

1208 Mr. {Lyons.} The Blue Ribbon Commission is not a siting
1209 commission. They are not considering any--

1210 Mr. {Shimkus.} But they were given a mandate not to
1211 even consider Yucca Mountain?

1212 Mr. {Lyons.} They are simply not a siting commission,
1213 sir.

1214 Mr. {Shimkus.} So that is a yes?

1215 Mr. {Lyons.} They are not a siting commission. That is
1216 the statement I would make, sir.

1217 Mr. {Shimkus.} So nothing, interim storage, nothing
1218 would be considered with Yucca Mountain? If they are doing
1219 centralized regional storage sites, Yucca Mountain could not

1220 be considered?

1221 Mr. {Lyons.} I didn't say that. I simply said they are
1222 not a siting commission. They are not evaluating sites.

1223 Mr. {Shimkus.} It is my understanding that the Blue
1224 Ribbon Commission was given explicit directions not to
1225 consider Yucca Mountain. Would you dispute that?

1226 Mr. {Lyons.} It is my understanding that they are
1227 simply not a siting commission. They are not considering
1228 sites.

1229 Mr. {Shimkus.} I yield back.

1230 Mr. {Green.} Well, and my concern is, and it is more of
1231 a statement than a question, is that we have all over the
1232 country sites, two of them in Texas, where we are actually
1233 storing them on site, and we would hope that we would have
1234 some long-term permanent storage. I support recycling so we
1235 don't have to put as much there, but that is not available in
1236 our country, but that is my concern is that by starting over
1237 a year and a half ago, then, you know, it could be 25 years,
1238 maybe longer, but even that, we are looking at 10 years away,
1239 and a lot of our temporary storage sites were not designed to
1240 be the long-term that they are now.

1241 Mr. Chairman, thank you.

1242 Mr. {Lyons.} If I may, Mr. Green, the Blue Ribbon
1243 Commission may recommend, since I certainly can't speak for

1244 what their final recommendations will be, may recommend other
1245 paths such as interim storage that could lead us to at least
1246 useful options far sooner than a repository could be in
1247 operation.

1248 Mr. {Shimkus.} The gentleman's time is expired.

1249 The chair recognizes the vice chairman of the committee,
1250 Mr. Murphy from Pennsylvania.

1251 Mr. {Murphy.} Thank you, Mr. Chairman.

1252 Are the current sites at nuclear power plants and other
1253 facilities above and below ground in concrete containers,
1254 etc., suitable for safety?

1255 Mr. {Lyons.} Yes, Mr. Murphy. That is reviewed on a
1256 regular basis by the Nuclear Regulatory Commission.

1257 Mr. {Murphy.} And they are adequate for how long?

1258 Mr. {Lyons.} Excuse me?

1259 Mr. {Murphy.} They are adequate for how long? I
1260 believe I read some studies where some are good for 30 years
1261 or so.

1262 Mr. {Lyons.} The decision recently reached by the NRC--

1263 Mr. {Murphy.} Just give me a number.

1264 Mr. {Lyons.} --was 30 years after the cessation of
1265 operations at the site. We have research programs--

1266 Mr. {Murphy.} I just have to keep going. It has taken
1267 us 30 years to get this far. Does DOE maintain a record of

1268 the balance of the nuclear waste fund?

1269 Mr. {Lyons.} I am sure they do, sir, but I--

1270 Mr. {Murphy.} Or how it is broken down by source or
1271 anything?

1272 Mr. {Lyons.} I don't have those numbers but I would
1273 assume it is available.

1274 Mr. {Murphy.} Can you get us that information?

1275 Mr. {Lyons.} We will provide that for the record.

1276 Mr. {Murphy.} I would also like to know if DOE is
1277 continuing to maintain that record, if it is available to the
1278 public, at least to the State PUCs and make sure it is
1279 updated, and I would like to know if we can have that
1280 information. That would be helpful.

1281 Mr. {Lyons.} Well, the number is around \$25 billion. I
1282 am not positive of the exact number.

1283 Mr. {Murphy.} We would to know how the fund is broken
1284 down.

1285 Mr. {Friedman.} That is correct. And it can be
1286 provided broken down.

1287 Mr. {Murphy.} Given that it has taken about 30 years to
1288 get this far, what makes you think you can suddenly complete
1289 this by 2020?

1290 Mr. {Lyons.} I didn't say we could do it by 2020. I
1291 said we may be able to do it sooner than Yucca Mountain--

1292 Mr. {Murphy.} There is absolutely no basis to assume
1293 the termination of Yucca Mountain will prolong the process,
1294 you said.

1295 Mr. {Lyons.} I said that there is as g question in my
1296 mind whether Yucca Mountain will open. As to how soon one
1297 could do an interim storage site probably could be--

1298 Mr. {Murphy.} I am trying to go by the law here, sir,
1299 and I hope you are too, but the law that Congress signed by
1300 the President as we have gone through my Administrations here
1301 says that this is the site that was selected. So I have to
1302 ask, is there something unsuitable scientifically about the
1303 Yucca Mountain site?

1304 Mr. {Lyons.} The license application submitted by the
1305 Department of Energy--

1306 Mr. {Murphy.} Is it unsuitable? Yes or no.
1307 Unsuitable, yes or no? Scientifically based, is it
1308 unsuitable, yes or no?

1309 Mr. {Lyons.} The license application was based on the
1310 technical criteria.

1311 Mr. {Murphy.} Is it unsuitable? Yes or no.

1312 Mr. {Lyons.} In the DOE's judgment on their
1313 application, it met--

1314 Mr. {Murphy.} You stated that GAO noted that overcoming
1315 social and political opposition was crucial, and so in the

1316 midst of the social and political opposition, I am assuming.
1317 I am trying to find out if it is scientifically credible or
1318 not. Did DOE mess this all up over the 30 years? Do we not
1319 trust anything you do and basically say that all the work
1320 that DOE has done in the last 30 years on deciding that Yucca
1321 Mountain is suitable or not, is that scientific garbage or is
1322 it scientifically credible, yes or no?

1323 Mr. {Lyons.} As I indicated, sir, the license
1324 application--

1325 Mr. {Murphy.} I am trying to find out--

1326 Mr. {Lyons.} --was based on the technical criteria.

1327 Mr. {Murphy.} So what does that mean? Is it suitable
1328 or not? Is it scientifically suitable or not? This is
1329 really not hard to do, sir. It is a yes or no. There are
1330 only two words you get to say, yes or no.

1331 Mr. {Lyons.} In the judgment of DOE, yes. They don't
1332 have the final answer.

1333 Mr. {Murphy.} That is important. So given that this is
1334 suitable, I have to find out this thing. Now, you mentioned
1335 some legal counsel in relation to Mr. Shimkus's question. I
1336 would like you to provide to this committee all
1337 communications regarding the judgment from legal counsel at
1338 the Department of Energy saying that they don't have to
1339 comply with the law, oral, written, e-mail, anything. It is

1340 important that we have an opportunity. Will you provide that
1341 for us?

1342 Mr. {Lyons.} The department has provided about 40,000
1343 pages already. We will try to provide what you mean.

1344 Mr. {Murphy.} It is important that we have this really
1345 parsed out so we understand when someone receives legal
1346 advice not to comply with the law, I would really like to
1347 have that there, not just say here is 40,000 pages. I hope
1348 you can do that.

1349 Back to the question here with regard to--now that DOE
1350 has ruled that the site was suitable back in 2002 and you
1351 just confirmed it, a reversal is going to require new
1352 physical evidence that the criteria suitability are not met
1353 and then DOE would have to follow several explicit steps laid
1354 out in the statute, in the law instead of just walking away.
1355 Do you have that physical evidence that this site is no
1356 longer suitable?

1357 Mr. {Lyons.} Again, sir, as was pointed out in my
1358 testimony and by other speakers already, Secretary Chu has
1359 made the statement that a workable solution--

1360 Mr. {Murphy.} Just the facts.

1361 Mr. {Lyons.} --and public acceptance.

1362 Mr. {Murphy.} I am asking the facts. What we don't get
1363 to do is to say we get to selectively enforce laws based upon

1364 that the polls change or we need votes in States. I am
1365 asking you from a scientific--because this is where DOE
1366 either is credible as an organization or it lacks
1367 credibility. I really want it to be a credible organization.
1368 I have the highest respect for many of the scientists in
1369 there, and this is an opportunity to either be a scientist or
1370 go by polling and politics.

1371 Has there been some physical evidence that says this
1372 site is no longer suitable which therefore says you are
1373 compliant with the law by saying we don't have to do Yucca
1374 Mountain anymore? Is there some scientific evidence out
1375 there that says it is not suitable?

1376 Mr. {Lyons.} As I stated, the license application was
1377 based on technical criteria. Based on general counsel, the
1378 Secretary's view is that we do have the authority to
1379 withdraw--

1380 Mr. {Murphy.} I didn't ask if you had the authority. I
1381 am not sure I am getting anywhere, Mr. Chairman, but I hope
1382 you would provide that information to us because that is the
1383 crux of what we are doing today.

1384 Mr. {Lyons.} We will continue to provide information as
1385 best we can.

1386 Mr. {Shimkus.} The gentleman's time is expired.

1387 The chair now recognizes the gentleman from Georgia, Mr.

1388 Barrow, for 5 minutes.

1389 Mr. {Barrow.} Thank you, Mr. Chairman.

1390 A moment ago when we were going over the subject of the
1391 cost that has been invested in the program so far, there was
1392 an attempt to explain some of the value we recouped from
1393 this, the knowledge, the information, the lessons learned.
1394 What I would remind you is that the more you spend on
1395 something of doubtful authenticity, the more likely you are
1396 to think you have the real deal. If you spent \$5 million on
1397 a pen-and-ink sketching that is reported to be a Leonardo da
1398 Vinci, you are very likely to believe it is the real deal.
1399 If you paid \$5 for it, you know it is a fake. The point I
1400 want to emphasize is, this vast difference between the value
1401 of a lesson learned and the cost of a lesson learned, and I
1402 am not exactly sure we have a good understanding of the
1403 difference, what the magnitude of the difference is in this
1404 particular case.

1405 I want to try to see where we go from here. I want to
1406 change the subject just a little bit. I had been present
1407 when Secretary Chu has summed up the cost to the American
1408 consumer of the fact that we were a nuclear pioneer country
1409 in this world and we went down a bunch of different paths and
1410 got different designs for different reactors here and there.
1411 It is part of the legacy costs of being the pioneer and going

1412 first and actually developing all kinds of different ideas.
1413 He was talking to one of his colleagues in France, and his
1414 French colleague says it is very simple what the problem is
1415 you Americans, you have 80 different reactors and one cheese;
1416 we have 80 different cheeses and one reactor. It is a good
1417 lesson to learn. We have 80 different waste repositories in
1418 this country, whether we know it or not and whether we like
1419 it or not, and we have a whole array of approaches toward
1420 dealing with the problem for the foreseeable future. Some of
1421 these are wet storage, dry storage. Some are a lot more
1422 stable, some are a lot more safe than others. Meanwhile, the
1423 American consumer has been paying for this long-term
1424 repository program that has stopped dead in its tracks right
1425 now. Two-thirds of the cost has just been paid by
1426 ratepayers, whether they know it or not and whether they like
1427 it or not and whether they support it or not. Another third
1428 of this has been paid by the general fund by taxpayers
1429 chipping in their income taxes to run the government. All
1430 the money that has been paid in so far I gather has been
1431 spent but the money is still coming.

1432 One question I have, and maybe this is addressed in part
1433 to the Blue Ribbon Commission but I want to address it to you
1434 all, is what can we do to divert that income stream to
1435 provide some stability, some predictability and some safety

1436 in the meantime for all those utilities that are running and
1437 operating these plants now and trying to operate these 70
1438 waste repositories on site that we have got right now? For
1439 example, if the money they are forced to extract from
1440 customers in the form of an excise tax on the rates they are
1441 paying can be diverted back to those utilities on the
1442 condition that it be used to take wet storage and turn it
1443 into dry storage, something that is inherently unstable and
1444 likely to get loose into something that is very stable, an
1445 asset that would not be stranded, something that would have
1446 lasting value no matter what we are going to do in terms of a
1447 long-term repository, wouldn't that be a useful thing to do
1448 in the meantime? Does anybody have any suggestions along
1449 those lines of what we can do with the current mess we are
1450 in?

