

TALE OF TWO REPOSITORIES

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ABSTRACT

This paper was presented by Mr. McNulty as a substitute for Congressman Udall. He clearly states that his remarks are his own, but it is well known that he is close to Congressman Udall. The paper reviews the history of the West and East proposed siting of the two HLW repositories and of the conflict between USDOE and Congress over the second repository (in the east). He sums up the paper with a call for resignation of the Secretary of Energy.

INTRODUCTION

Good Morning and Welcome to Tucson. We promise you warmer days and if you stay until August, we'll redeem that pledge in spades. I should have been introduced as a former Congressman, but Bill restrained himself in noting that I had left political life because of illness, the voters got sick of me. Well my general want is to walk softly and carry no sticks the harshest thing I have ever been accused of in 61 years and 15 years in political life, I remember having rebuked a woman who came to me during a campaign, waved her finger in my face and said, "I wouldn't vote for you if you were St. Peter", and I said, "If I were St. Peter, you wouldn't live in my precinct".

I'm substituting for my friend, Congressman Udall, but my remarks are my own and whether he shares them or not is something you should verify from him. My very minor experience with nuclear has been from being associated all my life with electrical cooperatives in Arizona, one a distribution cooperative founded by my partner 50 years ago and that I represented until I went to Congress, and the other that I formed myself, a small generation transmission, 575 megawatt cooperative, that did sign up 1.6 percent of the output of the Winterhaven Nuclear Generators run by the Arizona Public Service Salt River Project (primarily west of Phoenix) so called Arizona Nuclear Power Project (ANPP). Through divine inspiration it had included in my contract with ANPP that up to a period of ten years the cooperative would reserve the right to leave the group and have its money returned and shortly before the expiration of the ten year period we did exactly that.

America's exercising of the Nuclear Option, when it was 30 or 35 years ago, was done in a condition of innocence, not ignorance, and set in motion, the necessity of answering a number of other questions. One was, "How will a nation deal with the waste that is generated from these generating plants", and I say again, that question had to be answered not posed, because even posing the question at one time exposed the interrogator to a substantial amount of rath. That very hard question preoccupied people and those especially in government. I would not call the Congress the most daring or bold social institution, but in grappling with this problem, Congress proved that the system could work and people with good will come together and force on themselves, even reluctantly, some kind of an answer to this business of the nuclear waste. This culminated in the passage in 1982 of the Nuclear Waste Policy Act which went to extraordinary lengths to protect people and to protect integrity of our existing local and state governments. It was incredibly detailed in terms of time frames and

procedures that had to be followed. It also represented, as these things must, one of the most delicate compromises, legislatively speaking, since the Connecticut compromise 200 years ago. All parties understood that more generators are in the east and fewer in the west. The folks in the east thought that the west would be a good place to bury their stuff. Mark Russell has described Arizona as 110,000 miles of kitty litter so you can understand why members of the House of Representatives from Pennsylvania and New England have ready answers to where the waste should be disposed. It is some tribute to Chairman Udall that the initial repository site would be chosen in the west not withstanding what I just said. These timetables were critical to the process. In understanding that east versus west was at the very heart of it all, so when certain things began to happen in 1986, many people saw this very difficult arduous compromise being jeopardized.

It all began with a memorandum within the Department of Energy in May 1986 written by someone who was not a professional in government, which is to say written by someone who thought that there are secrets in government, but there aren't any. That memo said that it would be appropriate to terminate efforts to establish a second repository for waste, which is to say the east equivalent, because such a move would bring immediate political relief from secondary states. That was followed 15 days later, on May 28, 1986, by an order from the Secretary of the Department of Energy postponing indefinitely site specific work for a second repository and suspending further consideration of all eastern sites. That came as a bombshell to many members of the Congress. The next significant document is a letter addressed to the Secretary of Energy, dated June 11, 1986, in which 13 members of Congress, 12 from the Senate and 1 from the House, started out by saying, "Mr. Secretary, we are ready to express our deep concern at the recently announced decision to postpone indefinitely site specific work on a second geologic repository". This letter goes on to say in more or less bureaucratic language some very tough things. The next to last paragraph says, "the decision on whether to proceed with a second repository is a matter that the Congress, not the Department, must decide, and the Act has been carefully structured so that Congress will have the necessary information available to it". The letter asked that a detailed memorandum be submitted by the Secretary and that legislation which the Secretary thought was appropriate shall be forwarded as well; and because by then it was known that the Secretary didn't think that the law was a very good law and that it ought to be changed. The signers of this letter were Republican Senator James McClure of Idaho, the Chairman of the Energy and Natural Resources Committee, Republican Senator Simpson of Wyoming,

