United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Commerce, House of Representatives

March 1996

NUCLEAR WASTE

Nevada's Use of Nuclear Waste Grant Funds

G A O 75 years 1921 - 1996

GAO/RCED-96-72

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-271004

March 20, 1996

The Honorable Joe Barton
Chairman, Subcommittee on
Oversight and Investigations
Committee on Commerce
House of Representatives

Dear Mr. Chairman:

The Department of Energy (DOE) provides grant funds to the state of Nevada to assist the state in its oversight of DOE's investigation of Yucca Mountain, Nevada.[1] In accordance with the Nuclear Waste Policy Act of 1982, as amended, DOE is investigating the site to determine if it is suitable for permanently disposing of highly radioactive waste in a geologic repository. Nevada opposes the repository project. In 1990, we reported that Nevada had improperly spent up to $1,054,000 of $32 million in grant funds and that a permissive approach by DOE to grant administration had contributed to this situation.[2]

Under recent appropriations acts, Nevada may not use its nuclear waste grant funds for lobbying, litigation, and certain multistate activities; moreover, the state must use these funds solely for the conduct of the state's scientific oversight responsibilities. Concerned that Nevada may be violating these restrictions, you asked us to determine

- whether the state has used federal funds for prohibited purposes, including whether a 1993 multistate tour and recent litigation against two local governments were financed with federal funds;
- what controls are in place to ensure that Nevada appropriately spends its federal funds; and
- whether DOE has recovered the federal funds that we previously identified as improperly spent by the state.

As agreed with your office, we limited our review to (1) $1,884,000 in grant funds used for public information activities ($1,544,000) and legal services ($340,000) from a total of about $25 million in grant funds that Nevada received in fiscal years 1991 through 1995, (2) the 1993 multistate tour, and (3) recent litigation between the state and local governments. Also, as

[1]Grants are also made to any affected unit of local government.

[2]Nuclear Waste: DOE Needs to Ensure Nevada's Conformance With Grant Requirements (GAO/RCED-90-173, July 9, 1990).

agreed, we are providing Nevada's fiscal year 1995 expenditures of grant funds.

Results in Brief

Nevada has inappropriately used federal grant funds to advance, on a national stage, its message of opposition to a repository at Yucca Mountain. Under two public information contracts totaling $697,000, some activities performed by the contractors in support of this objective fell outside of the scope of the authorized purposes of the grant specified in the nuclear waste act and applicable appropriations acts. Moreover, one of these activities—a videotape produced by one of the two contractors—was also designed to influence legislative action on a matter pending before the Congress and thus violated the restriction in the applicable appropriations act. In the case of one other public information contract, for $36,000, sufficient documentation did not exist to permit us to assess whether the contractor had engaged in prohibited activities. We also believe that the state's use of about $1,600 in grant funds to pay a portion of the $25,000 cost of a multistate tour taken in 1993 was not appropriate because the primary purpose of the tour appears to have been to create public opposition to the repository project in other states, rather than "solely" to accomplish one or more of the grant's authorized purposes. We did not find any inappropriate use of federal grant funds by Nevada in its recent litigation involving local governments. (See app. I.)

Since fiscal year 1992, three annual controls have been in place to ensure that Nevada's funds are spent appropriately: (1) DOE's reviews of Nevada's program plans, (2) Nevada's certifications that it has appropriately used grant funds, and (3) independent audits of the state's use of grant funds. Until 1992, DOE reviewed and approved the state's applications for grant funds and required the state to provide DOE with periodic progress and financial reports. Since then, DOE's appropriations acts have required DOE to make direct payments of grant funds to the state and Nevada to certify that the funds were spent according to the requirements of the nuclear waste act. Thus, DOE has a lesser role in oversight of the state's grant. Weaknesses in the states internal controls related to documentation supporting expenditures of grant funds that we identified in our earlier report have not been corrected. (See app. II.)

DOE has recovered about $75,000 of the $1,054,000 that we previously reported as improperly spent. DOE has decided that $670,000 of these expenditures was either allowable or that it would not attempt to recover unallowable expenditures because, in part, no congressionally mandated

ceiling had been exceeded. DOE had no records of whether it had ever decided on the remaining $309,000 in expenditures that we had questioned and did not plan any actions to recover these funds. (See app. III.)

In fiscal year 1995, Nevada spent $5.4 million of nuclear waste program grant funds. This amount included $1.5 million to operate its nuclear waste project office and $3.9 million paid to contractors, local governments in Nevada, and other state agencies. The latter amount included about $346,000 paid to contractors for pubic information activities and about $59,000 for legal services (See app. IV.)

Recommendations to the Secretary of Energy

To better ensure that grant funds are adequately protected and that the recipients of these funds comply with the applicable laws and regulations, we recommend that the Secretary of Energy (1) determine the amount of grant funds expended by Nevada for prohibited purposes, including the expenditures we questioned in our 1990 report that the Department has not resolved, and, where appropriate, seek repayment of the prohibited expenditures and (2) ensure that the state's internal controls over grant funds comply with federal standards.

The State's and DOE's Comments and Our Evaluation

Nevada strongly disagreed with our report. In the state's view, all of the costs that we questioned in the report were allowable and appropriate. The state did not, however, offer any factual information beyond what it had provided us during our review or suggest any basis for a different view of the applicable law. Accordingly, we have no reason to change our view that the state has inappropriately used portions of its grant funds for activities that in some cases are outside of the scope of the grant's authorized purposes and in other cases are prohibited under the appropriation acts' restrictions. Nevada also contended that our finding that the state had violated the lobbying restriction was unsupported by our references to the Anti-Lobbying Act and the "general rider" provision that appeared in the Treasury, Postal Service and General Government Appropriations Acts from the early 1950s to fiscal year 1984. We referred to previous interpretations of these analogous provisions only to provide background for our interpretation of the lobbying prohibition applicable to the state. On the basis of this interpretation, we concluded that the state had violated the lobbying prohibition contained in the relevant appropriations acts. (App. V provides the written text of Nevada's comments.)