1451 Mr. {Gaffigan.} I would say there are a couple hurdles.
1452 You know, under the Nuclear Waste Policy Act, the money is
1453 being collected for a long-term repository, and we talk about
1454 maybe using it for a centralized repository. DOE is saying
1455 they don't have the authority to use that fund for that so
1456 there would have to be some change in law for that.

1457 In the meantime, industry is saying if you are not going
1458 to pursue a long-term repository, stop collecting the money.
1459 DOE is proceeding to collect the money. In fact--

1460 Mr. {Barrow.} That would require a law, wouldn't it?

1461 Mr. {Gaffigan.} And they are proceeding on the basis of
1462 a Yucca Mountain by 2020. That is how they base their rates.
1463 So, you know, Mr. Lyons may have some doubt about the 2020
1464 date but it is still being used by DOE as the best
1465 alternative going forward.

1466 Mr. {Lyons.} If I may add to that?

1467 Mr. {Barrow.} Go ahead, Dr. Lyons.

1468 Mr. {Lyons.} The Department of Energy recognizes it has
1469 the responsibility for the long-term management of the used
1470 fuel. As that fuel is being generated at your Plant Vogtle,
1471 for example, whatever the future option is going to be, that
1472 still will require handling by the Department of Energy.
1473 That is the rationale for continuing to collect the fee, and
1474 there has been no rationale, at least demonstrated to date,
1475 to change that fee.

1476 Mr. {Barrow.} Well, here is my concern. I recognize
1477 you all's need to set aside a little something in the future
1478 for handling the charges you all are going to incur in the
1479 future, but you don't have any ideas of when you are going to
1480 be handling nothing, and we are handling it right now. My
1481 ratepayers are handling it right now and our customers are
1482 handling it right now.

1483 My question is--and the questioning has shined a light

1484 on a problem when you have a law that tells you what this
1485 policy is going to be, it is going to take 25 years to
1486 implement and a lot of annual appropriations bills that have
1487 to get through both Houses of Congress in order to implement.
1488 I mean, if we are going to have to have a change in law to do
1489 anything positive, can we at least open the discussion and
1490 put on the table the idea of changes we can all agree on to
1491 try and manage the problem on site as long as it takes us to
1492 get our act together? Because what took an act of Congress
1493 to start us down the course and a plan that required several
1494 Congresses to go along with it is going to require another
1495 act of Congress to fix. Let us have an interim strategy we
1496 can all agree on. Let us try to work together on that. That
1497 would be my suggestion.

1498 Thank you. I yield back.

1499 Mr. {Shimkus.} The gentleman yields back his time.

1500 The chair now recognizes the gentleman from
1501 Pennsylvania.

1502 And just for the record, they are supposed to call votes
1503 at 2:30. We will try to get one or two more rounds of
1504 questioning before we go down to vote but we will have to
1505 adjourn because there are three votes in a row and not
1506 everybody will be through, so we will have to recess.

1507 The gentleman from Pennsylvania is recognized for 5

1508 minutes.

1509 Mr. {Pitts.} Thank you, Mr. Chairman.

1510 Mr. Gaffigan, the Nuclear Waste Policy Act of 1982
1511 created a federal legal obligation to accept nuclear fuel and
1512 dispose it in a geologic facility. Is that correct?

1513 Mr. {Gaffigan.} There was a commitment on the part of
1514 the Federal Government to take possession of the waste and
1515 explore a long-term repository.

1516 Mr. {Pitts.} So is it accurate to say in light of this
1517 law that Congress resolved how to manage spent nuclear fuel
1518 and high-level waste back in 1982?

1519 Mr. {Gaffigan.} It was a decision made by the Congress
1520 to pass the Nuclear Waste Policy Act. That is correct.

1521 Mr. {Pitts.} The development of the act was not the
1522 development of a single Congress or some partisan
1523 maneuvering, was it?

1524 Mr. {Gaffigan.} No.

1525 Mr. {Pitts.} In point of fact, in 1982 when the Nuclear
1526 Waste Policy Act was enacted, there was a Republican
1527 President, a Republican Senate and Democrats firmed
1528 controlled the House. In 1987, when Congress determined
1529 Yucca Mountain consistently of the top three sites was to be
1530 examined for a repository, there was a Republican President
1531 and Democrats controlled both the House and Senate. In 2002,

1532 leadership of the Congress was reversed but Congress
1533 overwhelmingly resolved to support Yucca development 306-117.
1534 So when the Nation through its elected representatives
1535 resolved how to solve the nuclear waste problem, it did so in
1536 a consistently bipartisan fashion, wouldn't you agree?

1537 Mr. {Gaffigan.} Those are policy decisions based by the
1538 Congress.

1539 Mr. {Pitts.} Dr. Lyons, the Department of Energy motion
1540 to withdraw the license application said ``the Secretary has
1541 decided that a geologic repository at Yucca Mountain is not a
1542 workable option for long-term disposition.'' Was the
1543 Secretary's decision based on internal department scientific
1544 evaluation by the Administration?

1545 Mr. {Lyons.} As I indicated, the license application
1546 was based on the technical criteria and the Secretary in his
1547 evaluation recognized the importance of technical criteria
1548 and social acceptance criteria.

1549 Mr. {Pitts.} Was it based on any scientific evidence
1550 that Yucca is not workable?

1551 Mr. {Lyons.} No, it was based on the concern that there
1552 are two major criteria, as I indicated.

1553 Mr. {Pitts.} Isn't there in fact ample scientific
1554 evidence that Yucca is workable and safe?

1555 Mr. {Lyons.} That would remain to be determined if this

1556 were to move through the process, sir. In the DOE's
1557 estimation when they submitted the license, that was their
1558 determination.

1559 Mr. {Pitts.} Has the department determined that Yucca
1560 Mountain's repository is not suitable to meet the relevant
1561 safety standards for long-term storage of spent fuel and
1562 nuclear waste?

1563 Mr. {Lyons.} No, there is no data that has been
1564 presented along those lines. However, again, the decision
1565 has made to withdraw, and whether that--and the legality of
1566 that is being tested both through the NRC and the courts.

1567 Mr. {Pitts.} In fact, DOE still stands behind the
1568 quality of its application that the repository can be built
1569 and protective of the public health for 10,000 years and
1570 more. Isn't that the case? Doesn't DOE in fact admit as
1571 much in its application to the NRC?

1572 Mr. {Lyons.} Those were the technical criteria and
1573 others that were deemed met by the Department of Energy.

1574 Mr. {Pitts.} So technically speaking, Yucca Mountain
1575 remains a workable option. Why is it not workable in DOE's
1576 view?

1577 Mr. {Lyons.} I don't know how else to say it, sir,
1578 other than the Secretary in his view, which I agree with,
1579 views both technical criteria and social acceptance criteria

1580 as key to ever moving ahead towards successfully opening a
1581 repository.

1582 Mr. {Pitts.} What scientific evaluations has DOE
1583 performed to make this determination?

1584 Mr. {Lyons.} I believe I just indicated that it was a
1585 question of social public acceptance.

1586 Mr. {Pitts.} So this is the opinion of the Secretary.
1587 Did DOE inform this opinion? Was anyone from the White House
1588 or the Administration involved in this decision in any way?

1589 Mr. {Lyons.} That was before I was involved. I simply
1590 can't answer that, sir. I know the Secretary certainly has
1591 the benefit of general counsel that it was within his rights
1592 to withdraw the application, and that is now in the courts
1593 and the NRC.

1594 Mr. {Pitts.} Thank you, Mr. Chairman.

1595 Mr. {Shimkus.} The gentleman yields back his time.

1596 The chair recognizes the chairman emeritus, Mr. Dingell,
1597 for 5 minutes.

1598 Mr. {Dingell.} Thank you, Mr. Chairman, for your
1599 courtesy.

1600 This is to Mr. Gaffigan. We have here a splendid
1601 situation where the Federal Government has invested huge sums
1602 of money in a thing that we cannot use. We have taxed the
1603 daylight out of the ratepayers, and how much is that fund

1604 that we have taxed into the ratepayers?

1605 Mr. {Gaffigan.} Currently, the current balance is about
1606 \$25 billion and about--

1607 Mr. {Dingell.} How much have we spent of that on what?

1608 Mr. {Gaffigan.} Almost \$10 billion.

1609 Mr. {Dingell.} Almost 10. And what--

1610 Mr. {Gaffigan.} Just to clarify, we spent about 10,
1611 plus there is another 25 sitting there.

1612 Mr. {Dingell.} So we have got a gigantic hole in the
1613 ground. Now, tell me, there is a lawsuit going on in this
1614 matter, is there not?

1615 Mr. {Gaffigan.} There is, sir.

1616 Mr. {Dingell.} And the Federal Government is being
1617 sued, but because of the mercy and the charity of the
1618 plaintiffs in that lawsuit, it has never progressed to the
1619 point where it is going to lead to a judgment. Is that
1620 right?

1621 Mr. {Gaffigan.} There was some oral arguments taken in
1622 March of this year. The basic gist of those arguments was
1623 whether there was a final action of the government, whether
1624 the NRC was going to rule, so that was the gist of the oral
1625 arguments. We haven't heard anything since.

1626 Mr. {Dingell.} I am just a poor Polish lawyer from
1627 Detroit, but you have stated that DOE officials stated they

1628 have frequent meetings and focus groups to help guide the
1629 shutdown. Can you tell me what that means?

1630 Mr. {Gaffigan.} We had a hard time knowing what that
1631 means. We asked--

1632 Mr. {Dingell.} Does DOE know what that means?

1633 Mr. {Gaffigan.} Well, I think they know what it means
1634 but we asked them, could they at least document what they
1635 have in terms of a shutdown.

1636 Mr. {Dingell.} Did they explain it to you?

1637 Mr. {Gaffigan.} They said they had a draft plan, they
1638 were working on it, and this is something the IG looked at.

1639 Mr. {Dingell.} Has that draft plan been submitted to
1640 anybody, Mr. Chairman?

1641 Mr. {Shimkus.} Not that I know of.

1642 Mr. {Lyons.} No, sir, the draft plan was not completed,
1643 and instead the department moved ahead as expeditiously as
1644 possible to shut down by the end of fiscal 2010.

1645 Mr. {Dingell.} Could we get the draft plan? I think it
1646 would be nice if you would share it with us. Would you
1647 submit it, please?

1648 Mr. {Lyons.} I honestly don't know if it is completed,
1649 sir. If it is available, yes.

1650 Mr. {Dingell.} I don't care whether it is completed.
1651 Submit the darn thing to the committee and we will tell you

1652 what we think of it.

1653 Now, in your testimony, Secretary Lyons, you said that
1654 DOE takes exception to a statement in the GAO report that a
1655 final impact of terminating Yucca Mountain is that
1656 communities may be even less willing to host spent nuclear
1657 fuel repositories or other storage sites in the future due to
1658 further erosion of DOE's credibility. You go on to say that
1659 on the contrary, a new start could lead to enhancement of the
1660 credibility of the department's approach. I don't mean to
1661 make light of a difficult situation but to your knowledge
1662 have communities around the country been volunteering to host
1663 a nuclear waste repository?

1664 Mr. {Lyons.} Yes, sir, there have been communities that
1665 have corresponded with the department.

1666 Mr. {Dingell.} Who has volunteered to do this?

1667 Mr. {Lyons.} One I am aware of is in New Mexico around
1668 the Carlsbad area. There may be others. I don't know.

1669 Mr. {Dingell.} Is that for high-energy waste or--

1670 Mr. {Lyons.} Again, this is local communities
1671 supporting, yes, sir.

1672 Mr. {Dingell.} Now, Mr. Friedman, how much is closing
1673 out the Yucca Mountain project costing the Federal
1674 Government?

1675 Mr. {Friedman.} You know, Mr. Dingell, I am not sure of

1676 the answer to that question.

1677 Mr. {Dingell.} Would you please get it and submit it
1678 for the record?

1679 Mr. {Friedman.} If I can, I certainly will.

1680 Mr. {Dingell.} It isn't going for peanuts, is it? It
1681 is costing lots of money, isn't it?

1682 Mr. {Friedman.} No, no. They have spent a great deal
1683 of money on the licensing support network and finalizing some
1684 of the technical studies that have been done.

1685 Mr. {Dingell.} Now, how much is it estimated that the
1686 closeout of Yucca will impact the Department of Energy's
1687 environmental remediation liability? Do you have any
1688 estimate on that?

