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06-353- DS (L)

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December 8, 2006

Mr. M. Lee Bishop
 EIS Document Manager
 Office of Logistics Management
 Office of Civilian Radioactive Waste Management
 U.S. Department of Energy
 1551 Hillshire Drive, M/S 011
 Las Vegas, NV 89134

Nye County's Comments on the Expanded Scope of the Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada

Dear Mr. Bishop:

Nye County appreciates the opportunity to submit comments on the Expanded Scope of the Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada (Supplemental Rail Corridor and Rail Alignment EIS). Nye County supports the successful construction and safe operation of the repository and the associated transportation systems. As the situs jurisdiction for the Yucca Mountain Project (YMP), Nye County has a tremendous stake in the process for producing the Supplemental Rail Corridor and Rail Alignment EIS and the outcome of its analysis, and we will continue to pursue all available opportunities to participate in the EIS process. We anticipate working closely with the Department of Energy (DOE) to ensure that the SEIS incorporates the unique data and analyses developed by the County's oversight program.

In August 2002 and again in July 2004, under Resolutions 2002-22 and 2004-25, respectively, Nye County resolved to actively and constructively engage with the Department of Energy (DOE) and Congress as the YMP proceeds to final design, licensing, and implementation. These resolutions formally acknowledged the Congressional designation of the Yucca Mountain site, and recognized that implementation of necessary steps to protect the long-term interests of Nye County and its residents required constructive County engagement as well as Congressional and DOE action. In Resolution 2004-25, Nye County further resolved to act to maximize the safety and success of the Yucca Mountain repository and its transportation system.

Nye County is extremely interested in the DOE's plans for providing rail access to the Yucca Mountain site. The county believes that radiation safety and traffic safety are enhanced by having rail access available to Yucca Mountain as early as possible in the construction phase of

the Yucca Mountain Repository project. Nye County also believes that it is prudent to respect the desires and needs of the communities that will be most impacted by the proposed rail line construction and operation. Because these communities will receive most of the impacts (both direct and indirect) from the rail line, it is important that DOE work directly with them to understand their concerns and configure the rail line in such a way as to mitigate adverse impacts and enhance benefits that may accrue from construction and operation of the rail line. Nye County applauds DOE's willingness to consider the desires of local communities, including the new information from the Walker River Paiute Tribe regarding the Mina rail route. Nye County expects DOE to give equivalent weight to other cities, towns, and communities in Nevada before making a decision on the final rail routing. To do otherwise would be uneven and unfair exercise of DOE's authority, and would demonstrate no community equity in the decision-making process.

On April 8, 2004, the DOE announced its selection of the mostly-rail scenario analyzed in the Yucca Mountain EIS. On the same date, DOE also announced its selection of the 318- to 344-mile Caliente Corridor as the preferred rail route and its intent to prepare an EIS to evaluate the alignment, construction, and operation of that rail line. Nye County provided its comments on the scope of that EIS on July 7, 2004. As announced on October 13, 2006, DOE is now in the process of preparing a Supplement to the Yucca Mountain Final EIS, issued in February 2002. The Supplemental Yucca Mountain EIS will analyze the potential impacts resulting from operational changes in the transport and storage of waste. On October 13, 2006, DOE also announced its intent to expand the scope of its Rail Alignment EIS to include the analysis of potential impacts of an additional alternative, the 240- to 254-mile Mina Corridor. Although Nye County appreciates the continued analyses to identify a preferred rail alignment, the continual changes in focus for both the repository and transportation system are beginning to look like segmentation. All impacts of the project (i.e., planning, construction, operation, transport, etc.) should be considered in an integrated manner, not as individual independent actions. Segmentation can greatly reduce or expand the impact of an action. Consideration of all impacts as a whole reveals possible synergistic effects and their major benefits or pitfalls. Comprehensive planning reduces the chances of duplication of action and ineffective use of resources. Nye County supports DOE action at the end of the current process.

The categorization of the following comments is, for the most part, consistent with the subheadings in the Background section of the Federal Register notice. The categories are Purpose and Need, Proposed Action and Preliminary Alternatives, No Action Alternative, Potential Environmental Issues and Resources to be examined, and Comments on Specific Wording of Scoping Request.

Purpose and Need

Nye County requests that the statement of purpose and need defined for the rail line be expanded to include the need to ensure the effective, efficient, and safe movement of waste shipments. These objectives would be achieved with a through-going rail line. Additionally, the assurance that waste would be kept moving may be accomplished by using spurs that function as sidings, allowing trains to pull off the main track making the track available to other trains. These spurs would also provide rail access to local communities and businesses to facilitate shared use.

Proposed Action and Preliminary Alternatives

Mostly-Rail Scenario

Nye County strongly prefers the mostly-rail transport of waste to the repository and, while most traffic issues associated with nuclear waste shipments would be alleviated by implementation of the mostly-rail option, traffic issues will surely occur because of the shipment of construction materials and personnel transportation to the repository site. Therefore, the alternatives analyzed in the Supplemental Rail Corridor and Rail Alignment EIS should include a phased construction schedule in which DOE constructs the rail line to Yucca Mountain and upgrades roads in the vicinity of Yucca Mountain prior to the beginning of repository construction. Otherwise, real direct and indirect impacts in terms of safety, highway congestion, noise, and emissions will accrue to the residents of Nye County near Yucca Mountain and to the personnel working at Yucca Mountain. DOE should fully consider such impacts and provide appropriate mitigation in the form of early rail construction and highway upgrades (specifically extension of the four lane highway from Mercury to at least Gate 510) prior to the start of repository construction.

Shared Use of the Rail Line

Nye County supports the evaluation of shared use as described in the Notice of Intent. Regardless of route alternative, Nye County supports a rail-line design that promotes shared use by commercial freight and repository waste shipments.