DOE did not concur in our recommendation, which, in its view, would assign an inappropriate function to the nuclear waste program. DOE added that if further federal oversight of Nevada's use of nuclear waste program grant funds is required, it should be assigned to another agency. DOE did not provide a basis for its views or specify what other entity could better provide the oversight function. Under the nuclear waste act, DOE provides the grant funds to the state. Appropriation acts have required the state to address its certifications that the funds were properly used to DOE. Finally, DOE has reviewed the state's requests for funds and has provided guidance to recipients of nuclear waste grant funds on the scope of certain restrictions in the appropriations acts. Under these circumstances, we continue to believe that our recommendation was appropriately addressed to DOE. (App. VI provides the written text of DOE's comments.)

We performed our review in Carson City, Nevada, and Washington, D.C., from August 1995 through February 1996 in accordance with generally accepted government auditing standards. (See app. VII for the details of our scope and methodology.)

We will send copies to the appropriate congressional committees; the Secretary of Energy; the Director, Office of Management and Budget; and the Governor of Nevada. We will also make copies available to others on request.

Please call me at (202) 512-3841 if you or your staff have any questions. The major contributors to this report are listed in appendix VIII.

Sincerely yours,

Victor S. Rezendes
Director, Energy, Resources,
and Science Issues

Contents

Letter	1
Appendix I Nevada's Use of Federal Funds	8
Appendix II Controls Over the Use of Funds	23
Appendix III Recovery of Improperly Spent Funds	26
Appendix IV Nevada's Expenditures of Nuclear Waste Grant Funds in Fiscal Year 1995	28
Appendix V Comments From the State of Nevada	31
Appendix VI Comments From the Department of Energy	33

Appendix VII Scope and Methodology 34

Appendix VIII Major Contributors to This Report 35

Abbreviations

DOE	Department of Energy
NWPA	Nuclear Waste Policy Act of 1982

Nevada's Use of Federal Funds

Nevada used a portion of its grant funds for activities that are outside of the scope of authorized grant purposes or are prohibited under the restrictions of the applicable appropriations acts. Specifically, two public information contracts totaling $697,000 supported some national outreach activities of the state geared to furthering the state's fight against constructing the repository at Yucca Mountain. Because these activities are outside of the scope of the authorized grant purposes, funding them with grant moneys is prohibited. Moreover, one of these activities—a video tape produced by a state contractor—was also designed to influence legislative action on a matter pending before the Congress. The use of grant funds for this activity was also prohibited. For a third public information contract amounting to $36,000, sufficient documentation did not exist to permit us to assess whether the contractor had engaged in prohibited activities. The $340,000 in federal funds that the state spent on legal services appeared to be consistent with the restriction prohibiting the use of nuclear waste funds for litigation expenses that has been in applicable appropriations acts since fiscal year 1992. Although about $220,000 of the $340,000 was for a legal services contract that included litigation services, it appears that both the contractor and the state have attempted to ensure that federal funds are not used to pay for litigation expenses.

About $1,600 of grant funds was used by the Project Office to conduct a multistate tour taken in 1993 at a total cost of about $25,000. It was inappropriate, however, to use any federal funds to support the multistate tour because the purpose of the tour was to create public opposition to the repository project in other states rather than "solely" to accomplish one or more of the authorized grant purposes. Nevada used its own funds to pay for recent litigation involving Lincoln County, Nevada, and the city of Caliente, Nevada.

Background

The Nuclear Waste Policy Act of 1982 charged DOE with investigating potential sites for licensing, constructing, and operating a nuclear waste repository. Recognizing that state and public participation in planning and developing repositories for the disposal of nuclear waste was essential to promote public confidence in the nuclear waste program, the Congress provided in the act for active participation by affected states. To ensure this participation, the act, as amended, required DOE to provide financial assistance, in the form of grants,[1] to enable the state (and any affected unit

[1]The Congress established the Nuclear Waste Fund, composed of payments made by the generators and owners of nuclear waste, to fund the disposal program's costs, which include Nevada's grants. The expenditures from the Fund are for specified purposes subject to congressional appropriations.

of local government) to (1) review DOE's activities at Yucca Mountain to determine the potential impacts of a repository on the state and its residents; (2) develop a request for financial and technical assistance to mitigate the impacts of constructing a repository; (3) engage in monitoring, testing, or evaluating activities in connection with DOE's site investigation program; (4) provide information to state residents about the activities of DOE, the Nuclear Regulatory Commission, or the state in connection with the repository site; and (5) request information from and provide comments and recommendations to DOE about activities taken under the disposal program. The act also precludes the use of grant funds for salary and travel expenses that the grantee would ordinarily incur.

In December 1987, the Congress amended the act and directed DOE to investigate only the Yucca Mountain site. Nevada strongly objected to this change. In 1989, Nevada passed two joint resolutions expressing the state's strong opposition to the repository site. The state transmitted these resolutions to the President and both Houses of the Congress, and the state viewed these transmittals as its submittal of a valid notice of disapproval pursuant to the nuclear waste act. In 1989, the state also enacted legislation making it "unlawful for any person or governmental entity to store high-level radioactive waste in Nevada." Finally, in January 1990, the state sued DOE and asked the Ninth Circuit Court of Appeals to, among other things, order DOE to terminate all site characterization activities at the site. This challenge was unsuccessful. The court found that the state's notice of disapproval was ineffective and that DOE's decision to continue investigating the site was not contrary to law.[2] Nevada continues to oppose the repository project.

As we reported in 1990, both DOE and the state have taken a liberal view on the use of grant funds allowed under the nuclear waste act. However, the Congress, concerned about the rising costs and the types of activities the state was financing with the grants, began limiting, in annual Energy and Water Development Appropriations Acts, the amount of funds DOE could provide to Nevada and placing restrictions on the way the funds could be used.[5] Specifically, the acts,

[2]State of Nevada v. Watkins, 914 F.2d 1545 (9th Cir. 1990).