1689 Mr. {Gaffigan.} We do. We expect that it will be--

1690 Mr. {Dingell.} Would you submit that and the answer to
1691 that for the record?

1692 Mr. {Gaffigan.} I certainly will.

1693 Mr. {Dingell.} Now, how much has the United States
1694 invested in the Yucca Mountain project? How much of that was
1695 from the nuclear waste fund, i.e., the ratepayers, and how
1696 much from the Federal Government, i.e., the taxpayers?

1697 Mr. {Friedman.} It was about two-thirds, one-third,
1698 two-thirds from the rate fund, about \$10 billion--

1699 Mr. {Dingell.} What does that come down to, Mr.

1700 Gaffigan?

1701 Mr. {Gaffigan.} Where does that what?

1702 Mr. {Dingell.} How much does that come down to coming
1703 out of the skin of the ratepayers and taxpayers?

1704 Mr. {Gaffigan.} Ten billion from the ratepayers and
1705 about \$5 billion from the taxpayers, and that doesn't include
1706 any of the judgment fund.

1707 Mr. {Dingell.} Now, you know, fellows, I know my
1708 questions seem repetitive and everybody who comes up here
1709 from the department gets the same because we have all heard
1710 about how much spent nuclear fuel is stored at various sites
1711 around the country and we just destroy the damn stuff. We
1712 don't reprocess it the way the French do but we dig holes
1713 that cost lots of money. And then we sit around and you guys
1714 come up and explain to us and a little while later somebody
1715 else runs the committee and then you come up and explain to
1716 us again, or your successors do. And so we have got a
1717 facility here that everybody wants to do something with. We
1718 have got a resource that we are not using. We are
1719 threatening nuclear, which is extremely important to this
1720 country in an energy shortage and all the other problems that
1721 we have, and it seems that we have no long-term plans for
1722 dealing with spent nuclear waste and the best we can say is
1723 that you seem to be proceeding down a very dangerous path

1724 with more and more and more of this stuff piled up. And
1725 Members of the Congress need to know what is going on. We
1726 need to protect the funds collected and we need to have a
1727 long-term solution, either storage that will work or
1728 reprocessing, and when are you going to get to this? This
1729 question was going on when I was chairman of the committee,
1730 and as a matter of fact, it was going on when I was a young
1731 member of this body. When is it that I can look forward to
1732 being young enough that I am going to get an answer on these
1733 questions?

1734 Mr. {Lyons.} I think the best answer, sir, is that that
1735 is the charge of the Blue Ribbon Commission. They will have
1736 their interim report in July of this year. I am looking
1737 forward to that report, and I too have been working many
1738 years to understand what the long-term solutions acceptable
1739 in this country will be.

1740 Mr. {Dingell.} Thank you, Mr. Chairman.

1741 Mr. {Shimkus.} The gentleman's time is expired.

1742 Just for notice to my colleagues, first a question. We
1743 have votes on the Floor. We are going to finish with the
1744 Chairman Emeritus Barton for 5 minutes and then we will
1745 recess. The question to my colleagues is, what is your
1746 pleasure to ask the first panel to come back, because some of
1747 you have been waiting to address questions to them, or do we

1748 go to second panel? You want the first panel?

1749 Mr. {Barton.} I think you should let this panel come
1750 back because some of the members--

1751 Mr. {Shimkus.} That is my question, and that is what I
1752 am posing to my colleagues, and I think that we will ask you
1753 to come back after votes to finish.

1754 The chair recognizes Chairman Emeritus Barton for 5
1755 minutes.

1756 Mr. {Barton.} Thank you, and I know that we have to
1757 vote so I am going to go through this pretty quick.

1758 We had the Nuclear Waste Policy Act in 1982 as amended
1759 in 1987. That is 29 and 24 years ago. Under that law, the
1760 Nuclear Regulatory Commission and the Department of Energy
1761 are authorized to find a permanent repository for the high-
1762 level nuclear waste both from civilian and military
1763 applications in this country. Through a convoluted process,
1764 Yucca Mountain was chosen as the repository. It has been
1765 through innumerable hearings, studies, but back in 2008 a
1766 license application was tendered to the Nuclear Regulatory
1767 Commission by the Department of Energy. I think the law
1768 gives them 4 years to make a decision. With the change in
1769 the Administration, the Obama Administration last year asked
1770 to withdraw that application. The board empowered to make
1771 the decision whether the application should be withdrawn in a

1772 very unusual decision chose not to allow it to be withdrawn
1773 and now we have got a very convoluted process at NRC where we
1774 are trying to determine whether there is a vote or isn't a
1775 vote, and we are in discussions on a bipartisan basis with
1776 the Chairman of the Nuclear Regulatory Commission about that
1777 issue.

1778 The purpose of this hearing is to determine what the
1779 legal criteria are for the Department of Energy to terminate
1780 Yucca Mountain, and the distinguished Deputy Secretary or
1781 Under Secretary has said, if I heard him correctly, that that
1782 decision was based on social public acceptance. Is that
1783 correct, Dr. Lyons?

1784 Mr. {Lyons.} As Secretary Chu has testified many times,
1785 yes, he views both technical criteria and public acceptance--

1786 Mr. {Barton.} Where in the NWPA does it say that social
1787 public acceptance is a criteria?

1788 Mr. {Lyons.} I didn't say it was in the Nuclear Waste
1789 Policy Act. I said that it--

1790 Mr. {Barton.} Then why is that a variable in the
1791 decision-making process?

1792 Mr. {Lyons.} Again, sir, our Secretary has the benefit
1793 of legal counsel, and this is in the courts and in the NRC--

1794 Mr. {Barton.} If the Secretary of Energy decided that
1795 the Yucca Mountain wasn't acceptable because it was in the

1796 desert, would that be a criteria? If he just decided he
1797 didn't like the color purple, would that be a criteria?

1798 Mr. {Lyons.} I think your know our Secretary, sir, and
1799 he would have substantially stronger criteria.

1800 Mr. {Barton.} I don't think social public acceptance is
1801 a criteria under the law.

1802 Mr. {Lyons.} As I noted in my testimony, there are
1803 many, many actions that are still required if Yucca Mountain
1804 were ever to open. Many of those decisions require permits
1805 and concurrences from the State of Nevada.

1806 Mr. {Barton.} But my understanding is that everybody at
1807 your level and above has to hold up your hand and take an
1808 oath of office or an oath to uphold the Constitution and
1809 defend the laws of the United States and all of this. We
1810 have a current public law that has not been amended that
1811 gives the Department of Energy the authority to tender an
1812 application. That application has been tendered. The
1813 Secretary decided to withdraw it but the board responsible
1814 for accepting that withdrawal said no. So I would assume the
1815 Secretary of Energy is knowingly and willfully violating
1816 federal law.

1817 Mr. {Lyons.} Well, as you are aware, sir, the day after
1818 the ASLB made that decision, then the commission decided that
1819 they wished to take review. That is their prerogative as the

1820 commission.

1821 Mr. {Barton.} And we are in a, it is not a negotiation
1822 but we are certainly in a situation where we are trying to
1823 determine with the chairman and the current members of the
1824 NRC just what they have decided or not decided to do, and
1825 that is a convoluted mess if I have ever seen one.

1826 Mr. {Lyons.} I certainly can't comment on what is going
1827 on at the NRC, but between the NRC and the courts, because
1828 this is also in the courts, the legality of that withdrawal
1829 is going to be determined eventually.

1830 Mr. {Barton.} Well, I have got 51 seconds. If this
1831 Congress affirmatively states that the application should
1832 continue to be reviewed and that Yucca Mountain should
1833 continue to be considered according to current law, is the
1834 Secretary of Energy and the President of the United States
1835 going to honor that law?

1836 Mr. {Lyons.} If we are ordered by one of those
1837 mechanisms that is not appealed to resume the license, we
1838 have indicated repeatedly in testimony that yes, we can and
1839 will. However, at part of our thinking, Congress has not
1840 provided any appropriations in fiscal year 2011.

1841 Mr. {Barton.} I have a feeling we will before the end
1842 of this year do so.

1843 With that, I yield back, Mr. Chairman.

1844 Mr. {Shimkus.} And just to correct the record, that is
1845 not true. We stopped funding for the last half of fiscal
1846 year 2011 in the C.R. The first part of the fiscal year was
1847 under a continuing resolution that still had it, and that is
1848 another issue of debate.

1849 The chair recognizes Mr. Inslee for as much time as he
1850 can consume before we have votes.

1851 Mr. {Inslee.} Thank you.

1852 This is very disturbing on a couple of bases. One is,
1853 in my State, the State of Washington, we have people very
1854 diligently trying to follow their obligations legally and in
1855 their profession getting this waste ready to ship to Yucca.
1856 They are going to be ready to ship 9,700 canisters to Yucca.
1857 They are doing their job, but the department is not doing its
1858 job, and that is on a local concern.

1859 But on a national concern, I just think this situation
1860 is one of a failed state. You know, they talk about failed
1861 states around the world. Because of the failure to follow
1862 the clear law here, this is the equivalency of a failed
1863 state. We reached a national decision. It is unpopular in
1864 one local part, a beautiful part of the country, as it will
1865 be in any part of the country that we ever have this decision
1866 made, and yet we can't execute a decision.

1867 Now, this sort of flagrant statement that social

1868 acceptance is now a legal criteria, I don't understand. I
1869 will just ask Dr. Lyons, how are we ever to build anything
1870 like a nuclear waste repository anywhere in the United States
1871 if social acceptance is a mandatory criteria to build
1872 something?

1873 Mr. {Lyons.} I used the example in my testimony of the
1874 Waste Isolation Pilot Plant in New Mexico, which has the
1875 strongest local acceptance, and I noted that there are a
1876 number of international examples where with careful education
1877 with transparent processes, there has been strong acceptance
1878 of repository programs.

1879 Mr. {Inslee.} So why didn't you do the same thing in
1880 Nevada?

1881 Mr. {Lyons.} I also indicated in my testimony--

1882 Mr. {Inslee.} Are you saying there is something unique
1883 about Nevadans that make them unique in the United States and
1884 this will be welcome as rosewater in the rest of the United
1885 States?

1886 Mr. {Lyons.} Sir--

1887 Mr. {Inslee.} It is going to smell the same no matter
1888 what name we put on it, and this is just a failed policy
1889 looking for another social acceptance criteria failure around
1890 the United States. What evidence do you have that there is
1891 any more socially acceptable place for this particular

1892 situation?

1893 Mr. {Lyons.} I provided the example of the Waste
1894 Isolation Pilot Plant. That is a different repository,
1895 different type of repository, but it is a repository and it
1896 has strong local acceptance.

1897 Mr. {Inslee.} And obviously in the decision-making of
1898 the department based on the best science and geology and
1899 hydrology, we decided Nevada was the best place, but now you
1900 are telling me we are going to maybe look for a less
1901 scientifically credible, less geologically stable, less
1902 hydrologically isolated place because we might get a little
1903 better social acceptance. That is a failed policy by a
1904 failed state, and I have to tell you, regardless who the
1905 Administration is, an abject failure to follow federal law
1906 here is most disturbing and it is unacceptable, and I don't
1907 really want to belabor you with too many more questions. I
1908 just want to tell you it is unacceptable by any
1909 Administration of any party. To make its decision when we
1910 are dealing with this number of curies of radiation based on
1911 social acceptance is just not a winner for this country.
1912 Thank you.

1913 Mr. {Shimkus.} The gentleman yields back his time.

1914 The votes are being called right now. There are three
1915 votes. That is probably going to run around 30 minutes. We

1916 will see who comes back, who hasn't asked questions of the
1917 first panel, and if not, be prepared to answer questions but
1918 having done this before, it may be it for you all but you
1919 need to be here in case someone wants to ask you all a
1920 specific question.

1921 I will recess this hearing subject to the call of the
1922 chair.

1923 [Recess.]

1924 Mr. {Gardner.} [Presiding] We will go ahead and resume
1925 the hearing. I recognize myself for 5 minutes for my
1926 opportunity to question.

1927 Thank you very much for being here today and your time
1928 to share with us. Just a couple of quick questions for you
1929 based on some previous testimony by Dr. Lyons. I heard a
1930 great deal of discussion regarding social acceptance, the
1931 social acceptance theory as it pertains to the Yucca Mountain
1932 license. Mr. Gaffigan, can you cite any statutory authority
1933 for social acceptance criteria?