Having made the commitment to provide rail access for shipment to Yucca Mountain, the federal government should consider the application of its rail investment as a component of an integrated strategy for coordinated community development in central Nevada. Over recent decades, Nevada's two widely separated metropolitan areas (Las Vegas and Reno) have grown dramatically, increasingly dominating the State economically and politically. Meanwhile, the State's historically important mining and ranching economies have dwindled, stranding the expanse of central Nevada whose communities often compete for limited economic opportunity. By offering its rail investment as a component of an integrated strategy for economic development in central Nevada, the federal government could signal an interest beyond merely transporting highly radioactive wastes. In the process, it could free the DOE to make decisions regarding the location of key YMP support facilities on best business practice principles. Availability of the rail line for commercial shipping will generate significant economic benefit for businesses served by rail, and for the towns and counties in which they are located. It would be imprudent to construct a rail line that is not designed for maximum utility and the benefit of the counties and communities through which it passes. Shared use could include mining and other industrial materials and products, low-level and transuranic radioactive waste shipments to and from the Nevada Test Site, hazardous waste shipments to the US Ecology facility in Nye County, and trans-Nevada commercial shipments.

The addition of rail spurs to industrial and business support areas in rural communities and near the Yucca Mountain site should be analyzed in the Supplemental Rail Corridor and Rail Alignment EIS. Although these spurs may not be considered part of the alternatives, other entities would likely construct the rail spurs. Therefore, the potential impacts of the spurs to natural and socioeconomic resources should, at a minimum, be analyzed in the Cumulative Impacts section of the Supplemental Rail Corridor and Rail Alignment EIS.

Shared use possibilities should be enhanced by considering local community inputs to rail alignment decisions. The DOE should seek formal consultation with communities near the routes under consideration. According to DOE's scoping request, they have done this for the Walker River Paiute Tribe. Nye County expects DOE to give equivalent weight to other cities,

towns, and communities in Nevada before making a decision on the final rail routing. For example, Nye County recommends that DOE evaluate alternative alignments of the rail line in Crater Flat as it approaches Yucca Mountain to facilitate rail spurs to areas identified for potential industrial development (see Crater Flat Alignment).

Through-going Rail Line

Regardless of ultimate corridor selection, DOE should evaluate a through-going rail system connected to Yucca Mountain from both the north and the south. A through-going rail system would serve to eliminate the necessity for rail shipments through the Las Vegas Valley where government leaders are concerned about the effect nuclear waste shipments may have on the tourism industry. An adverse impact on Las Vegas tourism would also result in an adverse impact to Nye County. The DOE has already set a precedent by agreeing not to make low-level radioactive waste shipments to the Nevada Test Site through Las Vegas. Therefore, it makes sense to avoid Las Vegas with high-level radioactive waste, whether the risk is real or perceived. A southern approach also would avoid the potential need for rail shipments through central California to connect with either corridor from the north. Having both northern and southern approaches to the repository would add flexibility to the national shipping program in that north-south and east-west rail corridors would be available to accommodate seasonal (weather), construction, and load/density considerations. A through-going rail system would also ensure the effective and efficient movement of waste shipments, reduce the number of rail shipments that would arrive at Yucca Mountain from any one direction, facilitate shipment of construction materials for the repository, and offer greater utility and economic benefit for shared use of the line by commercial freight.

Commercial enterprises in Nye County have stated they would ship via rail if it were available. These firms have also suggested that a southern connection would be preferable, as their major markets seem to be in southern California and the southeastern U.S. In addition, a through-going route via the Mina corridor may offer considerable economic benefit to current and future business in the Fallon to Reno corridor. The utility of the railroad for commercial freight shipment may be seen as a significant and quantifiable benefit that is not part of the project as it is currently defined.

Nye County recognizes that the Jean corridor was previously eliminated from further consideration because of unnamed land use issues that could cause delays in construction and the corridor's proximity to Las Vegas. Now that the alternatives for Nevada rail are again being evaluated, Nye County requests that the Jean route, or a similar alternative, be reconsidered as a component of a through-going rail line.

Crater Flat Alignment

Nye County requests that DOE evaluate alternative alignments of the rail line in Crater Flat as it approaches Yucca Mountain to facilitate eventual construction of a rail spur to areas identified for potential industrial development in Crater Flat. Shared use possibilities would facilitate economic development in the communities near the proposed rail alignments. It is Nye County's goal that the people who work at Yucca Mountain live in Nye County and that the businesses and industries that support the YMP (to the extent practicable and where "best business practices" suggest) are located in Nye County. Nye County expects that DOE will work with the county to adjust the rail alignment in Crater Flat to accommodate this goal as being in the best interest of the program, DOE, and the County. Nye County will provide more detailed information on recommended alternative alignments under separate cover.

Emergency Response and Communications Plans

The preparation and implementation of Emergency Response and Communications Plans should be included as part of the alternatives considered. Emergency response capability and a superior communication network should be in place along the entire rail access corridor before the rail operations begin to support repository construction or shipment of high-level waste. Under any routing option, rail access would traverse long stretches of rural Nye County and other rural portions of Nevada. The safety of Nevada residents and the personnel involved in rail shipments to the repository should be foremost in rail operational plans.

Emergency response personnel must have access to the entire length of the rail bed. Frequent rail crossings for the transport of personnel and equipment along the alignment would be needed. Access to water to fight fires, whether due to rail operations or other events, would be essential. Radio repeater stations along the route would be needed to enable emergency personnel to communicate with other responders, train crews, and back-up stations. Emergency access and communications should be included in the description of the alternatives and construction plans. The systems should be tested periodically to assure adequate communications capabilities exist as construction and operation proceed.

The potentially affected counties along the alignment should be given full authority and the capacity to manage YMP-related emergency preparedness, response, and medical services, and to coordinate and train with DOE to provide appropriate first response in the event of an emergency anywhere along the line. The DOE should ensure that such services are provided to the maximum appropriate degree by local agencies and local residents.

Radioactive waste shipments from 80 sites will converge in Nye County where wastes will be handled, stored, emplaced, and (perhaps) recovered for further handling and treatment. The ability to prevent accidents (radiological or non-radiological) and to respond effectively to any that may occur is a key concern of Nye County residents. Current Nye County capabilities for emergency response and related services are insufficient, given the scale and complexity of prospective DOE activity at the Yucca Mountain site, and the potential consequences (direct and indirect) of accidents that could occur.

