



State of New Mexico

Susana Martinez
Governor

May 2, 2012

The Honorable Jeff Bingaman
U.S. Senator
703 Hart Senate Office Building
Washington, DC 20510

Re: Blue Ribbon Commission on America's Nuclear Future in FY 2013: New Mexico's Strategy to Build a Consent-Based Approach to Handle Nuclear Waste.

Dear Senator Bingaman,

The Blue Ribbon Commission (BRC) on America's Nuclear Future submitted its final report to the Secretary of Energy on January 26, 2012. In it, the BRC recommends immediate efforts to commence development of at least one consolidated interim storage facility and at least one geologic disposal facility, as well as planning efforts to prepare for the eventual large-scale transport of spent nuclear fuel (SNF) and high-level waste (HLW) from current storage sites to those facilities. The following represents the response by the State of New Mexico to the BRC Report recommendations that we respectively request you consider as you respond to the BRC Report and develop enabling legislation for the Department of Energy (DOE) offices of Nuclear Energy (NE) and Environmental Management (EM). On April 3, 2012, Mr. David Martin, Secretary of the New Mexico Environment Department (NMED), presented details of New Mexico's views on the BRC Report at the National Nuclear Fuel Cycle Summit held in Carlsbad, NM, and a copy of his presentation is attached.

Consent-Based Approach

Storage and disposal of HLW is a national problem, and we agree with the BRC's conclusion that a new national nuclear waste policy is necessary. We strongly support the BRC's statement in its Executive Summary that the most important element of this effort is "a new consent based approach to siting future nuclear waste facilities." Decisions on locations for disposal must have the support of affected communities and

their states. This requirement is underscored by the experiences at Yucca Mountain and the Waste Isolation Pilot Plant (WIPP) showing that a top-down, federal-only approach does not work. Consent must include local, state, and congressional support.

The most important element of any legislation proposed will be to demonstrate the intent of Congress to clearly embrace a consent-based approach. This can be accomplished by providing states the legal authority and financial capacity to become equal partners in the development of a new nuclear waste policy.

Because states do not have the resources or the expertise to fully evaluate the state-of-the-art science related to nuclear waste, independent third-party experts are needed to provide an assessment of the existing valid scientific investigations and technical data, offer advice on safety and science-based environmental risk assessments, make recommendations for further research, both for interim storage and geologic disposal, and provide the scientific analyses and basis to allow the states to make sound technical decisions. Members of the public are often skeptical of evaluations performed by entities associated with the government, so the State favors the approach where evaluation of valid research and data is also performed by an independent third party, such as renowned scientists, to confirm findings and add legitimacy and credibility to the decision process. To maintain broad-based confidence, activities will require transparent operations and outreach to the public for input into matters of concern.

- DOE should provide funding to a national organization of states, appropriate individual state(s), and third-party technical experts to: 1) evaluate the existing valid scientific data related to the storage and disposal of defense and commercial HLW and SNF, 2) assess the safety and environmental aspects of siting an interim storage or permanent high-level waste repository, 3) analyze the impacts associated with transporting SNF and HLW, 4) assess how results of technical investigations should be made transparent and responsive to concerns expressed by the states, communities, and the public, and (5) consider the alternative forms and content of federal/local/state agreements to govern the planning, construction and operation of nuclear waste facilities.

Federal/State Collaboration on Regulatory Issues

The BRC Report recommends that the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) develop a generic disposal standard and supporting regulatory requirements that apply to all sites, are based on what is scientifically achievable, and facilitate a staged and adaptive approach to repository development. The Report encouraged cooperation and consultation between federal and state agencies and, where appropriate, delegation of authority to states over aspects of regulation, permitting, and operations. In his presentation at the Carlsbad Summit, Secretary Martin proposed a path forward in this regard.

- DOE should fund and implement a national effort to establish collaboration between states, DOE, NRC, and EPA designed to develop:
 - Environmental standards and a generic regulatory framework for storage and disposal of HLW and to define a procedure for federal/state collaboration and consultation.
 - Scientifically-based and risk-based health and environmental standards and model state laws and regulations to address the storage and disposal of defense and commercial high-level waste.

Generic Salt Studies

The State supports thermal studies in the salt beds at the WIPP site to assist in a national strategy for management of high-level wastes and spent fuel. These generic studies will be applicable to the salt formations that exist in many parts of the country. They can build on, and collaborate with, international investigations already in progress. A concern of many states is that, unless immediate steps are taken to identify at least one geologic repository, interim storage of SNL and HLW will become de facto permanent repositories.

- FY13 funds should be appropriated to DOE EM for Salt Repository Investigations that include the initiation of heater tests in WIPP.

Although laboratory testing and modeling are important parts of salt research, they alone have never been nor will ever be adequate to address HLW disposal concerns. In-situ salt heater tests are necessary to verify and validate the laboratory and modeling results as well as demonstrate the safety aspects of placement of heat-generating wastes in order to provide confidence to stake holders, regulators, and policy makers. The number one concern for the State is safety which we believe can only be demonstrated by actually performing heater tests in salt.

Thank you for all you continue to do as one of our state's advocates in Washington.

Sincerely,



Susana Martinez
Governor of New Mexico

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Enclosures