1934 Mr. {Gaffigan.} Not in the Nuclear Waste Policy Act.

1935 Mr. {Gardner.} Mr. Friedman, can you cite social
1936 acceptance criteria in the statute?

1937 Mr. {Friedman.} Not that I am aware of.

1938 Mr. {Gardner.} Dr. Lyons, can you cite statutory
1939 authority for social acceptance?

1940 Mr. {Lyons.} I am not citing statutory authority, sir,
1941 but what I have tried to indicate is the number of steps that
1942 would be required to ever open Yucca Mountain, steps that
1943 Nevada stands, I believe, in opposition to, and I believe
1944 they could very successfully block that.

1945 Mr. {Gardner.} So you would agree that there is no
1946 statutory authority or basis for social acceptance theories
1947 as criteria?

1948 Mr. {Lyons.} Not specifically in the Nuclear Waste
1949 Policy Act.

1950 Mr. {Gardner.} So the answer is no, then, there is no
1951 statutory authority for social acceptance?

1952 Mr. {Lyons.} No.

1953 Mr. {Gardner.} Thank you. And what is the theory of
1954 your legal counsel when he believes that social acceptance is
1955 a valid criteria?

1956 Mr. {Lyons.} Our Secretary has outlined that many
1957 times. The briefs that are our general counsel has filed
1958 either with the NRC or in the court cases, those are
1959 available; your staff has them. That spells out the position
1960 of the general counsel. I certainly won't try to repeat it.
1961 I am not a lawyer.

1962 Mr. {Gardner.} Thank you, Dr. Lyons.

1963 Mr. Friedman, your role as Inspector General, what is

1964 that role in a nutshell?

1965 Mr. {Friedman.} Well, I have four responsibilities, Mr.
1966 Gardner. One is to act as an independent set of eyes and
1967 ears for the Secretary and for the Congress. Two is to bring
1968 to justice those who are attempting to defraud the people of
1969 the United States. Three is to be independent fact finders
1970 in high-profile controversial matters, and four is to give
1971 the U.S. taxpayers a seat at the table when important
1972 government decisions are made.

1973 Mr. {Gardner.} Thank you, Mr. Friedman. Mr. Friedman,
1974 do you believe that the social acceptance criteria is a valid
1975 theory?

1976 Mr. {Friedman.} Mr. Gardner, I don't exactly know how
1977 to answer that question, to be honest with you. You asked me
1978 whether I thought it was in statute, and I don't believe that
1979 it is per se, so I would have to say it is somewhat
1980 questionable from a legal standpoint, but I am not a lawyer
1981 and I am not making legal judgment.

1982 Mr. {Gardner.} Mr. Friedman, in the four roles that you
1983 mentioned the Inspector General has under its purview, do you
1984 believe one of them is to expect or to perhaps visit with the
1985 Secretary's office about the social acceptance criteria that
1986 they are using if you believe there is no statutory
1987 authority?

1988 Mr. {Friedman.} Well, we also have a responsibility
1989 under the IG statute, Mr. Gardner, not to overlap and
1990 duplicate what GAO has done. So I think it is fair to say
1991 that GAO's report, which has obviously been a major topic of
1992 this hearing, has really addressed that issue essentially.

1993 Mr. {Gardner.} Thank you. And a further question, Mr.
1994 Friedman. You stated that it is likely that the termination
1995 of the Yucca Mountain project will significantly impact the
1996 department's environmental remediation liability, which is
1997 currently estimated at \$250 billion in future cleanup costs.
1998 Have you seen any evaluation by the department regarding how
1999 its decisions will affect this liability?

2000 Mr. {Friedman.} No. What we are anticipating, I
2001 indicate in my long testimony, my complete testimony, that we
2002 will be looking at this as the department prepares its
2003 financial statements for the current fiscal year, and they
2004 will be responsible for coming up with a revised estimate,
2005 which will reflect their judgment as to the impact of the
2006 closure of Yucca Mountain on the liability, and we will be
2007 reviewing that carefully at that time.

2008 Mr. {Gardner.} The Department of Energy's recent
2009 actions to dismantle its nuclear stockpile will increase the
2010 volume of defense nuclear waste. How has the department
2011 planned to accommodate this waste as it shuts down Yucca

2012 Mountain?

2013 Mr. {Friedman.} Well, Yucca Mountain, approximately 10
2014 percent of Yucca Mountain was designated, as I recall, for
2015 high-level defense spent nuclear waste. My understanding is
2016 that the current inventory of waste in that category exceeds
2017 even the 10 percent of Yucca Mountain that was reserved for
2018 that purpose originally. There are lots of proposals right
2019 now to compact the waste, to mix it with--to down blend it,
2020 if you will. But the fact of the matter is, it will have an
2021 impact as the level of the waste grows.

2022 Mr. {Gardner.} Did the Department of Energy consider
2023 whether its role in START would be compromised by its
2024 decisions on Yucca Mountain?

2025 Mr. {Friedman.} Well, that obviously is a very
2026 fundamental issue, Mr. Gardner, and to be honest with you, it
2027 is outside of my area, my purview. I don't know the answer
2028 to the question.

2029 Mr. {Gardner.} Dr. Lyons, do you know if DOE did any
2030 analysis under START implications?

2031 Mr. {Lyons.} I have not seen such analysis. However,
2032 the department recognizes its responsibilities for defense
2033 high-level waste. That has never been in question.

2034 Mr. {Gardner.} Thank you. My time is expired.

2035 The chair recognizes Mr. Cassidy for 5 minutes.

2036 Dr. {Cassidy.} --on June 29 an administrative court
2037 judge--the Department of Energy did not have the authority to
2038 close Yucca Mountain.

2039 Mr. {Lyons.} June 29, 2010.

2040 Dr. {Cassidy.} Yes. But you did anyway. I mean, does
2041 the rule of law have no say-so? Does the attorney you sought
2042 an opinion from trump the administrative procedures that have
2043 been set up to hear your concerns?

2044 Mr. {Lyons.} The Atomic Safety Licensing Board
2045 decisions are reviewed by the commission. The commission can
2046 take review of any ASLB decision and the commission--and I
2047 was no longer on the commission at that time--would like to
2048 take review of that decision. That moves the responsibility
2049 from--

2050 Dr. {Cassidy.} Excuse me. I have limited time. So the
2051 commission has not yet issued its report and frankly, there
2052 are some allegations of politicization of the process. But
2053 was there a stay upon the ruling of the preliminary
2054 administrative court, the June 29, 2010, board, was there a
2055 stay upon that? The ruling has not been released by NRC but
2056 clearly you are disregarding it.

2057 Mr. {Lyons.} Not being a lawyer, I don't want to get
2058 into a question of what a stay is in this case. I am
2059 positive that my statement is accurate that the commission

2060 has taken the review and the action is with the commission
2061 and the--

2062 Dr. {Cassidy.} But you preempted the action of the
2063 commission, if you will, because they have not yet issued a
2064 ruling but you have shut down Yucca Mountain, even though you
2065 were told you didn't have legal standing to do so, and if you
2066 are not an attorney, I would ask next time you bring an
2067 attorney because it is really fundamentally the question that
2068 is before the taxpayers. We just blew \$10 billion. It
2069 frankly doesn't look like you had legal standing, and I am
2070 getting a little bit of a legal rope a dope by you saying
2071 that you are not an attorney, and I don't mean to be rude,
2072 but imagine the frustration.

2073 Now, let me ask you next. Mr. Friedman's complete
2074 testimony in the written portion speaks of a process whereby
2075 after you disregarded this Atomic Safety Licensing Board's
2076 ruling and decided on 10/1/2010 to shut it down, you declared
2077 an abandonment of, what was it, 22 metric tons, Mr. Friedman?

2078 Mr. {Friedman.} You may be referring to the GAO report,
2079 Mr. Cassidy.

2080 Dr. {Cassidy.} Oh, I thought it was your report where
2081 this was declared abandoned.

2082 Mr. {Gaffigan.} It was some property that was declared
2083 abandoned.

2084 Dr. {Cassidy.} Tons. Now, granted it was steel and--

2085 Mr. {Gaffigan.} Computers, office equipment, that sort
2086 of thing.

2087 Dr. {Cassidy.} Yes, trailers, I mean, stuff of both
2088 value by bulk and by value. Why did you just declare it
2089 abandoned? I mean, frankly it looks like you were trying to
2090 make it so it would be expensive to restart, again, after
2091 deciding to disregard the Atomic Safety Licensing Board's
2092 ruling. Why did DOE just declare it abandoned?

2093 Mr. {Lyons.} Again, sir, those decisions were carefully
2094 reviewed by our general counsel. Abandonment is one of the
2095 mechanisms by which property can be disposed. The department
2096 was certainly working on an expedited schedule to complete
2097 the shutdown within fiscal year 2010.

2098 Dr. {Cassidy.} So--

2099 Mr. {Lyons.} Or I should say that there is a complete
2100 inventory underway now and there will eventually, as we go
2101 into the closeout process, there will be a reconciliation.

2102 Dr. {Cassidy.} One of the two--again, for whatever
2103 reason, I came back and not entirely organized but one of the
2104 men had testimony that said that it was a rather hasty
2105 shutdown and that the complete sort of gathering of
2106 information that would have been beneficial was not done,
2107 that I gather intellectual property was lost. Am I speaking

2108 for one of the two of you?

2109 Mr. {Gaffigan.} I would sort of summarize, I think both
2110 the IG and GAO had concerns about the lack of a plan to shut
2111 down. They basically started shutting down in June of 2010--
2112 I am sorry, February of 2010 and had basically completed
2113 shutdown by September of 2010. During that time, there was a
2114 draft plan that never got finalized. They were trying to get
2115 things done quickly, and we raised concerns about that.

2116 Dr. {Cassidy.} So it really looks like there was an
2117 attempt to abandon the process in a way which it could not be
2118 restarted.

2119 Mr. {Lyons.} Absolutely not, sir. As part of the
2120 quality assurance program, as each decision has been made
2121 along the way, the technical justification for that must be
2122 recorded in writing--

2123 Dr. {Cassidy.} So who made that decision to abandon
2124 tons of material including things that could have been sold
2125 for scrap or given to other federal agencies, instead, to
2126 turn it over to a contractor? Who made that decision?

2127 Mr. {Lyons.} It was an evaluation on the prospective
2128 value of the property in that decision. However, I believe
2129 both of the reports in question here note that the majority
2130 of this equipment in question was transferred to other DOE
2131 sites, particularly Hanford.

2132 Dr. {Cassidy.} Well, I thought I saw where it was
2133 abandoned.

2134 Mr. {Gaffigan.} It is declared abandoned, but then
2135 under that process they can transfer it to other sites, so
2136 Dr. Lyons is right. Most of it got transferred internally.
2137 It was considered unusual but DOE had the authority to do
2138 that.

2139 Our concern was, and we put this out in our
2140 recommendations, that, number one, in some cases they didn't
2141 have a good inventory. They would say they are working on
2142 and we would say great and they should have a full accounting
2143 for the inventory and what was sold. We still think that
2144 remains to be done. And then lastly, we think they should
2145 consider a plan to restart if they are compelled to do so.
2146 Those were our two recommendations.

2147 Dr. {Cassidy.} I yield back. Thank you.

2148 Mr. {Gardner.} The gentleman from North Carolina, Mr.
2149 Butterfield, is recognized for 5 minutes.

2150 Mr. {Butterfield.} Thank you very much, Mr. Chairman,
2151 and I thank the three witnesses for their testimony today. I
2152 am sorry I could not hear their testimony in their entirety
2153 but I will certainly work with my staff and look at your
2154 transcript as we go forward.

2155 But Mr. Chairman, by any assessment, this is a very,

2156 very complicated issue, but it is clear to me that the
2157 Department of Energy's decision to withdraw its application
2158 for Yucca Mountain is really the cherry on top of a greatly
2159 mismanaged federal exercise. I generally believe that the
2160 Department of Energy should follow the process laid out by
2161 the act and maintain focus on the technical and scientific
2162 elements of Yucca Mountain rather than the political
2163 considerations, but I am a realist and I understand that all
2164 politics are local, and that if any of our respective
2165 constituents came to us and said this is our number one
2166 issue, we would certainly fight tooth and nail to stop it even
2167 if the focus should be technical in nature.

2168 Notwithstanding, ratepayers in my home State of North
2169 Carolina have contributed \$900 million of their hard-earned
2170 money to help finance the construction of a permanent
2171 repository for our nuclear waste. I believe in nuclear
2172 power. I have said it time and time again. It makes up over
2173 30 percent of my State's generating capacity. I am
2174 embarrassed to tell my constituents that their contributions
2175 have amounted to very little as we appear to be in no better
2176 position for solving this problem as we were when we started
2177 splitting atoms. We have a responsibility to see this
2178 process through and to make it a high priority.