Rather than relying exclusively on federal agencies and/or their contractors, capability for emergency response and related fire/rescue, police/security, and medical/health services should be provided to the maximum possible extent through Nye County's local government. Emergency response personnel should be trained and exercised in conjunction with DOE personnel to ensure appropriate first response to any emergency, anywhere on the railroad. In this capacity, Nye County would employ fully trained and equipped staff with a personal and professional commitment to Nye County communities. Not only would this approach provide the most effective and reliable services, it would also be efficient and cost effective.

No Action Alternative

The Notice of Intent to expand the scope of the Supplemental Rail Corridor and Rail Alignment EIS states, "In the event that DOE were not to select a rail alignment in the Caliente or Mina corridors, the future course that it would pursue is uncertain. DOE recognizes that other possibilities could be pursued, including identifying and evaluating alignments in other corridors considered in the Yucca Mountain Final EIS." DOE has already considered alternative rail corridors, alternative transportation modes (mostly truck), and no action (no Yucca Mountain

repository) in the Yucca Mountain Final EIS. This EIS tiers from the Yucca Mountain Final EIS. If neither the Mina nor Caliente corridors have reasonable alignments, other transportation options not selected in the Record of Decision from the Yucca Mountain Final EIS would have to be reconsidered and a revised Record of Decision issued. No transportation at all is not an option if there is to be a repository. Therefore, it is important that DOE clearly determine, define, and analyze the No Action Alternative in the Supplemental Rail Corridor and Rail Alignment EIS to the same level of detail as the other alternatives, as required by the National Environmental Policy Act (NEPA). If the analyses conducted for the Yucca Mountain Repository EIS are determined to be adequate, then the information should be incorporated by reference.

Potential Environmental Issues and Resources to be examined

The Supplemental Rail Corridor and Rail Alignment EIS should consider all impacts of the alternatives, including direct and indirect impacts. As stated in 40 CFR 1502.16, the Environmental Consequences section of an EIS "shall include discussions of: (a) Direct effects and their significance (§ 1508.8). (b) Indirect effects and their significance (§ 1508.8). (c) Possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." As defined in 40 CFR 1508.8, "Effects include: (a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." "Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial" (40 CFR 1508.8).

Socioeconomics

The assumptions used in the socioeconomic analyses for the Supplemental Rail Corridor and Rail Alignment EIS should include realistic estimates of increased workforce, industry, and business that would result from the construction and operation of the rail line. The economic benefit to communities along the rail route should be included as an evaluation criterion, commensurate with the consideration of shared use and local benefit. Local economic benefit should also be considered a criterion for the determination of construction methodology and sourcing of materials, equipment and services for the Nevada Rail line.

The potential direct and indirect socioeconomic impacts to the local communities in the vicinity of the rail alignments should be analyzed using current and projected population data and input from the local communities. Mitigation measures should be presented for both adverse and beneficial impacts recognizing that impacts that may be considered beneficial such as economic development in local communities may require actions to minimize the effect that rapid growth may have on those communities.

Having made the commitment to provide rail access for shipment to Yucca Mountain, the federal government should consider the application of its rail investment as a component of an integrated strategy for coordinated community development in central Nevada. Over recent decades, Nevada's two widely separated metropolitan areas (Las Vegas and Reno) have grown dramatically, increasingly dominating the State economically and politically. Meanwhile, the State's historically important mining and ranching economies have dwindled, stranding the expanse of central Nevada whose communities often compete for limited economic opportunity. By offering its rail investment as a component of an integrated strategy for economic development in central Nevada, the federal government could signal an interest beyond merely

transporting highly radioactive wastes. In the process, it could free the DOE to make decisions regarding the location of key YMP support facilities on best business practice principles.

The addition of rail spurs to industrial and business support areas in rural communities and near the Yucca Mountain site and along the rail route should be analyzed in the Supplemental Rail Corridor and Rail Alignment EIS. Although these spurs may not be considered part of the proposed action or alternatives, other entities would likely construct the rail spurs. Therefore, the potential impacts of the spurs to natural and socioeconomic resources should, at a minimum, be analyzed in the Cumulative Impacts section of the Supplemental Rail Corridor and Rail Alignment EIS.

Nye County requests that DOE consider direct rail access as a means to serve those industries that support construction and operation of both the repository and the railroad. It is our hope that any industries sited to serve the repository or the railroad be able to serve other markets as well, and not be constrained by their accessibility.

Traffic and Transportation

As stated previously, Nye County strongly prefers the mostly-rail transport of waste to the repository, and requests that the alternatives analyzed in the Supplemental Rail Corridor and Rail Alignment EIS include a phased construction schedule in which DOE constructs the rail line to Yucca Mountain and upgrades roads in the vicinity of Yucca Mountain prior to the beginning of repository construction.

The impacts of a phased construction schedule should be analyzed in the Supplemental Rail Corridor and Rail Alignment EIS. Should DOE decide to omit the phased rail construction from the alternatives, the traffic impacts to Nye County communities and residents associated with shipments of nuclear waste and construction materials as well as personnel transportation to the repository site should be analyzed. Appropriate mitigation in the form of early rail construction and highway upgrades should be presented in the Supplemental Rail Corridor and Rail Alignment EIS.

To the extent practicable for all alternatives, and definitely for the No Action Alternative, the DOE should quantify and characterize all vehicular traffic that must travel via highway and surface streets, and assess the impact to the capacity, safety, efficiency and material condition of Nevada roads and to local air, acoustic, and visual quality.

Community Equity

In defining and evaluating specific alignments for the Nevada rail line, DOE should consider the equity of impacts and benefits among affected local communities and activities. The rail line should not disproportionately benefit or impact any individual population. To the extent possible, all communities should receive the same considerations for accessibility and economic development. Though all communities do not have the same funding and population, resources in the areas of the communities have frequently gone undeveloped due to the lack of, or expense of, available transportation.

Cost

While Nye County applauds DOE's current willingness to consider the needs and desires of affected communities, it is not apparent that DOE has any logical and consistent method for application of rail corridor selection criteria. The scoping notice discusses costs and a range of environmental factors as being in DOE's decision criteria, but it is far from apparent how such

factors will be considered. The estimated cost for all alternatives should be re-examined and updated for the analyses, including the costs of a through going route utilizing both the Mina and Jean corridors. The DOE should explicitly consider capital and operating costs for the Nevada rail line as a criterion for evaluating alignment alternatives, along with the other factors considered.

