

Testimony of  
Thomas A. Schatz  
President, Citizens Against Government Waste  
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Recommendations on the Blue Ribbon Commission on America's Nuclear Future  
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My name is Thomas A. Schatz and I am president of Citizens Against Government Waste (CAGW). CAGW was founded in 1984 by the late industrialist J. Peter Grace and nationally-syndicated columnist Jack Anderson to build support for implementation of President Ronald Reagan's Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government. CAGW has more than one million members and supporters nationwide, and, over the past 28 years, has helped save taxpayers \$1.2 trillion through the implementation of Grace Commission findings and other recommendations.

CAGW's mission reflects the interests of taxpayers. All citizens benefit when government programs work cost-effectively, when deficit spending is reduced and government is held accountable. Not only will representative government benefit from the pursuit of these interests, but the country will prosper economically because government mismanagement, fiscal profligacy, and chronic deficits soak up private savings and crowd out the private investment necessary for long-term growth.

Since the 1970s, the U.S. has been searching for a long-term site to dispose of its nuclear waste. As far back as 1957, and in as many as 50 separate official reports and scholarly essays, including several by the National Academy of Sciences, disposing of nuclear waste in deep geologic repositories has been recognized as the best solution. This method is also the state-of-the-art method of nuclear waste disposal internationally. It is the preferred method of disposal for long-lived radioactive waste in countries such as Australia, Belgium, France, the Netherlands, Russia, Spain, Sweden, and Switzerland.

In 1983, President Ronald Reagan signed the Nuclear Waste Policy Act of 1982 (NWPA), which acknowledged that disposing of spent nuclear fuel was a national priority. The bill authorized the Department of Energy (DOE) to begin searching for an appropriate deep geologic repository. Nine sites were reviewed and in 1987, Congress amended the NWPA and directed DOE to focus only on Yucca Mountain, Nevada, a site which is 100 miles north of Las Vegas on the Nevada Test Site, where more than 800 nuclear weapons tests were conducted during the Cold War. Yucca Mountain is virtually surrounded by Nellis Air Force Base. It was chosen for its extreme isolation, arid conditions, and the prospect of being able to sequester the spent fuel beneath 1,000 feet of solid rock, yet 1,000 feet above the water table.

The 1987 amendment also directed the DOE to begin entering into contracts with commercial nuclear reactor operators to take custody of their spent nuclear fuel for disposal at the repository beginning in January 1998. Former Energy Secretary Spencer Abraham certified the suitability of Yucca Mountain in February, 2002 and that recommendation was forwarded to Congress for a final decision. Congress approved the site in July 2002.

As directed in the NWPA, nuclear reactor operators and their millions of customers have been paying fees into the Nuclear Waste Fund (NWF) since 1983, in exchange for the government's guarantee that the revenue collected would be used to create a safe, long-term repository for the spent nuclear fuel. Through assessments in their utility bills, ratepayers have contributed between \$750 and \$780 million each year since 1983 into the NWF. DOE has spent \$15 billion to evaluate various possible sites, to develop Yucca Mountain, and to submit the licensing application.

Yet, today, the national inventory of spent nuclear fuel stands at 65,000 metric tons and not one spent fuel rod has been moved to the Yucca Mountain facility. The spent fuel languishes at 75 sites in 33 states, stored either in cooling pools or, when the pools have reached capacity, in expensive dry cask storage facilities adjacent to operational reactor sites.

As a presidential candidate, Barack Obama pledged to voters (and Nevada voters in particular) that, if elected, he would do all that he could to make sure the Yucca Mountain project never saw the light of day. In a May 20, 2007 letter to the editor of the *Nevada Review Journal*, candidate Obama stated, "I believe all spending on Yucca Mountain should be redirected to other uses... All Nevadans should know that as president, I will bring to this issue not just independent judgment and careful deliberation, but a personal appreciation that comes from my own experience of living in the back yard of hazardous nuclear materials."

It became official on January 29, 2010, when the White House's top energy adviser, Carol Browner declared that "The debate over Yucca Mountain is over as the president has made clear... We're done with Yucca. We need to be looking at other alternatives." The DOE under the Obama administration moved to terminate the Office of Civilian Radioactive Waste Management and the Yucca Mountain repository project. The president's FY 2011 budget contained no further funding for the project. DOE Secretary Stephen Chu, in his statement explaining the decision to terminate the facility, did not mention safety or environmental issues as the rationale for shuttering the operations. Instead, the administration simply stated that the decision was predicated upon "a proposed change of department policy for managing spent nuclear fuel." That is quintessential Washington double talk, meaning "log rolling and politics as usual."