2179 So let us talk about some of the options set out by the

2180 GAO. Mr. Gaffigan, you stated that an independent
2181 organization with predictable funding might be a way to
2182 overcome some of the administrative issues we have had with
2183 Yucca. Would such an independent organization have to be
2184 created by statute or does the Administration have the
2185 authority to create it?

2186 Mr. {Gaffigan.} Currently, no separate authority exists
2187 so I think it would have to be created.

2188 Mr. {Butterfield.} Obviously, you might eliminate some
2189 of the political capriciousness by granting this agency
2190 predictable mandatory funding but eventually the decision to
2191 site a repository will be inherently political, and we all
2192 understand that. That said, outside of funding, how could
2193 this independent agency be able to overcome the political
2194 hurdles with any greater efficiency than the Department of
2195 Energy?

2196 Mr. {Gaffigan.} We sort of had two lessons learned, and
2197 that is part of it. That is sort of the first lesson that
2198 perhaps some consistent leadership policy on where we are
2199 going would be a mechanism to get there, overcoming the many
2200 factors including public acceptance, which is recognized by
2201 many as a hurdle that should be addressed, just as well as
2202 the technical and safety issues. The key to those sorts of
2203 things is transparency, education, economic incentives.

2204 Those are some of the tools that have been used in other
2205 countries to gain acceptance for such a site.

2206 Mr. {Butterfield.} You talked about greater
2207 transparency in the process. Where do you see historical
2208 transparency gaps and how might they be closed?

2209 Mr. {Gaffigan.} It sort of goes back to the 1960s when
2210 they looked at a facility in Kansas. There was, you know, a
2211 feeling on the part of the folks that were out there that
2212 there wasn't full disclosure of what the information was.
2213 Even in the process of Yucca Mountain, there has been some
2214 complaints about not full disclosure of the different issues
2215 out there, and I think DOE to its credit has worked on that
2216 and tried to establish some credibility but it still has a
2217 ways to go, particularly in the eyes of the folks from
2218 Nevada.

2219 Mr. {Butterfield.} You know, the American people may
2220 not take notice of this issue based upon the spent fuel issue
2221 alone but I guarantee you that they will notice when the cost
2222 of not completing the project becomes known.

2223 Mr. Friedman, to you, sir, in your testimony, I am told
2224 by my staff that you stated that the U.S. spent nuclear fuel
2225 litigation liability is approximately \$15 billion. If the
2226 Yucca project is completely scuttled and no clear path is
2227 established, when will the government have to make these

2228 payments and to whom?

2229 Mr. {Friedman.} I don't know the answer to your
2230 question, Mr. Butterfield. I can't give you a precise date.
2231 But there will be payments that will have to be made, there
2232 is no doubt, and our view is that it is likely that there
2233 will be a significant increase in the gross amount of the
2234 payments.

2235 Mr. {Butterfield.} And will my constituents and the
2236 chairman's constituents and all of our constituents ever see
2237 any refund of the money that they have contributed to this
2238 date?

2239 Mr. {Friedman.} Well, that is not for me to say. I
2240 mean, if this project actually comes to a close, if there is
2241 a legislative fix or amendment or series of amendments or new
2242 legislation, then it wouldn't surprise me that there would be
2243 some attempt to try to reimburse those who have made those
2244 contributions only to see them go for naught.

2245 Mr. {Butterfield.} Thank you. My time is expired.
2246 Thank you.

2247 Mr. {Gardner.} The chair recognizes Mr. Bass from New
2248 Hampshire for 5 minutes.

2249 Mr. {Bass.} Thank you very much, Mr. Chairman.

2250 The answer to Mr. Butterfield's question is that the
2251 only way you are going to get their money back is to open

2252 this project.

2253 Lots of questions have been asked today, and Dr. Lyons,
2254 I have to say I almost feel sorry for you. You know what is
2255 going on here. Everybody in the audience knows what is going
2256 on here. The Democrats, Mr. Inslee, Mr. Green, all the
2257 Republicans know what is going on here, and it is unfortunate
2258 that we even have to have this hearing. The process of
2259 debating what to do with high-level and low-level nuclear
2260 waste began when I was a State rep in New Hampshire in the
2261 early 1980s and I believe there was a site in New Hampshire
2262 that was under consideration in some of the earlier rounds.
2263 We have gone through an excruciatingly detailed and complete
2264 analysis. We passed legislation. There have been battles
2265 that have occurred, as we have heard, through different
2266 Administrations, different parties have been in charge, it
2267 has been bipartisan, and we have come to as good a conclusion
2268 as we could possibly come to to solve this issue, which is of
2269 grave national importance.

2270 And then the Energy Secretary and the President and
2271 perhaps others that have a political interest in this issue
2272 stopped the project, potentially incurred expensive
2273 legislation, waste \$10 billion and possibly \$25 billion of
2274 taxpayers' money on the basis of undefined technical criteria
2275 and social acceptance, which is an interesting comment,

2276 deferring everything to a Blue Ribbon Commission that can't
2277 consider any sites. In essence, what we are proposing here
2278 is that the clock be wound back to the early 1980s again and
2279 we begin this process over again.

2280 Now, Dr. Lyons, you are the Under Secretary for Nuclear
2281 Energy so you are pretty high up in this organization but you
2282 can't make any comments. Can you define social acceptance,
2283 what it is? And again, I feel sorry for you because I know
2284 you can't answer these questions because there are no answers
2285 to the questions because there aren't any really valid
2286 criteria for doing what you are doing, but give it a try.

2287 Mr. {Lyons.} I am the Assistant Secretary, sir, not the
2288 Under Secretary.

2289 I grew up in Nevada. I visited Nevada. I worked in
2290 Nevada. I saw the opposition in Nevada growing. I saw it as
2291 it was created. I have watched over many, many years while
2292 Nevada has progressively blocked each of the various
2293 initiatives that was attempted with regard to Yucca. In my
2294 view, there are many, many steps that remain before Yucca
2295 Mountain could ever be opened. The views in Nevada for which
2296 I am using the buzzword of public acceptance or social
2297 acceptance, that opposition that has been spawned in Nevada I
2298 believe will continue to block progress towards opening Yucca
2299 Mountain.

2300 Mr. {Bass.} Not one single member of this subcommittee
2301 that I have seen has come out and shared your view, neither
2302 Republican or Democratic, and I understand that there are no
2303 members from Nevada here. Is there any place in the United
2304 States where you could build this without local opposition,
2305 in your opinion?

2306 Mr. {Lyons.} Well, I have used the example several
2307 times today about the Waste Isolation Pilot Plant in New
2308 Mexico that enjoys very, very strong local and regional
2309 support, and the way that process developed as well as the
2310 way repositories have been sited in other countries, which is
2311 what the BRC is evaluating, I think provides extremely
2312 important lessons as to how to do this job right and get the
2313 public education, general the public acceptance which I am
2314 convinced can be achieved.

2315 Mr. {Bass.} I beg to differ with you. I think that it
2316 has been pretty clear that the GAO, the Inspector General, we
2317 will hear a later panel that this project was ready to go.
2318 The taxpayers have funded it. The taxpayers are going to be
2319 on the hook for billions and billions of dollars more if we
2320 don't proceed, and the justification for its hopefully
2321 suspension, not termination, as of yet undefined technical
2322 criteria, social acceptance criteria, and what is not
2323 mentioned is political criteria.

2324 With that, Mr. Chairman, I will yield back.

2325 Mr. {Gardner.} The gentleman yields back.

2326 That concludes the testimony of our first panel, and
2327 thank you very much for your time and commitment to be here
2328 today and for bearing with us through the votes. Thank you.

2329 We will stand in recess subject to the call of the
2330 chair. We have got a 4:00 markup beginning, and we will give
2331 you as much information when we will reconvene.

2332 [Recess.]

2333 Mr. {Shimkus.} Welcome to the second panel. There was
2334 clapping as I was coming down the hallway and I thought, oh,
2335 man, people must love me. No, they just wanted to get the
2336 hearing back going on. So we will start. I will call the
2337 hearing to order, and we want to welcome our second panel,
2338 and we apologize but actually I am very excited to have the
2339 second panel here. In order, again, I will go from left to
2340 right, your right to left, we have on panel two Mr. Charles
2341 Hollis, Chairman of Nye County Board of County Commissioners,
2342 Nye County, Nevada. Good to see you again, sir. Mr. Martin
2343 Malsch, Partner, Egan, Fitzpatrick, Malsch and Lawrence, on
2344 behalf of the State of Nevada, welcome, sir. Mr. Greg White,
2345 Commissioner, Michigan Public Services Commission, and Mr.
2346 Christopher Kouts, former acting director of DOE's Office for
2347 Civilian Radioactive Waste Management.

2348 Again, your full statement will be submitted for the
2349 record. You have 5 minutes, and we will start with you, Mr.
2350 Hollis. Welcome.

|
2351 ^STATEMENTS OF CHARLES GARY HOLLIS, CHAIRMAN, NYE COUNTY
2352 BOARD OF COUNTY COMMISSIONERS, NYE COUNTY; NEVADA; MARTIN G.
2353 MALSCH, PARTNER, EGAN, FITZPATRICK, MALSCH AND LAWRENCE, ON
2354 BEHALF OF THE STATE OF NEVADA; GREG R. WHITE, COMMISSIONER,
2355 MICHIGAN PUBLIC SERVICE COMMISSION; AND CHRISTOPHER A. KOUTS,
2356 FORMER ACTING DIRECTOR OF DOE'S OFFICE OF CIVILIAN
2357 RADIOACTIVE WASTE MANAGEMENT

|
2358 ^STATEMENT OF CHARLES GARY HOLLIS

2359 } Mr. {Hollis.} Thank you, Mr. Chairman and members of
2360 the committee. Thank you again for the opportunity to
2361 testify about local support in Nevada for Yucca Mountain. I
2362 am Gary Hollis and I am the Chairman of the Nye County Board
2363 of Commissioners, the State of Nevada.

2364 As you know, Mr. Chairman, Yucca Mountain is located
2365 entirely within Nye County. While this testimony is mine, I
2366 want you to know that it reflects the views of the other four
2367 county commissioners as well, and as well as views of many
2368 political and local leaders in rural Nevada.

2369 Mr. Chairman, we deeply appreciate that you and
2370 Congressmen Green and Burgess took the time to visit Yucca
2371 Mountain and to meet local people in Nevada. As you learned,

2372 there many of us who live next to Yucca Mountain who support
2373 the completion of the licensing process. Most of us who live
2374 in the vicinity believe that the decision on Yucca Mountain
2375 should be made based on sound science, and this can only
2376 happen by full review by the Nuclear Regulatory Commission.
2377 If the NRC determines that the repository is safe, I favor
2378 its construction.

2379 As I am sure you can understand, no one is more
2380 concerned about the safety and welfare of the citizens of Nye
2381 County than me and the other four commissioners. It is my
2382 community. My family, my friends live and work here. I
2383 would never accept a federal facility to be located in my
2384 county if I thought it was unsafe, no matter what the
2385 economic benefits were attached to it. Frankly, I resent
2386 suggestions that any of the five Nye County commissioners
2387 would jeopardize the health and safety of our citizens for any
2388 sum of money. That would not happen on my watch.

2389 When Congress passed the 1987 amendment to the Nuclear
2390 Waste Policy Act, it provided money for local communities
2391 impacted by Yucca Mountain to fund oversight activities. Nye
2392 County used that money to create an independent science
2393 program. We had unbiased scientists to conduct the work.
2394 After years of effort, they found no reason to believe that
2395 the repository could not be built and operated safely. We

2396 have provided that information to the Department of Energy
2397 and the public. Our work was top quality and the results
2398 were available to everyone.

2399 But to get the full picture, we need to see all the
2400 evidence from every source. That includes information from
2401 Nye County, DOE, NRC staff and the State of Nevada. We want
2402 every piece of evidence to be reviewed so a final
2403 determination of the safety of Yucca Mountain can be made.
2404 That determination can only happen if the licensing process
2405 is complete.

2406 Mr. Chairman, if the NRC determines that the repository
2407 cannot be built and operated safely, I would be the first
2408 person to object to its construction. I only ask that all of
2409 the facts and the science are reviewed by the NRC and that
2410 the legal process established by the Nuclear Waste Policy Act
2411 is carried out. Let the facts dictate the result, not
2412 politics.