Cumulative Impacts

A cumulative impact is defined in 40 CFR 1508.7 as, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." The cumulative impacts analysis presented in the Supplemental Rail Corridor and Rail Alignment EIS should follow the processes recommended in the Council on Environmental Quality's handbook *Considering Cumulative Effects Under the National Environmental Policy Act*.

The addition of rail spurs to industrial and business support areas in rural communities and near the YMP site should be analyzed in the Supplemental Rail Corridor and Rail Alignment EIS, commensurate with consideration of shared use and local benefit. Even if these spurs were not considered to be part of the proposed action or alternatives, other entities would likely construct the rail spurs. Therefore, the potential impacts of the spurs to natural and socioeconomic resources should, at a minimum, be analyzed in the Cumulative Impacts section of the Supplemental Rail Corridor and Rail Alignment EIS. Additionally, the cumulative impacts of the construction, operation, and closure of the repository should be addressed.

Comments on Specific Wording of Scoping Request

Excerpts from the DOE scoping request and discussion are followed by specific comments.

1. "The expanded analysis will consider the potential environmental impacts of a newly proposed Mina rail corridor at the same level of corridor analysis as is contained in the Yucca Mountain Final EIS and will review the rail corridor analyses of that Final EIS, and update, as appropriate. The expanded scope will then proceed to include a detailed analysis of alternative alignments within the Mina corridor at the same level of analysis of the ongoing alignment analysis for the Caliente corridor."

"Accordingly, DOE is announcing its intent to expand the scope of the Rail Alignment EIS to supplement the rail corridor analyses of the Yucca Mountain Final EIS, and analyze the Mina corridor."

"In the Yucca Mountain Final EIS, DOE evaluated the construction and operation of a rail line within five corridors – Caliente, Caliente-Chalk Mountain, Carlin, Jean and Valley Modified. In the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS, DOE will review the environmental information and analyses for these corridors, and update, as appropriate."

"In addition, the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS will consider, in detail, alignments for the construction and operation of a rail line within the Caliente and Mina corridors."

Comment: DOE has obviously already made a decision to study only the Mina and Caliente corridors in detail. There is no reason, therefore, to waste time and resources updating analyses of the other corridors unless and until other corridors previously studied are

brought back into real consideration. However, there is reason for DOE to evaluate a through-going rail line that might include a combination of the Mina and Jean corridors. Under this scenario, an update of the analysis for the Jean corridor would be appropriate to support an evaluation, but only as a component of a through-going rail line.

2. "The Caliente corridor ranges between 512 kilometers (318 miles) and 553 kilometers (344 miles) in length, depending on the alternative alignments considered."

"... the Mina corridor offers potential advantages to the extent it would cross fewer mountain ranges, utilize existing rail bed, and also be a shorter distance. These potential advantages would simplify design and construction of the rail line, and therefore would be less costly to construct. The Mina corridor also would appear to have fewer land use conflicts, and would involve less land disturbance, which tends to result in lower adverse environmental impacts overall."

"The Mina corridor is about 450 kilometers (280 miles) in length; however, construction of a new rail line would range between 386 kilometers (240 miles) and 409 kilometers (254 miles) because the corridor includes the existing Department of Defense rail line from Wabuska to the Hawthorne Army Depot in Hawthorne."

"Potential Environmental Issues and Resources To be Examined"
[This section lists 14 potential issues and resources]

"The list . . . should be used as a starting point from which the public can help DOE define the scope of the EIS."

Comment: DOE lists issues and resources that they are considering in their alignment analysis that are nearly identical to those environmental topics considered in the Yucca Mountain Final EIS. Nye County has no objection to items on the list to be considered, but points out that DOE's discussion in the scoping request focuses mostly on considerations other than the environmental issues and resources listed. These include (1) fewer mountain ranges, (2) existing rail bed, (3) shorter distance, (4) fewer land use conflicts, (5) less land disturbance, and (6) cost. Although there is some overlap in the lists, it is clear that the primary factors influencing the reconsideration of the Mina corridor are cost and cost-related considerations. Perhaps the increased estimated cost of utilizing the Caliente corridor, although not stated by DOE, is as important as a potential lower cost of utilizing the Mina corridor.

Closing statements

In a letter dated July 7, 2004, Nye County submitted scoping comments on the Rail Alignment EIS. The Nye County scoping comment letter is enclosed with this letter and hereby incorporated by reference. All comments provided in the previous letter should be addressed during the preparation of the Supplemental Rail Corridor and Rail Alignment EIS.

Nye County favors a transportation strategy whereby as much waste, equipment, and materials associated with the Yucca Mountain repository are transported via rail, to mitigate public highway congestion, emissions, noise, and safety impacts. Additionally, Nye County strongly supports the Mina route alternative, particularly if it is defined as a through-rail line with interchange points and connections with mainlines to the north and south of Yucca Mountain. A through-going rail line via the Mina route would provide rail access from Churchill, Lyon, Mineral, Esmeralda, Nye, and potentially Inyo counties to the San Francisco Bay, Southern Nevada, and the Los Angeles Metropolitan areas.

In addition to the reasons stated previously in this letter, Nye County supports shared use of the rail line and a through-going rail system as a means of encouraging north-south communications and commerce in Nevada. This will encourage economic development in the communities adjacent to the rail line, and may result in shared roadbed maintenance costs if the traffic is sufficiently high.

Nye County supports a decision being made shortly after the potential impacts are evaluated and presented in the Supplemental Rail Corridor and Rail Alignment EIS. The decision should be documented in a publicly available form. It is not in the best interest of Nye County or the nation to delay the decision-making process. Nye County recognizes that it is time for the federal government to make a decision and move forward.

As the situs jurisdiction for the Yucca Mountain Project, Nye County expects to be a full participant in the development of the Supplemental Rail Corridor and Rail Alignment EIS. In particular, Nye County urges DOE to consider the unique expertise, resources, and data developed by the Nye County Nuclear Waste Repository Project Office.