The DOE's announcement to terminate Yucca came with a prototypical kick-the-can-down the-road tactic of calling for more taxpayer-funded studies and the establishment of the Blue Ribbon Commission (BRC) on America's Nuclear Future. Although the BRC was led by two distinguished veterans of public policy and public service, it was predisposed to spin its wheels, since it was prohibited by the administration from reviewing the administration's decision on Yucca or to revisit the suitability of the site.

Consequently, the BRC spent another more time and additional scarce federal resources to reiterate the obvious; that national nuclear waste storage and disposal policies have deadlocked over the pressures of political favoritism rather than following science and technology, even as demand for electricity rises, even as stockpiles of spent fuel become more mountainous, even as lawsuits and tens of billions of dollars worth of judgments have sapped the U.S. Treasury, and even as utility ratepayers are still being forced to pay more than \$750 million in annual payments into a fund that has a \$26.7 billion balance and earns annual interest in excess of \$1 billion.

Ironically, the commission itself cost taxpayers \$5 million, and in the two years it took to deliver its litany of tepid recommendations, the judgment fund paid out another \$2 billion in liability payments.

The panel's final report, which came out on January 26, 2012, made eight recommendations, but offered little that is new. The report admits that it was "not chartered as a siting commission. Accordingly, we have not evaluated Yucca Mountain or any other location as a potential site for the storage or disposal of spent nuclear fuel and high-level waste, nor have we taken a position on the Administration's request to withdraw the license application."

One of the commission's top recommendations is that, next time around, lawmakers and DOE officials should adopt a "new consent-based approach for siting nuclear waste facilities."

While it is good public policy and completely appropriate to ensure that DOE officials and lawmakers fully engage with state and local officials, it is worth remembering that, years ago, Yucca Mountain had support in the state of Nevada. In fact, in 1975, the Nevada state legislature strongly urged federal officials to choose the Nevada Test Site for the storage and processing of nuclear material. The Yucca Mountain project owes its ultimate demise to years of delays, manipulation, and obstructionism by Senate Majority Leader Harry Reid and the exigencies of election-year politics. Nuclear waste policy decisions are complex and should be driven, first and foremost, by scientific and technological rigor.

The BRC report offers the usual platitudes about the urgency of the nuclear waste disposal issue, supports more public funding for research and development, continued preparation for large-scale transportation challenges, and, as always, more taxpayer money for research and development.

Congress bears an enormous amount of responsibility for the Yucca Mountain program's current status. While members of Congress meddled, apparently more interested in using the NWF fees to spend on other projects or to make the deficit numbers look better, the spent nuclear fuel piled up at operational reactors across the country, forcing utility companies to construct temporary storage facilities to house the material until the Yucca facility was ready. The BRC commissioners implicitly acknowledge that Congress and the administration can no longer be counted upon to handle the issue without rank politicization and mismanagement, and call for the establishment of a federally-chartered corporation to run the nuclear waste effort.

The BRC states that it believes "a congressionally chartered federal corporation offers the best model, but whatever the specific form of the new organization it must possess the attributes, independence, and resources to effectively carry out its mission. The central task of the new organization would be to site, license, build, and operate facilities for the safe consolidated storage and final disposal of spent fuel and high-level nuclear waste at a reasonable cost and within a reasonable timeframe."

Termination of the Yucca project poses serious challenges to the funding of any future disposal site. According to the Government Accountability Office's (GAO) April 2011 report, "If DOE were to pursue an alternate repository – assuming an alternate repository would have costs similar to the Yucca Mountain repository – it is not certain that the fund will have built up a sufficient surplus to site, license, construct, and operate it. DOE makes an annual assessment of

the adequacy of the nuclear waste fund to ensure that full costs of a disposal program will be fully recovered.

“In November 2010, the Secretary determined that the fund was adequate, even though an attachment stated that DOE had no alternative to the Yucca Mountain repository, and that the Yucca Mountain repository provided the closest ‘proxy’ – in terms of cost – to an alternative. If the nuclear waste fund does not have a sufficient surplus for an alternate repository, additional funding would have to be found... Moreover, since the taxpayers have paid a proportion of the costs to establish a repository for DOE-managed high-level waste and spent nuclear fuel, the taxpayers may also end up paying more for an alternate repository. In addition, the proposed termination has prompted calls from industry for DOE to suspend collection of payments into the Nuclear Waste Fund. Industry has argued that their customers should not pay for a repository effort that has been shut down, with no work being done on an alternative. Suspending payments into the Nuclear Waste Fund could reduce the funds set aside for a repository.”