[5]The Energy and Water Development Appropriations Act for fiscal year 1996, P.L. 104-46, provided only a lump sum to DOE for the operation of its repository program. According to guidance provided by the accompanying House and Senate reports, no funds are included for the state or units of local governments. Nevertheless, the House report provides that if funds are made available, subject to authorization, the use of such funds would be restricted to the purposes authorized by law and subject to the conditions enumerated in prior Energy and Water Development Appropriations Acts. The Senate report contained similar language.

- beginning in 1989, prohibited the use of federal funds "directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913";
- beginning in 1991, also specified that litigation expenses may not be paid for with nuclear waste funds;
- beginning in 1993, added that federal funds are not to be used to support multistate efforts or other coalition-building activities inconsistent with the restrictions contained in the appropriations acts; and
- beginning in 1993, specified that grant funds were to be used for the "sole purpose in the conduct of [the state's] oversight responsibilities" ("scientific" oversight was added in 1994 and 1995).

At the same time, however, at the request of DOE and to alleviate some of the contentiousness between the Department and Nevada, the Congress also changed the method under which the grants are provided to the state. Since fiscal year 1992, the state has been provided with grant funds through direct payments and has been responsible for certifying that the funds have been spent for the purposes defined in the nuclear waste act. Failure to provide such certification will prohibit the grantee from any further funding provided for similar activities. DOE has provided little guidance to the state on the scope of congressional restrictions. DOE's view has been that the Congress, not DOE, provides direction on the grant program to Nevada.

National Outreach Activities

Nevada has improperly used federal funds to support some activities under two public information contracts totaling $697,000 to advance, on a national stage, its message of opposition to a repository at Yucca Mountain. The nuclear waste act contemplates that grant funds can be used to provide information to Nevada residents about the repository site. However, a nationwide information program to further the aim of the state to defeat the site at Yucca Mountain is outside of the scope of the authorized grant purposes, is not conducted solely to meet the state's oversight responsibilities under the nuclear waste act, and therefore cannot be supported with grant funds.

Criteria

The nuclear waste act specifies five purposes for which grant funds may be used. These purposes, which constitute the oversight responsibilities of the state under the grant provisions, include providing information to the residents of Nevada about the activities of the state, the Secretary of Energy, and the Nuclear Regulatory Commission in connection with the

repository program. Since 1989, the Congress has added successive restrictions on the use of grant funds, narrowing the scope of authorized grant purposes. Thus, grant funds may not be used for influencing legislation or lobbying activities, to support litigation expenses, or for multistate efforts or other coalition-building activities inconsistent with the restrictions in the applicable appropriations act. Moreover, since 1993, the Congress has specified that state grant funds are to be used solely for the conduct of the state's oversight responsibilities under the nuclear waste act. ("Scientific" oversight was added in fiscal years 1994 and 1995).

The Project Office's executive director acknowledges that the two public information contractors function on a national level rather than confining their activities to the state. It is his view that national operations are permissible under the nuclear waste act and the restrictions of the applicable appropriations acts. In a November 6, 1995, letter responding to our request for clarification of certain Project Office activities, the executive director stated that "[i]n order to identify impacts associated with the program, the State of Nevada must have information about the various aspects of the project and their interrelationships." Moreover the executive director stated:

> "Nothing in the NWPA [Nuclear Waste Policy Act] prohibits Nevada from sharing information with groups or organizations in other states. In addition, the task of providing information on the federal high-level radioactive waste program to Nevadans requires a national focus and perspective, since Nevadans get their information from many different sources. This requires maintaining contact with key information sources, be they in state or out of state. Information provision is an interactive process wherein Nevada shares information about the program with a variety of entities, including DOE, nuclear industry organizations, other federal agencies, and environmental groups. At the same time, Nevada obtains information from these entities for use in providing information to Nevada citizens."

Although we recognize that providing information is an interactive process, as noted by the Ninth Circuit Court of Appeals, the state is not entitled to carte blanche access to the Nuclear Waste Fund.[4] The Fund may be used to pay only those costs authorized under the act and in accordance with the restrictions of the applicable appropriations acts. Thus, information gathering and dissemination outside of the state should be for the specific purpose of fulfilling one or more of the purposes enumerated in the nuclear waste act.

[4]State of Nevada v. Herrington, 827 F.2d 1394, 1398 (9th Cir. 1987) (Nevada II) (citing Nevada I, supra, at 534).

Nevada Nuclear Waste Task Force

The Nevada Nuclear Waste Task Force (Task Force) was established in 1987 to provide public information and encourage citizens' involvement in the federal nuclear waste program in Nevada. The Project Office provided the sole funding for this work (more than $100,000 a year) from 1988 until 1994. For fiscal years 1991 through 1993, its use of grant funds generally appears appropriate. During that period, the scope of work provided that the primary purpose of the contract was to promote and facilitate public understanding of and involvement in DOE's nuclear waste program. The activities contemplated included the establishment of an office and a public reading room in the Las Vegas area. All activities of the contractor were subject to the approval of the Project Office before being implemented.

Toward the end of fiscal year 1993, the focus of the Task Force began to change from a state to a national level. At that time, the Task Force proposed a change in its organizational objective to one of coordinating a national nuclear waste network. This proposal was supported by several national public interest groups, such as Greenpeace, the Nuclear Information and Resource Service, and the Safe Energy Communication Council. For example, Greenpeace stated:

> ". . . there are hundreds of grassroots and national groups fighting nuclear power in the U.S. It would be expensive and time consuming for each group to attempt to update the other groups about their activities. The [Task Force's] proposed communication network could act as a clearinghouse for this information. . . .
>
> "Nevada seems to be a logical location for a communication network to be established because of the waste disposal issues in the state and the existing level of activism there."