Please feel free to contact us should you have any questions regarding our comments.

Very truly yours,
Nye County, Nevada



David Swanson
Interim Director

Enclosure:

Nye County Nevada's Comments on the U.S. Department of Energy's Notice of Intent to Prepare an Environmental Impact Statement for Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nevada, July 7, 2004

cc: Nye County Board of County Commissioners
Dr. James Marble, Director NRO
Samson Yao, Director, Nye County Public Works
Cheryl Beeman, Interim Director
Ron Williams, Interim County Manager
Rick Marshall, Assistant County Manager
Jan Cameron, Chairman, Amargosa Town Advisory Board



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July 7, 2004

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Nye County Nevada's Comments on the U.S. Department of Energy's Notice of Intent to Prepare an Environmental Impact Statement for Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nevada

Dear Ms. Sweeney:

Attached please find the Nye County, Nevada's comments on the above referenced Notice of Intent that was published in the Federal Register on April 8, 2004. These comments were approved by the Nye County Board of Commissioners on June 15, 2004.

If you have any questions regarding these comments, please contact me at 775/727-7727 or e-mail lbradshaw@nyecounty.net.

Sincerely,
NYE COUNTY, NEVADA

for Les W. Bradshaw
Department Manager

LB/vt

cc: Nye County Board of Commissioners
Nye County Manager
AULGs

NYE COUNTY COMMENTS ON PROPOSED EIS ON RAIL TRANSPORTATION IN NEVADA

Introduction

Nye County has been involved in the Yucca Mountain radioactive waste disposal project since the late 1980s. The Nuclear Waste Policy Act was passed in 1982 which authorized the U. S. Department of Energy (DOE) to characterize several sites around the United States, including the Yucca Mountain site, for suitability for designation as the nation's deep geologic high-level radioactive waste (HLW) disposal site. By the late 80s it was apparent that the number of potential sites was going to be reduced. Nye County mounted a Washington DC advocacy program and vigorously worked with lawmakers shaping the Nuclear Waste Policy Amendments Act, passed in 1987. Nye County energetically supported the insertion into the bill of provisions for local government oversight programs funding.

This authorization for local government Yucca Mountain oversight programs contained in the 1987 Amendments Act survives to the present time and forms the basis for Nye County's vigorous independent scientific and socioeconomic oversight programs. Under these programs in the mid-to late 1990s Nye County carefully considered the various options and considerations DOE was evaluating regarding transporting HLW to Yucca Mountain and developed a series of policy positions and statements relative thereto. These policies are summarized below.

Nye County Policies on Rail Transportation

The Nye County Board of Commissioners has made a number of policy statements regarding transportation of nuclear waste.

Resolution 98-21, 18 August 1998

This resolution set forth Nye County policies and preferences regarding mode and route of transportation of nuclear waste to Yucca Mountain. Included in the Resolution as Exhibit A are Criteria¹ recommended to the DOE to be used in making mode and route choices. The Commission stated:

- High-level radioactive waste should not be shipped on highways in the County.^{2,3}

¹ *Nye County criteria for prospective campaigns for shipment of LLRW and SNF/HLW for storage and disposal in Nye County*, 6 pp, including 3 pages of maps. LLRW refers to Low-Level Radioactive Waste, SNF refers to Spent Nuclear Fuel, and HLW refers to High-Level Waste.

² Nye County Board of Commissioners Resolution No. 98-21, *Resolution approving and recommending to the U.S. Department of Energy proposed criteria for the transportation of nuclear waste into, through, or within Nye County*, 18 August 1998, p. 2.

³ Nye County Board of Commissioners Resolution No. 99-03, *Resolution declaring Nye County's preferences relating to a route and/or mode for transportation of high-level nuclear waste and spent nuclear fuel, in the event the U.S. Congress mandates development of a high-level nuclear waste repository or interim storage facility within Nye County*, 16 March 1999, p. 2.

- Routing of large-scale, long-term radioactive waste shipping campaigns⁴ for either LLW or HLW on US Hwy 95 between Tonopah and Mercury is unacceptable to Nye County.
 - Hwy 95 is the only public highway linking the Nye, Esmeralda and Mineral county communities of Pahrump, Amargosa Valley, Beatty, Goldfield and Hawthorne. To burden such a public highway with the daily volumes of waste shipments in either of the two shipment campaigns is inequitable to rural Nevada and unacceptable to Nye County.
- Routing of large-scale, long-term campaigns for shipment of either LLW or HLW on NV Hwy 160 through Pahrump is unacceptable to Nye County.
 - Hwy 160 is the 'main street' of Pahrump, one of the State's fastest growing communities. Campaigns for shipment of either LLW or HLW through town could cause unacceptable public safety risks, cumulative radiation effects, and property value effects.

With a limited number of specified exceptions, shipments of HLW in Nye County should be by rail.⁵

 - Rail shipment is safer than legal-weight or heavy-haul shipping on public highways.
 - If rail is safer for cross-country shipment to Nevada, it is also safer for Nye County.
- New rail construction for use by radioactive waste shipments should be routed no closer than five miles from Nye County communities, unless by special exception approved by the Nye County Commission⁶.
 - New rail construction should avoid direct [negative] effects on existing communities.
 - New rail construction should accommodate rail access to potential industrial sites as warranted by economic development potentials.
 - The Nye County Commission should have an opportunity to approve or disapprove of specific features of proposed rail routes.
- If a rail is constructed for shipment of HLW to the Yucca Mountain area of the NTS, it should also be used for any large-scale long-term shipping campaigns of LLW to the NTS.
- Any campaign for large-scale long-term shipment of LLW or HLW in Nye County should be accompanied by a business plan for the campaign as a whole, identifying the various elements for construction, fabrication and operation, and how these elements will impact Nye County. The Nye County Commission should have a full opportunity to review and comment

⁴ Resolution 98-21, Exhibit A, p. 2, referring to DOE's ongoing low-level radioactive waste transportation and disposal program and the planned high-level waste transportation and disposal program at Yucca Mountain. Low-level waste disposal sites are located on the eastern side of the Nevada Test Site. The planned high-level radioactive waste disposal site at Yucca Mountain is on the western side.