2413 My views are shared by leaders of other rural Nevada
2414 counties. Upon being elected last year, Nye County
2415 Commissioner Dan Chinhofen initiated a resolution of support
2416 for the licensing application and worked with Esmeralda,
2417 Mineral, Lander, Churchill and Lincoln counties to do the
2418 same. Thus, these six rural counties that would see the most
2419 impacts from Yucca Mountain called on the DOE and the NRC to

2420 complete the licensing process. We are willing to live by
2421 the results of a fair, scientific review process. I ask
2422 permission to put all six resolutions in the record, Mr.
2423 Chairman.

2424 Mr. {Shimkus.} Is there objection? Hearing none, so
2425 ordered.

2426 [The information follows:]

2427 ***** COMMITTEE INSERT *****

|
2428 Mr. {Hollis.} Beyond the political leaders of those
2429 other counties, a majority of the residents of the county
2430 support the license application.

2431 Mr. Chairman, let me point out that all five current Nye
2432 county commissioners expressed their support for Yucca
2433 Mountain and all were elected or reelected by our citizens.
2434 Therefore, it is not accurate to say there is no local
2435 support for Yucca Mountain. The people that live in the
2436 neighborhood do support completion of the licensing process.

2437 Thank you. I am available to answer any questions you
2438 may have. I am here with two of the county's technical
2439 professionals, and they are available to answer questions as
2440 well. Thank you, Mr. Chairman.

2441 [The prepared statement of Mr. Hollis follows:]

2442 ***** INSERT 4 *****

|
2443 Mr. {Shimkus.} Thank you, Mr. Hollis.

2444 And now I would like to recognize Mr. Malsch. Sir, you
2445 are recognized for 5 minutes, and your full statement is in
2446 the record.

|
2447 ^STATEMENT OF MARTIN G. MALSCH

2448 } Mr. {Malsch.} Thank you, Mr. Chairman and members of
2449 the subcommittee. I appreciate the opportunity to provide
2450 testimony on behalf of the State of Nevada at this hearing
2451 today. My name is Martin Malsch. I have practiced law in
2452 the nuclear energy field and nuclear waste field for over 40
2453 years in both the public and private sectors, and I am
2454 Special Deputy Attorney General for the State of Nevada.

2455 The failure of the Yucca Mountain repository program is
2456 a direct result of decisions taken beginning almost 25 years
2457 ago. A decent respect for history would have suggested that
2458 those decisions created a very high risk of program failure
2459 but the lessons of history were disregarded.

2460 The original 1982 Nuclear Waste Policy Act foresaw many
2461 of the problems that now afflict the Yucca Mountain program.
2462 Among other things, it sought fairness and redundancy by
2463 requiring multiple sites from which to choose, ultimate
2464 locations for repositories and it strove for regional equity
2465 by setting up site selection programs for two facilities, one
2466 in the West and one in the East.

2467 However, all this was scrapped in 1987. Congress
2468 decreed that all repository development efforts must focus

2469 now on just one site in Nevada, and it did so notwithstanding
2470 incomplete scientific information and the fact that now spent
2471 reactor fuel and high-level waste from every region in the
2472 country would now be sent to a single Western State with no
2473 nuclear power plants or high-level waste-generating
2474 facilities.

2475 After 1987, there was only one possible site, and
2476 inevitably as more and more dollars were spent, it became
2477 progressively more difficult to admit that the selection of
2478 Yucca Mountain had been a mistake. But we know now things we
2479 did not know in 1987. We now know that groundwater will
2480 reach the waste at the site in about 50 years, not the
2481 hundreds or thousands of years that had been originally
2482 thought. We now know that Yucca Mountain is not dry. Total
2483 water seepage into the tunnels where the waste will be
2484 located will be as much as 130,000 kilograms per year. These
2485 and other serious problems led to even more exotic and
2486 doubtful engineering fixes.

2487 When it appeared likely that the Yucca Mountain site
2488 could not satisfy certain EPA and NRC licensing requirements,
2489 the requirements were simply eliminated. These actions by
2490 Congress and then by EPA, DOE and NRC destroyed the
2491 credibility of the program. Public opinion in Nevada which
2492 until 1987 had been mixed with regard to Yucca Mountain now

2493 solidified into strong, consistent, across-the-board
2494 opposition, and by annual surveys done between 1989 and 2010,
2495 opposition to the project has remained constant at between 63
2496 and over 70 percent.

2497 While there has been and continues to be some support
2498 for the project in small rural counties surrounding the site,
2499 such support cannot be extrapolated to the wider Nevada
2500 population. Taken together, the six counties sometimes cited
2501 as evincing some level of support for DOE's program comprise
2502 only a tiny fraction of the State's population.

2503 In 2002, Nevada carefully evaluated the effects of a
2504 prospective Yucca repository on the State, its communities
2505 and the economy, and that report documents the potential,
2506 among other things, for significant risks to Nevada's unique
2507 tourism-based economy and property value losses and health
2508 effects associated with transportation.

2509 While it can be difficult to terminate a federal project
2510 when large amounts of money has been spent, there is no sense
2511 now in spending good money after bad. DOE's finding that
2512 Yucca Mountain is unworkable, the decision to seek withdrawal
2513 of the license application and the establishment of the Blue
2514 Ribbon Commission to look for alternatives for the management
2515 and storage of spent fuel were all the right and lawful
2516 things to do. They had the potential to put the country on a

2517 path to a safer, more cost-effective and expeditious solution
2518 to managing spent fuel and high-level waste.

2519 Thank you, Mr. Chairman. That concludes my remarks, and
2520 I would be pleased to answer any questions.

2521 [The prepared statement of Mr. Malsch follows:]

2522 ***** INSERT 5 *****

|
2523 Mr. {Shimkus.} Thank you, Mr. Malsch.

2524 The chair now recognizes Mr. White. Again, your full
2525 statement is in the record and you have 5 minutes. Welcome.

|
2526 ^STATEMENT OF GREG R. WHITE

2527 } Mr. {White.} Thank you, Chairman Shimkus, and I would
2528 like to thank you for your leadership on this issue.

2529 As you know, my name is Greg White and I am Commissioner
2530 for the Michigan Public Service Commission. I am appearing
2531 today on behalf of the Public Service Commission in Michigan,
2532 electricity ratepayers and the National Association of
2533 Regulatory Utility Commissioners.

2534 I have been involved with this issue, the disposal of
2535 spent nuclear fuel from commercial reactors, since shortly
2536 after the Nuclear Waste Policy Act passed in 1983, which
2537 established the policy that the Federal Government has the
2538 responsibility for the safe and permanent disposal of
2539 government and commercial nuclear waste in a geologic
2540 repository, and that the customers that benefit from
2541 electricity generated from nuclear power pay for the
2542 commercial share of the disposal costs. That was the deal,
2543 and we agreed to that deal. The fee payments to the nuclear
2544 waste fund began in June of 1983 as required by the Nuclear
2545 Waste Policy Act. I am here to tell you that the is the only
2546 component of that program that has ever worked as intended.
2547 Nearly 30 years later, the Federal Government has our money;

2548 we have their waste.

2549 When the Department of Energy submitted a license
2550 application to the Nuclear Regulatory Commission in June of
2551 2008, we knew that it could take 3 to 4 years to carefully
2552 review the safety and other aspects of this first-of-a-kind
2553 facility. We were not prepared to learn that after more than
2554 20 years of study and nearly \$15 billion that a different
2555 Secretary of Energy would withdraw the license application
2556 with prejudice in March of 2010 with no indication that the
2557 site is unsafe or that the application is flawed. Instead,
2558 the motion to withdraw cited only that Yucca Mountain is
2559 considered not a workable option.

2560 The Department of Energy took other steps to terminate
2561 the Yucca Mountain project that are documented in the April
2562 report of the GAO including disbanding of the Office of
2563 Civilian Radioactive Waste Management that had managed the
2564 program. Like others, we have questioned the legal and
2565 administrative authority of the Department of Energy to
2566 disband this office.

2567 As you know, the Department of Energy requested no
2568 appropriations for the waste program for fiscal year 2011 or
2569 2012 except for support for the Blue Ribbon Commission on
2570 America's Nuclear Future. Yet when the Nuclear Energy
2571 Institute and the National Association of Regulatory Utility

2572 Commissioners suggested that the Secretary of Energy suspend
2573 fee payments by utilities to the nuclear waste fund in 2009,
2574 that was denied with an unconvincing pronouncement that all
2575 fees are essential. NARUC and the NEI have appealed that
2576 decision to the Federal Court of Appeals, which is pending.

2577 We can only speculate how much time and money it will
2578 take the United States to be ready to accept spent nuclear
2579 fuel for disposal if it is other than Yucca Mountain but it
2580 is likely to be decades. It seems essential then we seek our
2581 and develop one or more central interim storage facilities to
2582 take used fuel from the nine sites where reactors are
2583 currently shut down and the property cannot be decommissioned
2584 returned to other productive uses because the waste remains
2585 such as the former Big Rock nuclear power plant in Michigan.

2586 Regardless of what storage, transportation or disposal
2587 solutions the Blue Ribbon Commission may recommend, they will
2588 need certain and reliable financing support. Concerning the
2589 financial impacts of terminating Yucca Mountain, a more
2590 predictable funding mechanism would certainly enhance future
2591 waste management. Also, an independent organization outside
2592 of the Department of Energy could be more effective in siting
2593 and developing a permanent repository.

2594 If Yucca Mountain's termination is sustained, it means
2595 starting over to find and develop repositories since there is

2596 clear consensus that least one site is needed in all
2597 scenarios. Unfortunately, there are too many unknowns to
2598 begin to forecast how long it would take to authorize, search
2599 and select, fully evaluate, license, design, construct and be
2600 ready to begin deposits in a new repository yet another 20
2601 years seem to be highly conservative.

2602 With that, I would conclude my testimony and make myself
2603 available for questions. Thank you.

2604 [The prepared statement of Mr. White follows:]

2605 ***** INSERT 6 *****

|

2606 Mr. {Shimkus.} Thank you.

2607 Now the chair would like to recognize Mr. Kouts for 5
2608 minutes. Again, your full statement is in the record, and
2609 welcome.

|
2610 ^STATEMENT OF CHRISTOPHER KOUTS

2611 } Mr. {Kouts.} Thank you, Mr. Chairman and members of the
2612 subcommittee. I am Christopher Kouts, former principal
2613 deputy director of the Department of Energy's now-defunct
2614 Office of Civilian Radioactive Waste Management. I
2615 appreciate the invitation to appear before the subcommittee.
2616 I will focus my remarks on the recently released GAO report
2617 that was discussed earlier by Mr. Gaffigan and the
2618 Administration's decision to terminate the Yucca Mountain
2619 project.

2620 As background, for 25 years I served in various
2621 technical and management positions in virtually every program
2622 area within the office. I became the principal deputy
2623 director of the program in 2007 and was the acting director
2624 from January 2009 until I retired in early 2010 after 35
2625 years of federal service. While serving in the program, I
2626 was reminded on a daily basis of the formidable challenges
2627 that were given to the program by the Nuclear Waste Policy
2628 Act. As impatient as those who followed the program have
2629 been over the years with its progress, I believe that any new
2630 attempt to establish disposal or interim storage facilities
2631 outside the confines of the act will be met by many new and

2632 likely more vexing challenges regardless of the organization
2633 or entity that is established to administer the effort.

2634 Now, why will any new effort be more problematic? The
2635 answer to that question lies partly in the advance that
2636 society has experienced in instant communication and
2637 information flow. When the program proceeded through the
2638 facility siting process in 1980s for two repositories and an
2639 interim storage facility, the Internet was not in place. E-
2640 mail was not available to the general public, nor did the
2641 social media of today exist. The 24/7 news cycle we now live
2642 in will create many opportunities for those opposed to such
2643 facilities to spread rumors and disinformation. As a result,
2644 the credibility of any new process will be severely
2645 challenged from its inception.

2646 In addition, the State of Nevada has given a clear
2647 blueprint to those opposed to such facilities: delay, delay,
2648 delay. And it should be noted that I do not in any way
2649 begrudge the lawsuits or other actions the State has taken
2650 over the years to attempt to impede the project. It was
2651 certainly their right to do so, and I fully respect that.
2652 But accordingly, the time frame of decades noted in the GAO
2653 report for a new repository is nothing more than notional and
2654 does not appear to stem from a comprehensive evaluation of
2655 the program's past experience nor the changes that have

2656 occurred since the 1980s.