Democratic Senator Bennett Johnson of Louisiana, and Republican Senators Domenichi, Simms, Evans, Grahmn, Laxalt and Hecht. That letter did in turn stimulate a response to the letter of June 11 and the Secretary stated in these words, "I agree completely with the point made in the letter that the decision whether to proceed with a second repository is a matter that the Congress and not the Department of Energy must ultimately decide. By its nature, that decision is one that will merit the most thorough consideration by the Congress. As you observed in your letter, the statute contemplates only a recommendation in the future for site specific construction for a secondary repository". The Interior Committee found that (letter) not to be as forthcoming as it deemed appropriate and on July 30, it held a hearing at which this exchange took place. Question by Mr. Udall, "Secretary, (Secretary of Energy), you referred here to legal counsel advising you and so on, do you have a memorandum that you could submit to the subcommittee"? Secretary: "Yes Sir". Mr. Udall, "Covering you legal authority"? Secretary: "Yes Sir". Well, 21 days past and the Chairman (Udall) had not been accommodated as he thought that quoted exchange should of caused to happen and so there followed another letter, this one entirely over the signature of Chairman Udall and it says in part, "I note that my colleagues and I requested on June 11, that you provide prior to July 1, a memorandum of law setting forth a legal basis for the Departments decision. As of August 19, the Committee had not received the documents requesting either the June 11 letter or the July 31 hearing and on August 19, to the response of the staff requests that they be given the memorandum". The Department attorneys said they were unaware of the documents that were discussed at the July 31 hearing and that you agreed to provide. A letter was written by J. Michael Farrell after-the-fact, he's general counsel (to Secretary of Energy), he is discussing the relationship between the Mission Plan and the second repository recommendation requirements by the NWP. This thing goes on for 4 pages, but in the final paragraph, general counsel says, "It is clear that the provisions of Section 112 and 114 of the NWP require recommendations concerning a second repository are not supplanted by any amendment to the Mission Plan required by the Act". In other words, you were right when you said that I, as the Secretary, am obliged to proceed, but acting as a good soldier, Mr. Parro continues and says, "despite this, the course of action adopted of formerly proposing redirection of the second program based on evaluations of new information, that bear on the question of timing and need, through an amendment of the Mission Plan changing the law, if this means appears to be appropriate and consistent with Congress' expectation that the Mission Plan will deal with a subject like the second repository". In other words, you have the right to come in and suggest changes in the law. On September 9, the Secretary wrote and said to Chairman Udall, "At the hearing, I thought that your question was whether we would be in a position to provide a memorandum to the subcommittee rather than one existed at the time. Although no such formal memorandum existed at the testimony, we have prepared one. I regret the misunderstanding that my response may have created. On September 18, the Chairman of the Interior Committee said that, "I am troubled by your response to my letter of August 21, 1986".

Its kind of interesting at the kinds of reactions and from whom these reactions came as quoted in the oversight issue of February 13, 1986. William Danemeyer of Southern California, Orange County,

might be the most conservative member of the House of Representatives. He has a kind of attractive, ruthless honesty that made me feel very cordial towards him as a person. He's quoted as saying to the Secretary, "Move ahead and get the job done, somebody in your department is shooting you in the foot. Congress passed a law saying that the Senate selection process should take place in the west and in the east and you decided to defer the site in the east. The way out of this is to go ahead". He continued addressing comments about drilling a shaft and he said, "If you find because of the continuing resolution you can't drill a shaft, go ahead and build a facility that does work, don't come to us and say you can't drill a shaft so you can't proceed, I don't buy that". Senator Domenichi of New Mexico said, "After stressing the difficult work and compromises Congress had made to pass the law only prove that the system could work". He warned the Secretary, "this is what your going to experience day after day after day if you don't follow the law". Senator McClure of Idaho said, "the statute sets forth certain dates and guidelines which must be undertaken and I don't understand how you can divorce yourself from that statute". Former Governor Grant Sawyers from Nevada, Chairman of the Nevada Commission of Nuclear Projects, "the situation is so bad that Nevada and other affected states and tribes really can no longer tolerate DOE's mishandling of this program. The utilities and the rate payers should be very concerned that DOE is wasting millions of dollars in a program that will not result in a safe place to dispose of nuclear waste". Governor Gardner of Washington through his designee said, "midcourse correction means return to square 1". Jack Ferguson, Chairman of Virginia Power Company said, "faltering political leadership is a fundamental end and an impediment to progress, the administration must rise to the challenge and truly make a new start at consulting with the Congress and states. The program must be fair, it must appear to be so and it must be balanced as a regional issue". Well, all of that generated a comment written in an article, I think its a weekly flyer, called Radioactive Exchange, written by Tim Peckinpaugh, the following comment, "Congressman Udall is the legislative architect of the NWP and he knows the grand political compromises in the underpinning of the Act and in particular the notion of two repositories, one in the west and one in the east. When DOE dropped the second repository Udall accused them of putting an election ahead of a credible site selection process". Mr. Peckinpaugh continues, "the Secretary's rhetorical question about why a republican administration would defer the second repository when the decision would adversely affect three critically important 1986 Republican races, that question underscores the political eptitude of the May 28 decision. Abandonment of the second repository hindered Mr. Broyhills Senatorial bid in North Carolina not by enough to make him a winner and the decision clearly defeated Senator Gordon in Washington and sidetracked Former Congressman Santini in his uphill battle in Nevada". Several weeks ago faced with the highly unexpected, in fact, harsh kind of reaction received from numerous places, both parties, industry and from research, the Secretary told two house committees within the past two weeks that DOE wants positive congressional approval of the new Mission Plan he has submitted for comment and unless Congress specifically endorses the Mission Plan which formerly proposes postponing of the work on a secondary repository in the east, he would resume site specific work this summer. Its almost a 180 degree change and what it has done is made clear that the Secretary now lacks both honor and credibility and he would best serve this nation by vacating that office.

I don't know whether the "Grand Compromise" that's inherent in this law can be put back together again. The egg may have been scrambled by what's happened and loose the furies that are going to make the restoration of the program difficult. But if

there are any chances at all, the constructive minded of this nation will insist that the National Waste Policy Act be put back into condition which it originally was so that we can move ahead with this enormous problem. Thank you for your courtesy this morning.