⁵ Resolution 98-21, Exhibit A, p. 2.

⁶ Resolution 98-21, Exhibit A, p. 3.

on such a plan before the shipment campaign and at regular intervals during its implementation⁷.

- The business plan should account for all related expenditures, procurement, fabrication and operations by DOE contractors.
- The business plan should account for all present and projected waste inventories at the sites shipping to Yucca Mountain.

Resolution 99-03, 16 March 1999

This resolution reiterated the County's 'adamant'⁸ opposition to shipment of HLW by trucks on public highways within the County⁹. The Commission stated:

- Of all the proposed routes to Yucca Mountain, and considering the County's Route Selection Criteria set forth in Resolution 98-21 seven months earlier, the Commission designated the Caliente-Chalk Mountain route as its preferred route, without expressing a preference for a mode along this route¹⁰.
- If the Chalk Mountain route is not selected, then the Commission's preferred mode is rail along a corridor chosen so as to provide the least chance of radiological exposure to the public¹¹.
- Reiterated its position that transportation of HLW on public highways in Nye County is 'wholly unacceptable' and it opposes such transportation.
- Urged that any new rail built for transportation of HLW be available for private-sector commercial use also.

Resolution 02-22¹², 6 August 2002

In this resolution the Commission stated its intention to:

- Engage the DOE energetically and constructively on Yucca Mountain issues;
- Make recommendations on key issues, including transportation; and
- Use the Community Protection Plan¹³ as a framework for its constructive engagement with DOE and vigorously pursue the objectives regarding transportation articulated in the Plan.

Nye County, Nevada Community Protection Plan¹⁴

In The Community Protection Plan (CPP) the Commission calls for equity in transportation mode/route selection and operations in the Nye County:

- Modes, routes and operational practices in Nye County should be as inherently safe or safer than those used in the national cross-country shipping campaign¹⁵.

⁷ Resolution 98-21, Exhibit A, p. 3.

⁸ Resolution 99-03, p. 2.

⁹ Resolution 99-03, p. 2.

¹⁰ Resolution 99-03, p. 2.

¹¹ Resolution 99-03, p. 3.

¹² Nye County Board of Commissioners Resolution 2002-22, *Resolution stating the intent of Nye County to actively and constructively engage with the U.S. Department of Energy (DOE), the Administration, and Congress as the Yucca Mountain Project proceeds to final design, licensing, and implementation*, 6 August 2002.

¹³ Nye County Board of Commissioners, *Nye County, Nevada Community Protection Plan*, August 2002, 49 pp. The Plan is commonly referred to as the 'CPP'.

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- 'Best-practice' transportation planning should be utilized during the mode/route selection process, not a politicized selection process resulting in less protection for the destination county than in other areas of the country¹⁶. If rail is used in the rest of the country, rail, not trucks, should be utilized in Nye County.
- Nye County should have a special role in determining transportation operational parameters¹⁷.

Further, the Commission reiterated its policy on rail transportation:

- All HLW shipments should be by rail¹⁸;
- Rail route(s) should avoid communities and main highways;
- Routes should be selected in consultation with the Nye County Commission¹⁹;
- No HLW shipments should use the two-lane public highways in Nye County²⁰;

And, the commission renewed its call for integrating two now-separate large-volume, long-term shipping campaigns destined for the Nevada Test Site: LLW and HLW²¹.

DOE should develop a comprehensive plan for possibly consolidating LLW and HLW shipments.

Preliminary Transportation Assessment²²

In this report the Commission set forth the following statements regarding nuclear waste transportation:

- Any newly-constructed transportation infrastructure or infrastructure improvements must improve the efficiency of the current transportation network in the County. Worse still would be that no railroad is provided at all in Nye County, leaving the county with slow-moving truck traffic on an already limited road network²³.
- It is essential that work on a rail should begin as soon as possible to provide for the transportation of construction of materials to the Yucca Mountain site, reduce traffic on an already limited road network during the construction phase and later during operations, and to be ready for acceptance of waste at Yucca Mountain in 2010.²⁴
- Nuclear waste shipments are best transported by rail²⁵. Highway transportation should be minimized²⁶.
- New rail for nuclear waste transportation should be available for third-party, private-sector commercial use²⁷.

¹⁵ CPP, p. 30.

¹⁶ CPP, p. 45.

¹⁷ CPP, p. 31.

¹⁸ CPP, p. 44.

¹⁹ CPP, p. 45.

²⁰ CPP, p. 44.

²¹ CPP, p. 45.

²² Nye County Board of Commissioners, *Preliminary Transportation Assessment Cooperative Agreement Task 1A*, January 2004, 81 pp. This report is commonly referred to as the Task 1A Report.

²³ Task 1A Report, p. 31.

²⁴ Task 1A Report, p. v, 31.

²⁵ Task 1A Report, p. 35.

²⁶ Task 1A Report, p. v.

The alignment of the rail should be such that maximum economic benefit to the County is achieved. Consideration should be given to building spurs to facilitate maximization of economic development opportunities²⁸ and public transportation.

- A centralized Transportation Monitoring Center should be established to monitor the movement and location of nuclear waste shipments.
- A communications network should be established to ensure that emergency responders have the ability to communicate at every point along the rail route²⁹.
- If the use of roads for nuclear waste transportation is imposed, the Nye County road network should be both improved and enhanced to ensure that road safety is not compromised and environmental standards are maintained.
- Adequate medical facilities must be located within the County such that in the event of a radiologic or non-radiologic transportation incident medical care is available. A hospital in Pahrump should be the first-response hospital for such incidents along most of the rail corridor³⁰.

DOE Selection of 'Mostly Rail' Scenario

On 8 April 2004 the DOE issued its Record of Decision³¹ (ROD) expressing its preference for the 'mostly rail' scenario for transporting HLW to Yucca Mountain and selecting the 'Caliente Corridor' in which to examine possible alignments within which to construct a new rail line in Nevada. The Caliente Corridor, a strip of land approximately 1200 ft. wide defined in the Final EIS³², is 318-344 miles in length (depending on alternate segments under consideration).