In 1994, a private foundation grant allowed the Task Force to establish the National Nuclear Waste Coordination Center. This expanded the original objectives of the Task Force to establishing a communications network to coordinate grassroots and national groups fighting nuclear power in the United States.

The scope of the contract with the Project Office in fiscal years 1994 and 1995 changed to reflect the redirection of the Task Force. Under the new scope of work, the Task Force was to assist in the implementation of the Office's public information program. Nothing in the scope of work directs the Task Force's effort toward residents of Nevada. Rather, activities were geared toward "members of the public and public interest organizations."

Moreover, the Project Office's approval of activities before they were implemented was no longer required.

Under this new scope of work, the Project Office paid the Task Force a flat monthly fee of $3,000, for a total of $72,000 in fiscal years 1994 and 1995. In return, the Task Force furnished a monthly report briefly describing activities undertaken during the previous month and listing contacts and findings. The Task Force was also required to submit a final report within 30 days of the end of the annual contract period.

As noted above, since 1993, the applicable appropriations acts have restricted the use of grant funds for multistate efforts or other coalition-building activities inconsistent with the restrictions in the appropriations acts. The acts have also specified since 1994 that grant funds are provided to the state "for the sole purpose in the conduct of its scientific oversight responsibilities" under the nuclear waste act. Accordingly, it would be impermissible to use grant funds to support multistate efforts that are not solely for the purpose of the conduct of the state's scientific oversight responsibilities.

Here, the state is paying a flat fee, not tied to any specific activities, that supports the coalition-building agenda of the Task Force. The Task Force's focus is not on providing information to the residents of Nevada. Rather, information is being provided on a national level to support a policy of opposition to the repository project. There is nothing in the nuclear waste act to suggest that grant funds were to be used to support a national effort directed toward the defeat of the repository program.

Moreover, information gathering and dissemination outside of the state must be geared toward the fulfillment of one or more of the enumerated grant purposes in order to justify the use of nuclear waste funds. However, this does not appear to be the case here. For example, the Task Force's executive director testified before the Minnesota State Senate on February 8, 1994, and specified in her statement that she was not representing the state of Nevada. Yet this testimony is listed on the Task Force's monthly report, which is the principal contract deliverable supporting payment of the monthly fee out of the state's nuclear waste grant funds. Also in February 1994, the executive director met with the Safe Energy Communication Council to discuss the Secretary of Energy's alternative energy and energy conservation commitment. The Council describes itself as a national coalition of energy, environmental, and public interest media organizations working to increase the public's awareness of

energy efficiency and renewable energy sources and the "serious economic and environmental liabilities" of nuclear power. There does not appear to be a direct relationship with the repository program to justify funding this meeting with grant funds. Yet this meeting was also listed on the Task Force's monthly report. Under these circumstances, the monthly fee to support the Task Force's multistate and coalition-building efforts cannot be paid out of grant funds.

Kamer, Singer and Associates

Kamer, Singer and Associates (Kamer), an independent, full-service public affairs and public relations agency based in San Francisco, has been under contract with the Project Office since 1992. Under the contract's scope of work, Kamer is to provide "a range of consulting and management services to the office in implementing a public information program with regard to the location of a high-level nuclear waste site in the state." Activities must be approved before implementation, and payment is based on an hourly rate plus expenses. From May 1992 through September 1995, Kamer received $625,000 in federal grant funds and $31,000 in state funds for its services.

According to the Project Office's executive director, it is Kamer's job to develop ideas and ways to get Nevada's message out.[5] However, activities designed to promote the state's views should not be financed with grant funds as they are not being conducted solely to meet the state's oversight responsibilities. Of course, the state is free to use its own funds to finance its opposition to the repository project.

For example, through Kamer, the Project Office launched in February 1994 a campaign to interest national media outlets in Nevada's position on the repository. This campaign included a letter from Kamer to the Christian Science Monitor depicting the project as a "tale loaded with government abuse, strong-arm politics, Frankenstein science, and life-threatening consequences that could persist for the next 100 centuries and beyond." This letter concluded by proposing that the newspaper publish a story on Nevada's view of the project.

This campaign is not an informational exchange; rather, it is a one-way communication outside of the state of Nevada directed at molding public opinion against the repository project. Such a campaign is clearly outside

[5]Reflecting this design, the scope of work also provides that:
"Contractor makes no representation, warranty, or guarantee that it will achieve Office's goal of increased public awareness, favorable publicity, or changes in pubic opinion or federal policy with regard to nuclear waste storage."

of the scope of authorized grant purposes and therefore should not be financed with nuclear waste funds.

Another of Kamer's activities that fell outside of the scope of authorized grant purposes was the production of a video tape entitled "What's the Deal With Yucca Mountain." The 16-minute video was developed in collaboration with the state's Superintendent of Schools, specifically to complement DOE's educational programs in Nevada schools. Although grant funds may be used to provide information to residents of Nevada about the repository project, this tape is available at no cost to anyone who requests it. Moreover, the tape's purpose is clearly to promote the state's view of the project and not simply to provide information. The tape presents students asking questions and answering them in the negative. For example, the first question raised is "Should Nevada be the place the nation dumps its nuclear waste?" In the background is a resounding chorus of "No" and a soft whisper of "I don't know" and "Maybe." The students then state that viewers need the whole story, that Nevada is fighting the Yucca Mountain site, and that many scientists believe that the site is unsafe. However, the tape does not present DOE's views or the views of any citizen or scientist in favor of the site.

According to the Project Office's executive director, DOE's educational program "tends to be very one-sided and does not address many of the issues and concerns related to the [repository] project." The same criticism could be made, we believe, about this video. For example, in commenting on an award won by the tape, the executive director stated that "It sends a positive message to citizens and leaders to keep up the fight against an ill-conceived plan by Washington bureaucrats to use Nevada as a nuclear dumping grounds." In our view, the tape was not prepared "solely" to meet the state's oversight responsibilities. Grant funds may not be used to advance the state's fight to defeat the repository site.