2657 The report suggests that an independent entity outside
2658 of the Federal Government could be more successful. The
2659 ``grass is always greener'' rules here. It is also my belief
2660 that Congress should have the final word on facility siting
2661 and that ultimately any siting decision will be a political
2662 decision, informed by thorough technical evaluation, just as
2663 in the case of Yucca Mountain.

2664 It is difficult to understand the GAO report's so-called
2665 benefit of terminating the Yucca Mountain Project to afford
2666 DOE the opportunity to explore other approaches. DOE has no
2667 authority to undertake new approaches outside the confines of
2668 the Act, and history has shown that the consensus needed to
2669 develop a new policy path will not come easily or quickly.

2670 Because the development of Yucca Mountain has been such
2671 a contentious and protracted process, it is being suggested
2672 that only consensual siting of these facilities should be
2673 pursued. I would submit to the subcommittee that the U.S.
2674 and international experience in this area proves otherwise.
2675 In my discussions over the years with the directors of
2676 repository programs abroad, they have consistently expressed
2677 their concerns that, due to the very long timeframes
2678 repository programs take to develop, any political consensus
2679 at the beginning can evaporate with one election, just as it

2680 has in the United States with Yucca Mountain. At the end of
2681 the day, implementing a repository program requires steady,
2682 consistent, national leadership.

2683 In closing, beside its questioned legality, the
2684 Administration's decision to terminate the Yucca Mountain
2685 project is disturbing because Yucca Mountain has not failed
2686 any technical or regulatory test. The thousands of
2687 scientists and engineers and others that worked on the
2688 project over the years believe, as I believe, that the site
2689 would meet the stringent regulations of the EPA and the NRC
2690 and assure that these materials would not adversely impact
2691 future generations and the environment. Given the
2692 substantial investment this Nation has made in the site and
2693 in the policy that has been supported by every prior
2694 Administration since 1982, I believe the Nation deserves a
2695 final and definitive answer regarding Yucca Mountain from the
2696 NRC licensing process.

2697 Thank you for this opportunity to discuss these issues,
2698 and I would be pleased to answer any questions the
2699 subcommittee may have.

2700 [The prepared statement of Mr. Kouts follows:]

2701 ***** INSERT 7 *****

|
2702 Mr. {Shimkus.} Thank you, Mr. Kouts, and I will
2703 recognize myself for 5 minutes for the first round of
2704 questioning.

2705 Again Mr. Hollis, I want to welcome you here, and I
2706 think in my visit out there, which was my second visit, I
2707 think it was even better that I drove because it gave you an
2708 idea of how far the definition of local is. The size of the
2709 federal property that consists and Yucca Mountain is inside,
2710 how big is that land mass?

2711 Mr. {Hollis.} Well, the county is around 18,000 square
2712 miles.

2713 Mr. {Shimkus.} I was told that the federal property,
2714 the BLM, the DOE, the nuclear test site is the size of the
2715 State of Rhode Island. Is that correct?

2716 Mr. {Hollis.} Well, the test site is just about the
2717 size of the State of Rhode Island, but that doesn't account
2718 for the Tonopah Test Range and the Nellis Bombing Range.

2719 Mr. {Shimkus.} So it is a large site, and Yucca, the
2720 mountain itself is not on the outskirts of this Federal
2721 Government land. It is my recollection that we went through
2722 the gate, we still drove 10 or 15 miles to get to Yucca
2723 Mountain. Is that true?

2724 Mr. {Kouts.} If I could answer that question?

2725 Mr. {Shimkus.} Yes, Mr. Kouts.

2726 Mr. {Kouts.} Mr. Chairman, the site itself, basically
2727 half of it is on the Nevada Test Site and the other half is
2728 on BLM land. So--

2729 Mr. {Shimkus.} And so from the security gate, that is
2730 how far of a drive from the first--I mean--

2731 Mr. {Kouts.} Well, if you entered around Mercury, since
2732 the gate that we used to use is now closed, I mean, you
2733 probably drove about 5 miles form that gate to try to get to
2734 a place near the mountain.

2735 Mr. {Shimkus.} So when we talk about local
2736 consideration, what is your county seat? What is the city,
2737 the county seat?

2738 Mr. {Hollis.} Tonopah, and from where I live, it is 165
2739 miles to the county seat.

2740 Mr. {Shimkus.} And Pahrump, which is the town I
2741 visited, is that the closest community of size?

2742 Mr. {Hollis.} Yes, it is approximately 34,000.

2743 Mr. {Shimkus.} Thirty-four thousand, and it is--

2744 Mr. {Hollis.} The county is about 43,000.

2745 Mr. {Shimkus.} So you are local in the region.

2746 Mr. {Hollis.} Yes.

2747 Mr. {Shimkus.} So if we wanted to talk to local
2748 individuals--now, in driving from Las Vegas, it is like--my

2749 hometown in Collinsville, Illinois, and the State capital is
2750 a town called Springfield, it is about 90 miles. Isn't that
2751 the distance?

2752 Mr. {Hollis.} Actually it is probably 130 miles, 135
2753 miles from Las Vegas.

2754 Mr. {Shimkus.} No one in Collinsville, Illinois, would
2755 say we are local to Springfield and no one in Springfield,
2756 Illinois, would say Collinsville is local. And so we
2757 appreciate your being here and we appreciate a local voice in
2758 this debate on what the local citizens want to do. And all
2759 you are asking is for the NRC to make a decision?

2760 Mr. {Hollis.} That is correct.

2761 Mr. {Shimkus.} Because there is always a debate, and we
2762 had the commissioners here, and this is not a hearing on the
2763 commissioners but we feel that the NRC commissioners have
2764 voted, and we would like to know what the result of that vote
2765 is.

2766 Mr. {Hollis.} Absolutely. That is what we want to
2767 know.

2768 Mr. {Shimkus.} And so you are also speaking for other
2769 counties that are closer in proximity to the city of Las
2770 Vegas?

2771 Mr. {Hollis.} Well, I pretty well speak for all the
2772 counties around Yucca Mountain that have impact to Yucca

2773 Mountain. Those six counties that I am talking about and
2774 that I have resolutions here in support of.

2775 Mr. {Shimkus.} Thank you.

2776 Mr. Kouts, you mentioned in your bio you were in the
2777 Office of Civilian Radioactive Waste Management, correct?

2778 Mr. {Kouts.} That is correct, sir.

2779 Mr. {Shimkus.} And that office was enacted by--what
2780 statute gave that office the authority?

2781 Mr. {Kouts.} The Nuclear Waste Policy Act of 1982.

2782 Mr. {Shimkus.} And that law is still valid, correct?

2783 Mr. {Kouts.} Yes, sir, it is.

2784 Mr. {Shimkus.} And who is in charge of and how many
2785 people are in the Civilian Radioactive Waste Management
2786 Office right now?

2787 Mr. {Kouts.} Zero.

2788 Mr. {Shimkus.} And would it be your opinion that if
2789 there is no one fulfilling the role that is under the law
2790 that someone is not abiding by the law?

2791 Mr. {Kouts.} Although I am not a lawyer, it would seem
2792 to me the department is not following the law.

2793 Mr. {Shimkus.} And I have 11 seconds. How would it
2794 would take to reconstitute the office and finally reach an
2795 answer on how much that will cost?

2796 Mr. {Kouts.} Let me preface my estimate by saying that

2797 this all presupposes that the department did not demolish the
2798 office as it tried to demolish the licensing process with
2799 impunity basically. The motion that they filed was with
2800 prejudice, which meant that if indeed it was withdrawn from
2801 the NRC, it could never be resubmitted. So if the department
2802 has treated the office that way, then I think it will take
2803 many years. If the records are in reasonable shape and if
2804 you can coax the staff--and I am not talking about the
2805 federal staff, I am talking about the contractor and
2806 scientific staff--back and you can get the contractors in
2807 place, you are going to have to get a law firm again. Having
2808 said that, it would probably take 2 to 3 years to reformulate
2809 the office and to get it in a position where it could begin
2810 defend the license again, and from that point, it will
2811 probably take, assuming the NRC has issued their report or
2812 nearby close to that probably at least another 3 years to get
2813 a final answer out of the commission, so that will probably
2814 be about a 5- to 6-year time period. That is my estimate,
2815 assuming again they didn't terminate the office with
2816 prejudice.

2817 Mr. {Shimkus.} Thank you very much. My time is
2818 expired.

2819 I would like to recognize the vice chairman of the
2820 committee, Mr. Murphy from Pennsylvania.

2821 Mr. {Murphy.} Thank you, Mr. Chairman.

2822 Mr. Kouts, I wonder if you could tell me a little bit of
2823 your background. You are an engineer by trade?

2824 Mr. {Kouts.} Yes, sir. I have two degrees in
2825 engineering, and I am also a licensed professional engineer.

2826 Mr. {Murphy.} And you have worked with the Department
2827 of Energy?

2828 Mr. {Kouts.} I joined the Department of Energy back in
2829 1978 and I joined the program in 1985.

2830 Mr. {Murphy.} And you have been involved--when you say
2831 ``the program,'' you mean the program with Yucca Mountain?

2832 Mr. {Kouts.} The Office of Civilian Radioactive Waste
2833 Management. I lived through just about all the siting
2834 challenges, everything else through the act, and I lived in
2835 the program or I was in the program during virtually its
2836 entire existence.

2837 Mr. {Murphy.} Are you familiar with the legislation
2838 that has been passed and into law regarding Yucca Mountain?

2839 Mr. {Kouts.} Very familiar.

2840 Mr. {Murphy.} You have read it?

2841 Mr. {Kouts.} Many times.

2842 Mr. {Murphy.} Have you found anything in there which
2843 set a standard in law which talked about social acceptance of
2844 sitings of this?

2845 Mr. {Kouts.} No, sir, I have read it many times, and I
2846 never found anything like that in there.

2847 Mr. {Murphy.} Are you familiar with the Department of
2848 Energy or anybody involved with any of these projects ever
2849 using that as a standard to override scientific or legal
2850 information?

2851 Mr. {Kouts.} Only the current Secretary of Energy.

2852 Mr. {Murphy.} You heard in the previous testimony
2853 multiple times related to their counsel and their Secretary
2854 of Energy saying that that was the standard they were going
2855 to use, and it reminds me of other standards they used when
2856 the White House talked about changing some of the other
2857 mandates and regulations that come up, that they would look
2858 at some other social aspects of this as well. But I am
2859 curious as we go through this if you have any idea of any
2860 standard in engineering at all where this is applied anywhere
2861 else in the universe that we are familiar with.

2862 Mr. {Kouts.} Well, no, sir, I am not, and I think the
2863 irony of all this as the Nye County representative
2864 represented, there is local support. There is acceptance of
2865 a repository there, assuming--and I would say appropriate
2866 local support because I think they are concerned about its
2867 safety. The bottom line is that just as Dr. Lyons indicated
2868 that the local community around Carlsbad would like it, well,

2869 I don't think the local community around Nye County is any
2870 different in that regard than Carlsbad. So again, I don't
2871 understand the standard, I don't know how it was applied. I
2872 wasn't involved in those conversations, so your guess is as
2873 good as mine.

2874 Mr. {Murphy.} But you had made some reference before to
2875 the term ``consensus.'' Certainly one can find someone in
2876 any community that either the NIMBY principle applies or
2877 BANANA, which means build absolutely nothing anywhere
2878 anything. I am interested in the science and trying to find
2879 a safe place to put nuclear fuel. It is safe where it is now
2880 but not long term, if we are looking at long-term sites here
2881 too.

2882 The Department of Energy describes Yucca as unworkable,
2883 and it is a 25-year stalemate. Do you agree with those
2884 terms?

2885 Mr. {Kouts.} I don't believe it has been a stalemate,
2886 sir. I think it has been a very contentious process, and I
2887 would deny that, but I don't believe it was at a stalemate.

2888 Mr. {Murphy.} Those 25 years weren't spent with just
2889 people wringing their hands, they were working on scientific
2890 information.

2891 Mr. {Kouts.} That is correct, sir, and we had a great
2892 victory in submitting the license application back in 2008,

2893 so I wouldn't look at that as a stalemate. Unfortunately,
2894 they truncated the licensing process but as I indicated in my
2895 testimony, I believe the Nation deserves an answer on Yucca
2896 Mountain.