DOE Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Caliente Rail Corridor³³

Simultaneously, the DOE declared its intentions to prepare an EIS for the alignment, construction, and operation of a new rail line within the Caliente Corridor for shipping HLW from eastern Nevada, near Caliente, NV to Yucca Mountain near Amargosa Valley, NV. The EIS will consider a strip of land 200 ft. wide within the Caliente Corridor within which to locate the actual rail bed. The DOE is interested, *inter alia*, in identifying and evaluating reasonable alternatives that would reduce or avoid known or potential adverse environmental impacts, national security activities, features having aesthetic

²⁷ Task 1A Report, p. 37.

²⁸ Task 1A Report, p. vi.

²⁹ Task 1A Report, p. 27.

³⁰ Task 1A Report, p. 26.

³¹ US Department of Energy, *Record of decision on mode of transportation and Nevada rail corridor for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, NV*, 69 Fed. Reg. 68, pp. 18557-18565, commonly referred to as ROD.

³² US Department of Energy, *Final environmental impact statement for a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada*, February 2002, DOE/EIS-0250-F, commonly referred to as Final EIS.

³³ US Department of Energy, *Notice of intent to prepare an environmental impact statement for the alignment, construction, and operation of a rail line to a geologic repository at Yucca Mountain, Nye County, NV*, 8 April 2004, 69 Fed. Reg. 68, pp. 18565-18569, commonly referred to as NOI.

values, and land-use conflicts, or alternatives that should be eliminated from detailed consideration.³⁴

Nye County Recommendations for Issues to be Considered in the EIS

Initially it is noted that the Commission has stated its preference that any rail alignment be at least five miles from any town in Nye County. The Caliente Corridor, as set forth in the Final EIS, crosses through the Town of Beatty on its northern end. Nye County urges the DOE to examine alternative alignments that would result in the final alignment being at least five miles from the town boundary.

The Commission has stated emphatically that DOE should plan its transportation campaign so as to maximize the use of rail and minimize the use of highways. Nye County urges the DOE to plan its EIS work to address the policy statements and positions of the Nye County Board of Commissioners. Specifically:

1. Highway transportation unacceptable - The Board has stated that highway transportation of HLW in Nye County is unacceptable. In particular, the Board has stated its aversion to HLW being on US Hwy 95 and State Route 160. The DOE should examine in the EIS the impacts of its plan to ship some portion of HLW destined for Yucca Mountain by highway within Nevada and specifically within Nye County. The environmental, socioeconomic, political and financial impacts of such a decision should be thoroughly examined. If, in DOE's 'mostly rail' scenario, which it is presently pursuing, a small percentage of the waste is to be trucked to Yucca Mountain, the EIS should thoroughly examine the impacts of the highway shipments and define mitigation measures.
2. All HLW should come by rail to Yucca Mountain - The Board has stated that all shipments should be by rail. The EIS should thoroughly examine the consequences of a mostly rail scenario. Nye County believes that the consequences of a 'mostly rail' scenario would be most favorable to Nye County residents. i.e., that rail transportation poses the least risk to the health and safety of County residents and presents the least environmental risk. Construction of an intermodal facility in Caliente, NV to facilitate rail-to-truck transfer and highway shipping within Nevada during the early years of operating Yucca Mountain is contrary to the Board's stated policy position supporting 'mostly rail'. As stated below (#3), the rail should be built now to be available for the first HLW shipment to Yucca Mountain.
3. Rail should be available for the construction phase - The Board has stated its preference for early rail construction, i.e., that rail should be available during the construction phase to assist with hauling construction materials and equipment to the site, thus alleviating highway traffic associated with the construction phase. Rail would then be available to haul the first waste coming to Yucca Mountain, thus obviating the need for heavy reliance on highway/truck transportation in the early years of waste receipt until a rail is available, as DOE is now planning. Nye

³⁴ NOI, p. 18566.

- County advocates building the rail now. The EIS work should examine the favorable outcomes for the Project if rail is available early.
4. Rail alignments should be at least five miles from towns – The Board has stated that rail lines hauling HLW to Yucca Mountain should not be closer than five miles from a town. As presently configured, the rail alignment crosses through the Town of Beatty on its north end. The EIS work should examine alternative alignments to keep the rail out of the Town. An alignment should be found that is acceptable to the Board and the Town of Beatty.
 5. New rail construction should accommodate rail access to industrial and economic development sites – The Board has advocated that new rail construction should be made available to economic and industrial development sites near the rail corridor. As warranted by economic development potentials, the DOE and Nye County should jointly plan for alignment shifts and rail 'spurs' to industrial development sites. All of the Nye County towns along the corridor have plans for industrial development sites whose potentials would be greatly enhanced by rail access. The EIS should thoroughly examine alternative alignments and spurs to accommodate development and growth planning by the towns along the corridor.
 6. The new rail should be available for private-sector commercial use – The Board has advocated that the rail should not be a single-use operation (i.e., hauling HLW to Yucca Mountain). The rail should accommodate present and future private sector efforts along and near the corridor. The DOE's EIS work should examine what existing private-sector activities along presently-planned and alternative alignments would be helped by the presence of a rail, and what potential rail users might desire to locate in Nye County if a rail were available in certain areas. DOE should consult with local governments, local businesses, local land and other property interest holders, local, state and regional development authorities, the rail operators in the region and similar entities to develop a plan for encouraging private-sector use of the Yucca Mountain railroad.
 7. Rail alignments should be jointly planned by DOE and Nye County – In considering how new rail construction in Nye County could be planned so as to minimize the risks from shipping HLW to Yucca Mountain and to maximize the economic development potential DOE should take into account town and county development and growth planning policies and documents. DOE, in its EIS work, should consult with the Board, and with town boards, to be completely cognizant of local development and growth management issues and plans, and thoroughly consider the impacts of the local governments' suggestions and alternatives.
 8. DOE should consider combining the LLW and HLW shipping campaigns to the Nevada Test Site – DOE is presently shipping large volumes of LLW to the Test Site, and is expected to continue for years to come. As with HLW, Nye County has advocated that getting the LLW off the highways would be in the best interests of the health and safety of Nye County residents. In its EIS work, DOE should consider the impacts and potential benefits of combining these two large-scale, long-term radioactive waste shipping campaigns into a single integrated rail-based shipping effort.