Although CAGW agrees with the BRC that the funds in the NWF should no longer be made to go through the appropriations process, where the money has subjected to years of inappropriate diversion by Congress, the BRC recommendations do not have the force of law. The NWPA is still the law; Yucca Mountain is still the only repository available; and any changes to the siting procedures and funding mechanisms would require congressional action.

Questions remain about whether there should be an immediate suspension of payments by utilities and ratepayers into the NWF until such time as the courts decide whether or not Yucca will be resurrected or permanently moribund and whether Congress should prohibit the use of the Judgment Fund to pay any liabilities of the DOE resulting from litigation. Taxpayers are now left with deep and abiding questions of whether the administration has the legal authority to terminate Yucca and understandable suspicions about whether, given the failures of the current administration to abide by current law and Congress’s predilection for injecting politics into every nook and cranny of public policymaking, the next go-around won’t be just another exorbitantly expensive sequel to the first one.

The stockpile of spent nuclear fuel increases by about 2,000 metric tons each year, and according to the GAO, the volume of commercial spent nuclear fuel is projected to more than double by the year 2055. The NWF fund balance stands at \$26.7 billion as of September 30, 2011 and ratepayers continue to be forced to pay into the fund. But those expenditures only scratch the surface of the total costs associated with the development and subsequent rejection of Yucca Mountain, not to mention the cost of starting all over.

Originally, utility companies and their consumers were promised that the Yucca Mountain site would begin accepting spent fuel in 1998. Almost from the start, Congress began siphoning and interfering with the project’s funding. For example, Edward Sproat, then-Director of the Office of Civilian Radioactive Waste Management, testified on October 4, 2007 before the House Budget Committee that “The projected budget authority needed through repository construction is well above current and historic levels, and the current funding levels are insufficient to build the repository and the transportation system. If the Program is funded at its current levels without fixing the current funding mechanism, the shortfall in the funding needed would be between \$1.0 billion and \$1.5 billion per year. This funding shortfall will not allow the

placement of the design and construction contracts for the repository or the transportation systems. In short, DOE will not be able to execute its responsibilities under the Nuclear Waste Policy Act and will not be able to set a date for meeting its contractual obligations. Government liability will continue to grow with no apparent limit... So basically, unless we fix this issue and are able to achieve these cash flows to build this repository, the liability of the Federal Government and the U.S. taxpayers will continue to grow unabated.”

Director Sproat warned the Budget Committee that, even at that point, had the Yucca Mountain facility begun accepting spent fuel in 2017, nineteen years beyond its statutory deadline, the DOE’s liabilities for the delays would have lasted far beyond the date on which the facility became operational.

Director Sproat also pointed out that Congress had been starving the Yucca Mountain project of necessary funds, which triggered a cascade of delays and deferrals that invited costly lawsuits from utility companies. He pointed out that the budget rules required NWF revenue fees to be classified as mandatory receipts, while the program funding would be classified as discretionary. Sproat noted that “the fees are not dedicated to offset the appropriations on the program, and therefore, both the fees and the interest generated on the fund are used as offsets against the total federal deficit. Essentially, we have \$20.5 billion in the Nuclear Waste Fund, but we are not able to use it for its intended purpose to actually build the repository.”

The first lawsuit was filed in 1998. The U.S. Court of Federal Claims found that the DOE had failed to begin accepting spent nuclear fuel from nuclear power plants when Yucca Mountain was supposed to be operational. That suit was the first of 74 separate lawsuits to date against the agency for its abject failure to comply with the provisions of the NWPA. In each of those cases, the courts have ordered the DOE to compensate the utilities for failure to begin moving the spent fuel to Yucca, as mandated by law, and to reimburse them for the cost of storing the fuel at the reactor sites. Those fees come straight out the taxpayers’ pockets.

If that were not bad enough, GAO estimates that the Department of Justice spent \$188 million by the end of 2011 just to defend the DOE in court, unsuccessfully, against the suits. That excludes the cost of DOJ and DOE staff. The DOJ anticipates as many as six more lawsuits could move forward in 2012.

According to a December 22, 2009 Congressional Research Service (CRS) report, “...contract damages will continue to build as there seems to be no prospect for a completed facility capable of storing [spent nuclear fuel] anywhere on the horizon.”