Use of Grant Funds for Lobbying

The video tape produced by Kamer ("What's the Deal With Yucca Mountain") also constituted an indirect attempt to influence legislation on a matter pending before the Congress and therefore cannot be supported with grant funds.

Criteria

Since fiscal year 1989, the Energy and Water Development Appropriations Acts have contained the following provision geared toward restricting the use of federal funds to influence legislation and other lobbying activities:

". . . none of the funds herein appropriated may be used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913."

The Anti-Lobbying Act, 18 U.S.C. 1913, a criminal provision, prohibits officers and employees of the executive branch from engaging in certain forms of lobbying.[6] The Office of Legal Counsel has interpreted the statute in light of its underlying purpose "to restrict the use of appropriated funds for large-scale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administrative position."[7]

We and the Justice Department have generally read appropriations act restrictions on lobbying by executive branch officials as applying only to expenditures involving direct appeals to the public, suggesting that they in turn communicate to Members of Congress, to indicate support of the administration's position on pending legislation. This construction allows a range of necessary communications between the executive branch on one hand and the Congress and the general public on the other.[8] The considerations that underlie this narrow construction are largely irrelevant to a prohibition against lobbying by private persons receiving federal grants and contracts. As the Justice Department has stated:

"The Constitution contemplates that there will be an active interchange between Congress, the Executive Branch, and the public concerning matters of legislative interest. For that reason alone, this Department has traditionally declined to read the criminal statute and the general rider as requiring federal officers and employees to use their own funds and their own time to frame necessary communications to Congress and the public. We have taken the view that the criminal statutes and the general rider impose no such requirement.

[6]Specifically, 18 U.S.C. 1913 provides:
"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member or Congress to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communication to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriation which they deem necessary for the efficient conduct of the public business."

[7]Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, "Constraints Imposed by 18 U.S.C. 1913 on Lobbying Efforts," 13 Op. O.L.C. 361, 365 (1989) (prelim. print) (citation and footnote omitted).

[8]5 Op. Off. Legal Counsel 180 (1981).

They permit a wide range of contact between the Executive and the Congress and the Executive and the public in the normal and necessary conduct of legislative business.[9]

"The prudential considerations that underlie this narrow and necessary construction are largely irrelevant to prohibitions against lobbying by private persons and organizations that receive federal funds under federal grants and contracts. Although private persons and organizations have a right to petition Congress and to disseminate their views freely, they can be expected within the framework established by the Constitution, to do their lobbying at their own expense. They have no inherent or implicit right to use federal funds for that purpose unless Congress has given them that right."

In this case, the Congress has clearly and specifically prohibited recipients of nuclear waste funds from using those funds "directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913."

Kamer Video Tape

As noted above, in 1994 Kamer produced a video tape for Nevada entitled "What's the Deal With Yucca Mountain." In addition to the information contained in the tape discussed above, in the tape one student refers to the 1987 amendments to the nuclear waste act as the "screw Nevada bill." The video also ridicules DOE, including in the tape footage from a 1950s film prepared by the Atomic Energy Commission (the predecessor to DOE) urging citizens to "duck and cover" in the event of an atomic bomb. Viewers are admonished: "Go ask—should we believe everything that DOE says?" In its recap, the tape answers the question "What does make sense?" by, among other things, advocating slowing down the rush to build Yucca Mountain and storing the waste where it is generated in order to allow it to cool down. This is followed by a student saying: "Speak up. Write your Congressman. Get involved and try to get this thing out of the state of Nevada. It's not Nevada." The tape then shows the student presenters saying:

[9]For over 30 years, from the early 1950s to fiscal year 1984, the following provision, know as the "general rider," was enacted every year:
No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. (See, for example, the Treasury, Postal Service, and General Government Appropriations Act, 1980, Pub. L. No. 96-74, 607(a), 93 Stat. 559,575 (1979).)
For fiscal year 1984, the "this or any other act" provision fell victim to a point of order and was dropped. However, it continues to appear in individual appropriations acts in various forms. The first clause of the appropriation restriction at issue here ("none of the funds . . . may be used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature") is one variation of the general rider.

"So You've heard the questions. Make sure you ask them. Speak up. Shout if you have to. Just don't let them steamroll over us. Nevada's better than that. We're talking about our future and our kids and their kids for 10 centuries. Think about it. Then do something."

The video then urges the viewer to write to Members of Congress, U. S. Senators, state legislators, and newspapers and for the viewers to attend meetings, read the news, and talk to parents and friends. The video ends with an emphatic "Ask questions."

In the Project Office's executive director's letter to us of November 6, 1995, he stated:

"[The video] is intended to help students ask questions and be better informed when interacting with DOE-sponsored informational programs. At the end of the video, students are provided with information about what they can do to be more involved and more informed about the issues. Among other things, they are advised that they can contact their congressmen and legislators who, obviously, will have varying perspectives on the issue and additional information that may not be available elsewhere. The video does not urge people to take a position one way or another on the Yucca Mountain issue or to attempt to influence members of Congress, legislators, or other elected officials."

We do not find that the urging of viewers to get involved and stop the "steamrolling" of the state by, among other things, writing to congressmen and state legislators to be simply an informational activity as does the Project Office's executive director. The tape was not merely "advising" viewers that additional information was available by contacting their representatives in the Congress and state legislators. The viewers are admonished to "speak up and do something."

In connection with lobbying prohibitions in other appropriations acts, we have found violations in which listeners are merely urged to make their views known to the Congress if the context of the message makes it clear what those "views" are supposed to be. Alternatively, we have found no violation when a speaker's statement was perceived as being informational rather than encouraging any action on the listener's part. Moreover, it is not necessary for a statement to explicitly refer to a particular piece of pending legislation for there to be a violation.