2897 Mr. {Murphy.} And as far as you can tell through your
2898 knowledge and experience, that answer has not been
2899 forthcoming other to say they are looking for some consensus
2900 or social aspects on this but no other. You heard in my
2901 previous questioning of the DOE secretary that we have not
2902 seen any scientific, legal, any information out there of any
2903 way, shape or form which would contraindicate what has been
2904 forth as licensure up to this time?

2905 Mr. {Kouts.} The answer is no, and I will say that as
2906 long as I was principal deputy and acting director in the
2907 program during this Administration, I was never asked for any
2908 technical information regarding the site, so my assumption
2909 was that technical information was not part of the
2910 Secretary's decision-making process, and had anyone else in
2911 my program been asked for it, I would have known about it.
2912 So the bottom line is, to my knowledge the Secretary's
2913 decision was not a technical one, at least he didn't ask for
2914 any information from the program for it, and he must have
2915 used other criteria which again since I wasn't part of the
2916 decision-making process I can't comment on.

2917 Mr. {Murphy.} I thank you.

2918 And with that, I yield back.

2919 Mr. {Shimkus.} The gentleman yields back his time. The
2920 chair recognizes the ranking member, Mr. Green from Texas.

2921 Mr. {Green.} Thank you, Mr. Chairman.

2922 I appreciate the patience. I apologize to our
2923 witnesses. We actually had a markup of the full committee
2924 downstairs on a bill I was working on and also I met with the
2925 chair on a little pipeline from Canada legislation that we
2926 are working on, but I appreciate it. Obviously energy is
2927 really important where I came from, and I appreciate the
2928 opportunity a few weeks ago to come out to Yucca Mountain. I
2929 have supported it for my whole career in Congress, and it was
2930 good to see on the ground what was happening.

2931 Mr. Kouts, in your testimony you mentioned the potential
2932 challenges with restarting the selection process for a
2933 nuclear waste storage facility. I have concern about that
2934 process, as I said with our earlier panel. You mentioned
2935 your disagreement and GAO's recommendation or independent
2936 commission and Congress should have final say. Do you also
2937 take issue with the Blue Ribbon Commission and their
2938 potential recommendations?

2939 Mr. {Kouts.} If you are asking my opinion about the
2940 preliminary recommendations of the Blue Ribbon Commission, I

2941 would use three words. I would say they are predictable. I
2942 would say they are disturbing and I would also say they are
2943 amusing, and let me try to explain why. Predictable in the
2944 sense that if you read the President's Executive Order, it is
2945 very clear that the President had made up his mind that Yucca
2946 Mountain wasn't an option. He talked about in his order that
2947 the last 25 years has basically been unworkable--not
2948 unworkable, he used some other words--but it was a very clear
2949 charge to the commission about what his views were. So what
2950 came out of it was, Yucca Mountain obviously was not on the
2951 table and they want to restart the whole process, and that is
2952 the real troubling part of it because I don't think anyone at
2953 the commission really understands what it will be like for
2954 this country to go through another siting process for a
2955 repository. It was a gut-wrenching, very, very difficult
2956 time, not only inside the Department of Energy but outside
2957 the Department of Energy, and now as I indicated with the
2958 social media that we have and the opportunity for
2959 disinformation, it will be magnitudes more challenging than
2960 it was back in the 1980s.

2961 And let me just finish with the amusing aspect of the
2962 preliminary recommendations is that it took so long for them
2963 to come up with their predictable, disturbing conclusions.

2964 Mr. {Green.} Mr. Hollis, thank you for being here

2965 today, and again, thank you for your hospitality. We had a
2966 brief meeting there. You mentioned your desire to see Yucca
2967 Mountain proceed if the health and safety of individuals of
2968 the areas is protected. You mentioned resolutions passed by
2969 Nye County and other areas. Can you discuss the resolutions
2970 and further explain the position of your county?

2971 Mr. {Hollis.} Well, the six resolutions, they are just
2972 asking the DOE, Department of Energy and the Nuclear
2973 Regulatory Commission to finish the process, let us finish
2974 the license application, and that is what we are supporting.
2975 We want them to finish their job. We can't make evaluation
2976 of the safety of Yucca Mountain without all the evidence, and
2977 we are asking for all the evidence, and the evidence is that
2978 the Nuclear Regulatory Commission has to follow the licensing
2979 application. It has to be completed before we will know. If
2980 it is unsafe, I will be the first one to stand up and say no.
2981 But if it safe, I will be the first one to say let us build
2982 it.

2983 Mr. {Green.} I typically go with the folks who live in
2984 the neighborhood, and you are about as close as folks that
2985 live in the neighborhood as you can get.

2986 Mr. White, in your testimony, you discussed the need to
2987 develop at least one interim storage facility, that these
2988 potential facilities could be a net savings to the Federal

2989 Government. You suggest one of nine potential locations
2990 where reactors were shut down. Can you further in detail on
2991 this suggestion and how could it help solve or ease the
2992 burden of our nuclear storage dilemma?

2993 Mr. {White.} Well, there is a couple different aspects
2994 to that question. One of the things we are really concerned
2995 about is the fact that the program has not performed at all,
2996 you know, we have nothing, and we have nine sites around the
2997 country where there are shutdown reactors and many of those
2998 plants, for example, the Big Rock nuclear plant in Michigan,
2999 they have decommissioned that site as much as they possibly
3000 can. What is left on that 750-acre site is an independent
3001 spent fuel storage facility. It is just the dry casks
3002 sitting in a pit, so we cannot return that property to
3003 productive use, so we think that there could be some lessons
3004 learned if we could consolidate at least the fuel at those
3005 nine sites, those nine shut-down sites, into one location,
3006 and it would achieve a savings because currently the
3007 customers and the utilities that own those sites are paying
3008 those costs continually despite the fact that they are no
3009 longer generating electricity at that site.

3010 Mr. {Green.} You also discussed financing the disposal
3011 of nuclear waste in the nuclear waste fund. If the nuclear
3012 waste fund were not used for the purpose you discussed, what

3013 would alternative means be for financing disposal of nuclear
3014 waste? Because we know part of this came out of our
3015 ratepayers, including my area, and part of it came from just
3016 general revenue. Where would we the other funding?

3017 Mr. {White.} Well, that is a good question, and I don't
3018 have the answer to that. We agreed to what I call the deal
3019 where the customers would pay the cost. The beneficiaries of
3020 nuclear generation would pay the cost of the program. What
3021 we are frustrated by is we have paid and paid and paid and we
3022 have nothing to show for it, and I can argue that the
3023 customers paid for the design of the spent fuel pools at the
3024 reactors. We have paid for the reconsolidation when those
3025 pools filled because the Federal Government hadn't taken the
3026 waste. We paid again when that fuel was removed and put into
3027 dry casks. All the while we are paying for a federal program
3028 with nothing to show for it.

3029 Mr. {Green.} I appreciate it. I know my time has run
3030 out. Mr. Chairman, no matter what happens with Yucca
3031 Mountain, we still need a nuclear waste disposal facility,
3032 and the President supports investment in alternative energy,
3033 and Secretary Chu actually gave testimony before our
3034 committee that we are unable to meet the President's goals if
3035 we do not invest in nuclear energy. Part of that is also
3036 finding a place to have a permanent storage, and this means

3037 we need to have it stored safely somewhere, and if not Yucca,
3038 then we don't want to have Members of Congress 25 years from
3039 now like we are saying okay, where are we going to put this,
3040 it is still sitting on these sites all over the country. So
3041 thank you for the hearing.

3042 Mr. {Shimkus.} I thank my colleague, and now I would
3043 like to recognize Congressman Whitfield from Kentucky, who
3044 chairs the Energy and Air Subcommittee, so he is very
3045 knowledgeable on energy issues.

3046 Mr. {Whitfield.} Well, I hope I can live up to your
3047 expectations, John.

3048 Mr. {Shimkus.} I hope you can too.

3049 Mr. {Whitfield.} Thank you all for being here. We
3050 really appreciate it.

3051 I think it is very difficult myself to come to any
3052 conclusion except that this Administration is ignoring the
3053 law because the Nuclear Waste Policy Act of 1982 did set this
3054 up. In 2002, Yucca Mountain was approved as the site, and
3055 for this Administration to pull back its application for
3056 construction, authorization for construction before any
3057 decision has been made, it seems to me is violation of the
3058 law. Would you agree with that, Mr. Kouts?

3059 Mr. {Kouts.} Let me preface by saying I am an engineer
3060 who has read the act very many times but I tend to agree with

3061 the administrative law judges at the NRC who when they read
3062 the act could not find any basis for the Secretary to
3063 withdraw the application in section 214, which is the same
3064 section that tells them to submit it. If there was a flaw in
3065 the license application, then I think the Secretary could
3066 pull it back and fix it and then resubmit it, but just to
3067 withdraw it with prejudice, in other words saying that it is
3068 never going to be submitted again, I certainly don't see that
3069 authority in the act.

3070 Mr. {Whitfield.} And then obviously the NRC's
3071 construction authorization board agreed with that because
3072 they refused to allow them to withdraw the application, and
3073 that was in June of 2010, and so we have had one year for the
3074 commissioners to take this issue up and make some decision,
3075 and I think that anyone who has heard Chairman Jaczko testify
3076 would certainly walk away with the conclusion that he is
3077 simply dragging his feet, because one of the commissioners
3078 whose term is going to be expire maybe the end of this month
3079 and he knows that the appointment of the next commissioner
3080 will be voting with him, and yet to do that is violating the
3081 policy act.

3082 So it appears, even a reasonable interpretation is, this
3083 is nothing but politics. And then I heard you answer Mr.
3084 Murphy and say you were the acting director of the Office of

3085 Civilian Radioactive Waste Management. So if the Secretary
3086 was going to withdraw this application, it would appear that
3087 he would come to you for some technical information and yet
3088 you testified he did not do so. Is that correct?

3089 Mr. {Kouts.} That is correct, sir. He did not.

3090 Mr. {Whitfield.} And so if he didn't want technical
3091 information in making a decision to withdraw, what kind of
3092 information would he need to make a decision like that?

3093 Mr. {Kouts.} Well, if I could just give you my
3094 experience with the program, having been in it for 25 years,
3095 and again, I was a career SES, I was an acting director, and
3096 over the years I have been involved in lots of meetings and
3097 been told not to attend lots of meetings, and the ones I have
3098 been told not to attend are typically those that are among
3099 political appointees where they are going to discuss
3100 political issues. So my assumption was, since I was not
3101 involved in the decision-making process, that those types of
3102 discussions were going on. And we did not have a political
3103 for the program. There was not one appointed. So therefore
3104 there was no one from the program politically appointed by
3105 the President in those meetings but that is what my
3106 assumption was because I wasn't involved.

3107 Mr. {Whitfield.} Well, I think the logical conclusion
3108 is that it was political. It was done to help Harry Reid.

3109 And the American people are the ones that are going to suffer
3110 from this. Over \$15 billion has been invested already.
3111 Ratepayers for utilities are paying fees for this. Taxpayers
3112 are now legally liable to pay over \$15 billion in judgments
3113 against the Federal Government because they cannot live up to
3114 the responsibilities of the policy act of 1982.

3115 So it seems to me--and then you take the six counties
3116 closest to the repository, as Mr. Hollis has testified,
3117 actually support the Nuclear Regulatory Commission at least
3118 going through the process and making some final decision and
3119 have adopted resolutions basically to that effect. So I
3120 don't think there is any question that this is bad news for
3121 the American people, it is costly to the American people,
3122 taxpayers, and it is probably a violation of the Nuclear
3123 Waste Policy Act of 1982.

3124 Mr. {Shimkus.} The gentleman's time is expired.

3125 Mr. Kouts, I appreciate your testimony. I think the GAO
3126 analysis kind of supports your assertion. Yucca Mountain is
3127 the most studied place on the planet, and I think you were
3128 there for most of the studying.

3129 I just want to remind the second panel that the record
3130 will remain open for 10 days. This hearing may be followed
3131 up by individual questions by my colleagues, so if you could
3132 then answer those and get those back to us as expeditiously

3133 as possible, we would appreciate it.

3134 We will continue to move forward on addressing these
3135 disconcerting events that many of us question the legality
3136 of, and look forward to moving types of legislation that will
3137 help enter another voice of what the vast majority of
3138 representatives of this constitutional republic would like to
3139 do based on previous agreements and laws passed.

3140 So we thank you for your testimony and appreciate your
3141 time. Members have 10 days to submit questions for the
3142 record. And with that, this hearing is now adjourned.

3143 [Whereupon, at 5:00 p.m., the subcommittee was
3144 adjourned.]