Although Yucca Mountain has been terminated, the fiscal fallout of this convoluted and costly tale of governmental and congressional ineptitude will hang over taxpayers and eat away at the federal budget for decades. The DOE’s latest estimates for taxpayer liability for the agency’s failure to comply with the NWPA are stunning.

To date, the Treasury Department’s Judgment fund has paid \$1.7 billion to settle cases for those utilities which have incurred damages as a result of the DOE’s delays. The DOE’s FY 2011 Audit Report stated that “Additional payments under these settled and adjudicated cases may be made if the utilities incur additional costs before the Department permanently disposes of the

spent nuclear fuel. The Department believes its assumptions and methodology provide a reasonable basis for the contingent liability estimate.”

Utility industry estimates for the ultimate liability costs to taxpayers, including what has already been paid out, are in the range of \$50 billion. DOE officials dismiss those predictions as highly inflated and peg the losses at closer to \$20.7 billion. However, the department’s estimates are predicated upon the promise that Yucca Mountain would have begun accepting spent fuel for disposal in 2020. Now that the administration has shuttered Yucca and terminated the program, the 2020 assumption is null and void and it is clear that the taxpayer liability will be exponentially higher than the DOE’s estimates; in fact, it is certainly arguable now that even the industry estimates of \$50 billion might be too low.

In a June 10, 2011 report accompanying the FY 2012 Energy and Water Appropriations bill, the House Appropriations Committee castigated the administration’s plans to shut down Yucca, noting that “The Department of Energy now estimates that taxpayers will have to pay nearly \$16.2 billion in damages by 2020, and an additional \$500 million for each year after 2020 that the Department does not fulfill its legal obligations.” According to a March 16, 2011 article in the *Orange County Register*, “Payouts to nuclear plant operators – to essentially cover their costs for storing the spent nuclear fuel that the government was supposed to handle – could total as much as \$50 billion.”

Adding to the tens of billions of dollars in liability costs for nuclear power facilities and their ratepayers associated with the abandonment of the Yucca Mountain, the ill-advised decision to close the facility has also left the U.S. Navy with a serious conundrum.

The DOE has an agreement with five states, including Idaho, and the Navy has a separate agreement with Idaho, regarding the storage and disposal of nuclear waste at DOE sites. The DOE promised to remove the waste from Colorado and the DOE and the Navy promised to remove the waste from Idaho by January 1, 2035. The two states have penalties, respectively, or \$15,000 per day and \$60,000 per day for each day the waste remains in the state after that date.

According to a May 5, 2011 GAO report, the penalties for failure to comply with the contractual obligations in Idaho and Colorado could amount to about \$27.4 million annually. The Navy has no other location for its waste disposal, and the GAO quotes Navy officials as being most concerned about the fact that the failure to open Yucca Mountain in a timely manner could “interfere with the Navy’s ability to refuel its nuclear warships...it would likely extend on-site storage and increase storage costs, which could be substantial.”

There are additional costs for extended storage at the sites in those states. A DOE Office of Environmental Management analysis estimates that it would need another \$918 million in appropriations to extend storage, again, assuming a 20-year delay in a repository’s opening. Since there is now no known alternative to Yucca Mountain and the administration intends to begin this process from scratch, the total additional storage costs stemming from terminating the repository will certainly be higher than that.

Not only is the spent nuclear fuel piling up around the country, so are the massive costs associated with this blatantly politicized decision. What confidence can the states have that DOE

will make good on its commitment to them when the administration and the Congress have so casually disregarded their other legal obligations?

The saga of Yucca Mountain has been one of gross disregard for the demands of nuclear-generated electricity, which constitutes 20 percent of the electricity generated in the country; for the ratepayers, who have contributed and continue to contribute billions to what was supposed to be a lockbox to build a spent nuclear fuel repository; and to the taxpayers, who will pay for the debacle far into the future. Congress and the DOE have squandered not only the money in the trust fund, but also the trust of the ratepayers and the taxpayers.

Notwithstanding the politics of the issue, the United States must, at some point, construct a deep, geologic disposal repository and the nation cannot afford to begin at square one. The GAO has signaled that the death of the Yucca Mountain project could delay the opening of a new waste disposal site by more than 20 years. The Waste Isolation Pilot Plant (WIPP) just outside Carlsbad, New Mexico, is the only operating deep geological waste repository in the United States, and it is not suitable as a long-term solution for all nuclear waste. That site was chosen by the U.S. Atomic Energy Commission, now the Department of Energy (DOE), in 1974. In 1979, DOE estimated that the total cost for the WIPP, both for construction and to operate the facility for 25 to 25 years, would be \$1.1 billion. By the time the facility opened and took its first shipment in 1999, construction alone had cost approximately \$3 billion, three times the original estimate.