Here, viewed in its entirety, the tape provides a clear message of opposition to the repository project. The tape was an exhortation to contact the Congress to stop the "steamrolling" of Nevada. During the period that the tape has been distributed, aside from the annual

appropriations acts, a number of bills have been introduced in the Congress concerning the federal repository program.[10] Under these circumstances, the urging of viewers to "speak up" and contact their congressmen clearly constitutes an attempt by the state to "influence legislative action" on a matter "pending" before the Congress.

Lack of Sufficient Documentation

For one of the Project Office's public information contractors, Potomac Strategies Group (Potomac), the documentation available from the Project Office was insufficient for us to even analyze grant-funded activities for the purpose of determining whether the costs of the activities were allowable.

Although the standards for internal controls in the federal government require, among other things, that all transactions are to be clearly documented, Potomac does not provide the Project Office with any documentation of its activities. Potomac has been under contract to the Office since April 1993 and had received $75,000 through September 1995. Of this amount, $36,000 was federal funds and the rest was state funds. The contract's scope of work provides that Potomac is to represent the Project Office with key members of the executive and legislative branches of the federal government. The Office could not provide us with any documentation of Potomac's activities. According to the Office's executive director, Potomac reports only to him and only verbally, usually by telephone. Although DOE had, in an unrelated matter, cautioned the Office in 1992 to use extreme care when recording expenditures to avoid future questioning of costs, the Office maintained no written record of Potomac's activities.

Legal Services

We reviewed the contracts for legal services affecting the Project Office and did not find any improper expenditures of federal grant funds for legal services. Since fiscal year 1992, the Energy and Water Development Appropriations Acts have prohibited the use of nuclear waste funds for litigation expenses. The state's attorney general's office has entered into one legal services contract that includes litigation services and is paid for with both federal and state funds. Although this situation raises the possibility that grant funds could be used inadvertently to pay for litigation expenses, it appears that both the attorney and the state have attempted to ensure that this situation does not occur. Since February 1991, Nevada has contracted with an attorney at a Seattle, Washington, law firm for both

[10]See, for example, H.R. 2081, 103rd Cong., 1st Sess. (1993) and H.R. 496, 104th Cong., 1st Sess. (1995).

litigation and nonlitigation services.[11] The total cost of the contract through fiscal year 1995 was about $238,000. According to both the Chief Financial Officer for the attorney general's office and the executive director of the Project Office, the attorney general's office directs the contract for litigation services and the Project Office directs the contract for general legal services. They both contend that no litigation expenses are paid for with federal funds.

It appears that both the attorney and the state have attempted to ensure that litigation services are not paid for with federal funds. Although not specifically required under the contract, the attorney separates his monthly billings into two portions: one for general legal advice and consultation on the nuclear waste program and one for litigation services. These billings are reviewed by a deputy attorney general. If approved, funding for general legal services comes out of grant funds, and funding for litigation services comes out of state funds. Although most of the billings appear correct, we were unable to determine, on the basis of our review of a sample of monthly billings, if all of the activities designated as general legal services were solely for services other than litigation.

Multistate Tour

In April 1993, a group of Project Office officials and contractors conducted a 12-day, 6-city tour in several states, disseminating to the media the results of the Office's waste transportation routing study. We reviewed this activity because questions have been raised about the purpose of the tour. For example, one editorial in a Nebraska newspaper described the purpose of the tour as being for the "express purpose of scaring the dickens out of people who live in other states."

The cost of the tour was about $25,000. Except for 2 days of the executive director's salary and expenses totaling about $1,600, which were paid with federal grant funds, all costs of the tour were paid with state funds. The Project Office could not explain why 2 of the 4 days the executive director actually participated in the tour were not charged to the state. According to the executive director, the entire tour could have been paid for with federal funds since it was intended to assess how other states' routing designations for shipments of nuclear waste could affect communities in Nevada. Specifically, in his November 1995 letter to us clarifying certain activities of the Project Office, the executive director stated:

[11]The attorney was previously with another law firm that has held a similar contract with the state since 1983.

"In order for the State of Nevada to be able to plan and identify routes for waste transportation, it is crucial that State officials know what the reactions of other states may be to those designations. If Nevada is making decisions which impact cities and communities in other states, it is only reasonable that those locales know of the possible effects on them of those Nevada initiatives. Practically speaking, Nevada also needs to know how other states may react to its route designation decisions and how other states' routing designations could affect Nevada communities. The meetings in other states were intended to provide this perspective and generate information for the State's impact assessment activities. The [Project Office] neither sought nor encouraged any formal or informal relationships with other states, and we did not provide funds or other support for other states' activities. The meetings do not constitute coalition-building nor are they prohibited by the NWPA or the Appropriation Acts."

We note that the meetings conducted on the tour were with media outlets rather than environmental and transportation experts. Thus, the multistate tour appears to have been primarily for the purpose of creating public opposition in other states rather than an interactive information process. As we have stated above, in order to justify expenditures from the Nuclear Waste Fund, the activity supported must be necessary to the achievement of one or more of the authorized grant purposes and must be conducted "solely" for the purpose of meeting the oversight responsibilities of the state. We do not believe that the multistate tour meets this test. Accordingly, the use of grant funds for the tour was prohibited.

Litigation Against Local Governments

The costs of Nevada's recent litigation against Lincoln County and the city of Caliente were appropriately charged to state funds. We reviewed these costs because of concern that several contractors for the Project Office had participated in a litigious action for the state and may have been paid for these activities from the state's grant funds.

In August 1995, the state filed suit to have certain public officials of Lincoln County and the city of Caliente removed from office. The cause for the complaint was the passage of a joint resolution by the city and county requesting, among other things, that an interim nuclear waste storage facility be constructed and operated within the county. In its suit, the state contended that in passing this resolution, city and county officials violated the state law prohibiting the storage of nuclear waste in Nevada.