9. Nye County should be consulted about, and have a say regarding, DOE's plans for implementing its transportation program – The Board has expressed its desire to be fully informed about DOE plans to construct and operate a transportation program for HLW coming to Yucca Mountain. In its Community Protection Plan the Board called for equity in transportation mode and route selection, and operational parameters. DOE should, on its own initiative, seek out the views of the Board regarding operational aspects of the transportation program. In its EIS work, DOE should fully consider local government preferences regarding transportation.
10. DOE's transportation plans and infrastructure should enhance the overall transportation network in the County – The Board has stated its preference that any new transportation work, construction or infrastructure enhancements should improve the efficiency of the current transportation network in the county and not just provide for a single, dead-end route to Yucca Mountain. In its EIS work the DOE should thoroughly examine the impact of its present plans on this stated Nye County preference.
11. Adequate emergency response and public safety capacity must be established in Nye County – The Board has stated its preference that an adequate emergency response and public safety capacity (including adequate communications) must exist in the County before the first shipment arrives. The additional financial burden necessitated by Nye County's preparation for HLW shipments should be borne by DOE. The County has stated its willingness to work with the DOE in planning, implementing and operating an adequate infrastructure. The DOE's EIS work should examine local preferences for placement and operation of the necessary infrastructure and determine a long term funding mechanism for ensuring continuity over the decades.
12. Adequate medical facilities must be established in Nye County – The Board has expressed its desire that adequate medical facilities exist in the County prior to arrival of the first shipment. The County has expressed its willingness to work with DOE to marshal private-sector and governmental resources to ensure that adequate medical facilities exist in the event of a radiologic transportation incident. The DOE's EIS work should thoroughly examine the ramifications of a radiologic incident and how that incident would be handled in regard to medical facilities.
13. Adverse impacts to existing property interest holders along or near the rail alignment must be minimized – DOE should be very careful to identify property interest holders along and near the proposed rail alignments that might be adversely impacted by the land withdrawal or eventual rail construction. Persons or entities that own valid unpatented mining claims, fee simple title holders, special use permittees, rights-of-way holders, grazing rights holders, and the like should be able to continue their lawful pursuits while DOE continues with its alignment selection process. The EIS should thoroughly examine and define the impacts on these interest holders and suggest alternatives that would be favorable to the maximization of continued use and development.
14. Public access across and along potential alignments should continue – Public access along and across potential alignments should be continued during the

period that DOE is conducting its evaluation and later during operations. The DOE's EIS work should carefully examine how access should be managed, if at all, during the evaluation and later during the operational phases. For the public to lose the ability to cross the alignment to pursue lawful activities would be a great detriment to the local economy. Activities such as ranching, minerals exploration and extraction, hunting, scientific investigations, fishing, trapping and motorized recreation are examples of activities that should not be interrupted by any phase of DOE's transportation programs. The rail should not be fenced.

15. Ability to continue development of mining claims - Present mining claim holders should be allowed to continue with the development of claims while DOE finalizes its plans for definition of the alignment. It is not fair that claimants' interests should be put on indefinite suspension while DOE makes up its mind. DOE's EIS work should thoroughly examine the impacts of its transportation programs on minerals exploration and development along and adjacent to the alignment and devise mitigation measures as appropriate after consultations with claimants.
16. Ability to continue present ranching operations – Present ranching operations along and near the proposed alignment should be allowed to continue with no disruptions during definition, construction and operation of a rail line to Yucca Mountain. Ranchers should not be expected to bear any detriment while DOE defines the alignment, constructs the rail, and operates the rail line. The DOE's EIS work should carefully examine the impacts on ranching operations and define mitigation measures to make the ranchers whole. DOE should consult with individual operators along the alignment to devise individualized mitigation packages appropriate for each operation. No rancher should suffer financially as a result of the alignment crossing his/her operation.
17. A Railroad Plan of Operations should be produced - DOE should disclose early on a Plan of Operations for the railroad. The plan should divulge operational details, required infrastructure, location of infrastructure, numbers of employees, land requirements, communications infrastructure and operational plans, and the like. The DOE's EIS work should use the Plan of Operations to analyze the impacts of the railroad on the local economy, communities and quality of life and devise mitigation measures to offset any negative impacts and to maximize positive economic impacts.
18. Use of local contractors and suppliers should be maximized – DOE should make every effort to use local businesses as it plans, constructs and operates the rail line. The DOE's EIS work should identify what goods and services are available locally and use these in its Plan of Operations (see #17, above) to the maximum extent possible. There are significant resources available locally that could help DOE plan, build and operate a railroad efficiently and at lower overall cost. The DOE, through its EIS work, should seek out these resources. Nye County expects that DOE decisions on using local building materials, contractors and suppliers, and decisions on location of rail-related infrastructure will be based on 'best business practices' and will not be driven by politics.
19. Use of local building materials should be maximized – The DOE's EIS work should identify what building materials, such as sand, gravel, ballast, cement,

clays, etc., are available locally and make every effort to develop those local supplies. DOE should consult with local governments, local land and other property interest holders, natural resource management agencies (local, state, and national), local and regional development authorities and the like to become aware of local resources that could be used in rail construction and operations.

20. Impacts on Nye County Public Roads - In 1999 The Board of Commissioners passed Resolution 99-01³⁵ reaffirming the County's long-standing position on roads on the public lands. In that Resolution Nye County reaffirmed that most of the roads crossing the public lands (excepting State highways, certain roads established after Oct. 21, 1976, and certain roads on private land) are Nye County Public Roads. With the Resolution Nye County promulgated a map of the county showing many (but not all) of the roads included in the Resolution. The proposed rail corridor crosses many Nye County Public Roads. In its EIS work the DOE should thoroughly examine the impacts its work along the Corridor will have on all Nye County Public Roads and identify appropriate mitigation measures.

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³⁵ Nye County Board of Commissioners Resolution 99-01, *Resolution declaring Nye County's policy regarding public roads*, 19 January 1999, 7 pp. plus attachments.