Furthermore, when it comes to Yucca Mountain and nuclear power, the Obama administration has transmitted a series of decidedly mixed messages. A few weeks after the announcement to ax funds for Yucca and pull the plug on its licensing application, President Obama announced his support for \$54 billion in federal loan guarantees to build new nuclear power plants. The President, who has been described as a “resolute advocate” for nuclear power, claims he has never wavered in his support for nuclear power, and that he supports accelerating the nuclear licensing process. This policy is patently incoherent and irresponsible, given the administration’s do-nothing attitude toward managing the spent fuel at the back end.

In addition, there appears to be no discernible plan in sight for the disposition of spent nuclear fuel currently located at 121 sites in 39 states around the country. This includes the Savannah River nuclear complex in South Carolina, which currently manages 36 million gallons of high-level liquid radioactive waste, and the Hanford site in Washington, which has 56 million gallons of high-level radioactive tank waste, as well as nuclear fuel. All of that waste was lined up to go to Yucca.

There are countless problems associated with the politicized and short-sighted decision to abandon Yucca Mountain. First, and perhaps most importantly, it contravenes the law. The NWPA, as amended, clearly designates Yucca Mountain as the only permanent nuclear waste storage facility and any alteration of that location will require a legislative change to the NWPA. Neither Congress nor the Obama administration has moved to amend the Act.

In its April, 2011 report, the GAO suggested that in any future attempts to address the nuclear waste disposal issue Congress must consider infusing the entire process with more transparency, predictability, and independence. With GAO’s recommendation in mind, CAGW respectfully requests that the House Committee on Science, Space, and Technology release an unredacted

copy of the Safety Evaluation Report (SER), Volume 3, which it currently has in its possession. If they will not release it to the public, the committee should publicize the legal rationale it is relying upon for withholding the report.

Taxpayers and ratepayers have paid tens of billions of dollars over the last 25 years and will pay tens of billions more in the future for a national nuclear waste repository. They have been dismissively informed that Yucca Mountain is simply no longer “workable.” They deserve to know now exactly what the DOE discovered and what the SER has to say about its comprehensive review of the Yucca Mountain application in terms of the site’s suitability and its “workability.”

This troubled saga has destroyed the public’s confidence in the government’s ability to provide a safe and timely solution for the disposal of spent nuclear fuel. Whether Yucca Mountain is reopened or the taxpayers are forced to initiate another costly and time-consuming search, as long as the process and the funds that attend that process are accessible for manipulation by politicians, there is little reason to believe that the taxpayers and ratepayers won’t be forced to buy into yet another boondoggle that will cost more than projected and arrive later than promised, if ever. The entire process has set an appalling legal precedent; DOE has repeatedly been found guilty in court of breaching its contractual obligations to millions of ratepayers and their utility companies, yet the department has been allowed to impose the cost of those verdicts back onto the backs of taxpayers.

There are already too many examples of the federal government breaching, sidestepping, and blatantly ignoring its contractual obligations, even thumbing its nose at the law, as in the case of Yucca Mountain. Even more insidiously, the Yucca Mortmain debacle graphically illustrates a deepening cultural flaw which is becoming almost organic in the federal government. Lawmakers and executive branch officials appear to be increasingly ill-equipped and unwilling, often for shallow political reasons, to address larger national issues. Year in and year out, lawmakers and government officials are permitted to shy away from their constitutionally-mandated obligations to grapple with momentous national issues until they have become even more damaging and destructive to our country’s bottom line and to the rule of law.

Legislative action on vital public policy issues is increasingly pushed off to bloated commissions, indolent study committees, portentous but impotent boards, and unaccountable regulators who patch together short-term quick fixes, all paid for with taxpayer dollars. More often, nothing at all is done and the problems fester. It would be difficult to come up with a more pertinent example of this kind of reckless Washington behavior, and certainly not one as costly and egregious as Yucca Mountain.

The BRC report included the following statement: “This generation has a fundamental, ethical obligation to avoid burdening future generations with the entire task of finding a safe, permanent solution for managing hazardous nuclear materials they had no part in creating.” That statement is just as true about the staggering financial liabilities related to this epic failure as it is regarding the spent nuclear fuel. Without a rational plan for dealing with nuclear waste disposal, which had already been decided and enacted into law in 1982, the viability of future energy policy, along with the fiscal well-being of our children and grandchildren, will remain tenuous.