

# Beyond Nuclear

working for a world free from nuclear power and nuclear weapons



**A critical step on the road to a repository:** free, full, prior, *informed consent* by tribal,<sup>1</sup> state, and local governments, and citizens who are asked to consider the role of serving as a host community. As noted by the President's Blue Ribbon Commission, the lack of informed consent was an obstacle to licensing of the proposed Yucca Mountain repository. And the lack of consent stemmed in large part from the lack of objective science-based siting criteria: standards for the Yucca Mountain site were set after the site was chosen, and were tailored to the site's characteristics rather than protection of public health and the environment.<sup>2</sup>

## **Essential Elements of Informed Consent: Federal Transparency, State/Tribal Authority, Support from Nuclear Waste Fund**

- **Federal Transparency:** Tribal, state, and local governments, and citizens need complete, objective, and science-based information to make informed decisions about hosting a repository. *Thus, repository standards must be based on sound scientific and equitable principles, and established before the repository siting and licensing process begins.*
- **State/Tribal Authority:** The concept of informed consent carries with it the assumption that a host community has the power to say “no” to a proposed facility or demand greater protection than afforded by federal standards. *Thus, Congress should amend the Atomic Energy Act to give tribal and state governments authority to regulate radioactive materials, beyond minimum federal standards established by federal environmental laws. This authority could be modeled on the authority delegated to state and tribal governments under the Clean Air Act, Clean Water Act, and the Resource Conservation and Recovery Act, and should include full enforcement powers and access to resources to enable enforcement.*
- **Support from Nuclear Waste Fund:** Effective participation in repository evaluations and licensing proceedings requires legal and technical expertise that

<sup>1</sup>Consistent with principles of environmental justice, tribal lands should not be considered as sites for nuclear waste repositories. Nevertheless, to the extent such lands may be considered, application of informed-consent principles to participation by tribal host communities is imperative.

## **Consent-Based Repository Siting: A Necessary and Viable Path to Permanent Disposal of Nuclear Waste**

should not come from the limited budgets of tribal, state, and local governments, and citizens. *Thus, the NWPFA provides for use of the Nuclear Waste Fund to support state, tribal, and local government participation in repository evaluations and licensing proceedings. This NWPFA program must be continued, and should be expanded to support participation by citizens and environmental organizations (as is done in other countries, including Canada).*

### **A Critical Contributor to the Derailment of Yucca Mountain: A Lack of Informed Consent<sup>3</sup>**

*Nevada U.S. Senators Catherine Cortez Masto and Jacky Rosen: “The Yucca Mountain site is both a geologically and geographically unfit site to house the nation’s nuclear waste, and its selection as the nation’s sole high-level nuclear waste repository was the result of a flawed decision-making process that ignored science and the will of the state. Nevada will not agree to house the nation’s spent nuclear fuel and high-level nuclear waste. **If the last three decades have taught us anything, it is that a nuclear waste facility cannot and should not be forced upon an unwilling host state . . . Consent is the only viable path forward to guarantee the responsible stewardship of taxpayer dollars and our nation’s nuclear waste.”***

*Letter to Senate Subcommittee on Energy and Water Development, November 6, 2020, <https://www.cortezmastosenate.gov/imo/media/doc/11.6.2020%20Letter%20to%20Alexander%20and%20Feinstein%20Yucca%20Mtn.%20Appropriations%20FINAL.pdf>.*

<sup>2</sup>Dr. Arjun Makhijani, Managing Spent Fuel and High-Level Waste: Interim and Long-Term Considerations (May 25, 2010), <https://ieer.org/wp/wp-content/uploads/2010/05/ManagingSpentFuel-BRC-2010-slides.pdf>.

<sup>3</sup>Bold typeface indicates emphasis added to original.

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*Delaware U.S. Senator Tom Carper: “I believe that one of the biggest mistakes Congress made was not obtaining the consent from all parties on the location of a disposal [site]. Somehow we’ve learned how to get communities to compete for the siting of prisons in this country, but we haven’t learned how to get communities to compete for our nuclear waste disposal sites. As a recovering governor, I know that any actions we take on nuclear waste must include a consent-based approach that fosters a meaningful partnership between federal, local AND state leaders. We must also have open communication with the people who live and work in those communities.”*

Statement to Senate Environment and Public Works Committee, May 1, 2019, <https://www.carper.senate.gov/public/index.cfm/2019/5/epw-hearing-statement>.

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*Former U.S. Department of Energy Deputy Under Secretary for Management and Performance David Klaus: “The Nuclear Waste Policy Act was designed to hold the use of consolidated interim storage facilities “hostage” to the issuance of a license for a long-term repository—as a means of assuring the states and localities where “interim” facilities are built that they would not become permanent. The Act did not anticipate that private companies would develop interim storage sites and have them licensed by the Nuclear Regulatory Commission, thereby freeing the hostage on terms and conditions not subject to review or approval by state or local government.”*

*Why Biden should designate a nuclear waste negotiator, The Bulletin of the Atomic Scientists, January 12, 2021, <https://thebulletin.org/2021/01/why-biden-should-designate-a-nuclear-waste-negotiator/>.*

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**Federal and State Officials Are Refusing to Take the Dangerous Dead-End Detour to Consolidated “Interim” Nuclear Waste Storage**

(Bold typeface indicates emphasis added to original.)

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*New Mexico U.S. Senator Martin Heinrich: “The concern, really, is that the department does not have a plan to ensure that any of these interim storage sites are actually going to be interim. I would have that concern irrespective of the geography. In particular, obviously, if it’s in New Mexico we own it. So what I’m hoping to see is an actual plan ...”*

Exchange Monitor, Weapons Complex / Morning Briefing, August 4, 2021

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*New Mexico Cabinet Secretary of the Environment James Kenney: “[I]ndefinite storage of commercial spent nuclear fuel joins the ranks of uranium mining and milling, legacy contamination at national laboratories, and disposal of defense waste at the Waste Isolation Pilot Plant (WIPP), all of which have long presented risks to public health and the environment in the State of New Mexico that are disproportionately greater than such risks to the general population of the United States . . . [Indefinite storage] threatens the high percentage of minority and low income populations in the State of New Mexico that have already suffered disproportionately high adverse human health and environmental effects from nuclear energy and weapons programs of the United States.”*

Comments on Holtec International Draft Environmental Impact Statement, September 22, 2020, <https://www.env.nm.gov/wp-content/uploads/2020/05/2020-09-21-NMED-Holtec-draft-EIS-comments-to-NRC-Final.pdf>.

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