To prosecute the state's complaint, the attorney general secured the services of four expert witnesses, of whom three are contractually tied to the state's Project Office. The costs of the services of these experts were

appropriately charged to state funds. All of the experts had contracted with the attorney general's office, billed that office for their services, and received payment from that office. We traced these payments through records in the Office of the State Controller and confirmed that the payments were charged against the attorney general's budget.

Controls Over the Use of Funds

Since fiscal year 1992, three annual controls have been in place to ensure that Nevada's funds are spent appropriately: (1) DOE's reviews of Nevada's program plans, (2) Nevada's annual certifications to DOE that it has used grant funds appropriately, and (3) independent audits of the funds on which DOE relies. DOE's appropriations acts for fiscal years 1992 through 1995 made Nevada responsible for certifying that it appropriately used grant funds. Because of this change in funding procedures and congressional directions in the appropriations acts, DOE has taken a relaxed approach to administering the grant. In addition, DOE does not generally provide the state with guidance on the restrictions contained in the appropriations acts. In the absence of such guidance, Nevada has, as discussed in appendix I, constructed its own broad view of how the funds can be used. Yet the successive additions of legislative restrictions indicate that the Congress may have a more narrow view. In 1990, we recommended that DOE provide timely guidance to Nevada on any congressional restrictions being placed on grant funds and ensure that the state has appropriate controls over these funds, but DOE has not implemented our recommendations because it has deferred to the Congress to provide direction to Nevada.

Before 1992, DOE required Nevada to periodically submit grant applications for DOE's review to ensure that the state's proposed activities were, among other things, reasonably related to the oversight of the Yucca Mountain repository project and allowed by law, court decisions, congressional restrictions, and administrative requirements. After approving the grant, DOE required Nevada to submit periodic progress and financial reports.

The 1992 and subsequent Energy and Water Development Appropriations Acts have changed the way that DOE and Nevada interact. These acts required DOE to make direct payment of grant funds to the state and required Nevada to "provide certification to the DOE, that all funds expended from such direct payment moneys have been expended for activities as defined in Public Law 97-425 [the nuclear waste act], as amended." Failure to provide certification will result in the loss of funding for similar activities. The legislative history suggests that the purpose of this change, which DOE had requested, was to "improv[e] the contentious relationship" that existed between DOE and the state and reduce the administrative burden on both DOE and the state.

With the advent of the direct payment approach, DOE directed the Project Office to submit a brief—not to exceed two pages—description of its planned program each year. The Project Office's description of its program

has been the same since 1992. The document briefly describes the statutory basis for the Project Office and its proposed goals, work activities, and budget for the fiscal year. The one explicit link in the document to the nuclear waste act and DOE's appropriations acts is a stated goal of performing the duties and responsibilities of the state of Nevada as described in the act. On the basis of this review, DOE provides the state with a direct payment of grant funds.

Once, DOE raised, but did not resolve, a question about the Project Office's proposal before making the direct payment. In November 1993, DOE advised the Project Office to review its planned involvement in activities that the Project Office had described as "multi-state evaluations and assessments of impacts and associated consequences of repository siting, construction, operation and closure . . ." to ensure compliance with the restrictions in the appropriations act. According to DOE's contracting officer, she wanted to be on record as questioning this planned activity because of the restriction related to multistate efforts. However, DOE did nothing beyond its advice to the Project Office to resolve her concern, and the language remained the same in the Project Office's subsequent program proposal.

DOE also briefly reviews Nevada's certification that it has appropriately used grant funds. DOE prepares a certification letter for the state to sign at the close of the grant year. The letter certifies that the grant funds were expended for activities that are defined in the nuclear waste act and were not inconsistent with the restrictions in the applicable appropriations act. DOE has not challenged the state's certification, and according to DOE's Chief Counsel for its repository project, DOE would do so only if it had knowledge that funds had been impermissibly used.

For independent assurance that Nevada has properly used grant funds, DOE relies on independent audits performed as required by the Single Audit Act.[1] State or local governments that receive $100,000 or more a year in federal funds are required to conduct such audits each year. The audit act requires that the independent auditor determine and report on whether the audited organization has internal control systems to provide reasonable assurance that it is managing federal assistance programs in compliance with applicable laws and regulations. The auditor is also required to determine whether Nevada has complied with laws and regulations that may have a material effect on federal assistance programs classified as

[1]The act requires state and local governments that receive specified amounts of federal financial assistance to have a single audit conducted.

"major," including this program. Kafoury, Armstrong & Co. performed the audit of the Project Office in 1994 and is completing its audit for 1995.

These audits, however, did not cover all areas. In fiscal year 1994, for example, the scope of the audit was focused on the costs associated with running the Project Office. Other areas, such as procurement or assurance of compliance with legislative requirements, were not addressed. According to the auditors, they were not aware of any guidance from DOE on how to interpret the restrictions on certain multistate efforts or other coalition-building activities, and therefore it was unlikely that the transaction tests that they performed to determine compliance would disclose any violations.

To address concerns about inappropriately spent funds in our 1990 report, we recommended that DOE (1) provide timely guidance on the methods to be followed in implementing congressional restrictions placed on Nevada's use of grant funds and (2) ensure that the state's internal controls over grant funds comply with federal standards. Although these recommendations were made before the Congress adopted the direct payment and certification process, they remain appropriate and have not been implemented by DOE. Since 1990, the Congress has continued to impose increasingly narrow restrictions on the use of funds. In the absence of guidance from DOE on how to interpret these restrictions, Nevada continues to broadly interpret the applicable provisions of the nuclear waste act and the restrictions. In addition, Nevada's lack of documentation for several activities we identified indicates a lack of adequate internal controls. Had DOE acted on our previous recommendations, Nevada would have been guided by DOE's interpretations of the restrictions and should have had internal controls requiring adequate documentation of the funds spent. As discussed earlier, however, DOE has been reluctant to provide guidance to the state because its view is that the Congress provides grant program direction to Nevada.

Recovery of Improperly Spent Funds

DOE has not recovered most of the funds we identified in a previous report as improperly spent. In our 1990 report, we concluded that Nevada had improperly spent up to $1.054 million of $32.3 million in grant funds provided through June 1989. Specifically, the state had (1) used up to $75,000 for litigation expenses; (2) used as much as $608,000 for lobbying expenses; (3) used about $275,000 from one grant period to pay expenses incurred in the previous year; and (4) exceeded, by about $96,000, a legislative spending limit of $1.5 million on socioeconomic studies. Subsequently, DOE recovered the funds used for litigation expenses and decided that $670,000 in expenditures was either allowable or that it would not attempt to recover unallowable expenditures because, in part, no congressionally mandated ceiling had been exceeded. DOE could not locate records showing the disposition of the remaining $309,000 and does not plan any further action on these costs.

DOE recovered about $75,000 improperly used for litigation expenses. It did so by subtracting the amount from Nevada's $5 million grant for fiscal year 1993. Thus, for that fiscal year, the state actually received a direct payment of about $4,925,000.

DOE made explicit decisions that $670,000 in expenditures was either allowable or that no recovery of unallowable expenditures would be sought. Of that amount, $395,000 was for lobbying by a law firm that was registered as a lobbyist for the Project Office. The Project Office's executive director had described the firm's activities as "clearly [being] in the area of lobbying." For these reasons, the Single Audit Act audit report for the year ended June 30, 1988, questioned the entire $240,000 paid to the law firm in that year and also noted that $155,000 in grant funds had previously been provided to the firm for similar activities.

DOE resolved the questioned amount for lobbying by obtaining further written explanations from the Project Office and, on the basis of those explanations, determined that the $395,000 was allowable. The Project Office advised DOE that the activities of the law firm were in response to congressional requests for information. In the absence of any information to the contrary, DOE accepted this explanation and closed the related audit findings. In addition, DOE cautioned the executive director about the "broad restrictions against using 'oversight and participation' funds to influence legislation" and "to use extreme care when recording and describing expenditures [to] avoid the questioning of certain costs in the future."

In addition, DOE decided not to recover about $275,000 that the state had used from one grant period to cover expenses in another period. Questions about these funds were raised by the independent auditor in its report for the year ending June 30, 1989, as well as in our report. In September 1988, the Project Office had requested that amount in additional funds to pay for expenses incurred in the grant period that had ended on June 30 of that year. Although DOE denied the request, Nevada used about $275,000 in funds provided for the year ending on June 30, 1989, to pay these expenses incurred in the previous year. In August 1991, DOE decided that expenditures in excess of the funding under one grant are not allowable costs under the subsequent grant. However, DOE also decided that no congressionally mandated ceiling had been exceeded, that the denial of the state's request had been flawed, and that it was the Congress's intent, and in the spirit of cooperation between the involved parties, that whatever funding was available be provided to the state for its oversight role. Therefore, DOE did not attempt to recover these funds.

DOE had no records on whether it had ever decided on the remaining $309,000 in expenditures by Nevada that we questioned in our 1990 report. Of that amount, $213,000 was for payment of what appeared to be lobbying-related costs through June 30, 1989, to an Olympia, Washington, law firm that was registered as a lobbyist for Nevada. Documents that we had reviewed as one basis for our 1990 report showed numerous congressional contacts, many of which appeared to have been initiated by this law firm. Unlike the situation for the law firm discussed above, DOE could not locate records that it had ever formally determined, on the basis of our audit findings, if the state had improperly used federal funds to pay the Olympia law firm for lobbying services. DOE does not plan any additional action on this matter in view of the time that has passed since the questioned activities occurred.

DOE also could not locate records showing that it had ever formally determined if Nevada had exceeded the limitation on the use of grant funds for socioeconomic studies. DOE's fiscal year 1989 appropriations act limited the amount of grant funds that Nevada could spend on socioeconomic studies to $1.5 million. In our 1990 report, we found that the state had exceeded this limitation by about $96,000. As in the lobbying-related case discussed above, DOE does not plan any additional action on this matter.

Nevada's Expenditures of Nuclear Waste Grant Funds in Fiscal Year 1995

Types of expenditures	Amount
Staff	**$1,086,533**
State employees—salaries and fringe benefits for 14 project office staff and 7 commissioners	615,416
Contract employees—4 contract employees of the state's Nuclear Waste Project Office	368,075
State attorney general's office—1 assistant attorney general and secretary	103,042
Travel	**$136,492**
State employees—travel cost of 12 staff, 7 commissioners, and governor	47,879
Contract employees—travel cost of 4 contract employees	46,886
State attorney general's office—1 assistant attorney general	39,864
Transportation—motor pool/car rental	1,863
Operating and equipment	**$279,845**
Equipment purchases (primarily replacement and/or upgrade of computers and software)	82,776
Publications, printing, and postage	72,787
Building lease	58,536
Other	32,372
Telephone, subscriptions	22,854
Equipment lease	5,820
Maintenance	4,700
Subtotal—staff, travel, and operating	**$1,502,870**
Contractors and consultants—science	**$2,260,209**
Technology & Resource Assessment Corp.—investigate groundwater hazard	500,000
University of Nevada at Reno—assess faulting, earthquake, tectonic hazards	410,915
Mifflin & Associates, Inc.—hydrologic and geochemical review and research	392,777
University of Nevada at Reno, Desert Research Institute—hydrologic research, monitoring, and review	259,869
Thompson Professional Group, Inc.—review/evaluate repository engineering	235,203
University of Nevada at Las Vegas—volcanic risk assessment research	157,981
L. Lehman & Associates, Inc.—expert advice on hydrology	150,000
David Tillson—expert advice on geology and licensing	82,546
University of Nevada at Las Vegas, Dept. of Mathematical Science—develop risk assessment models	26,250

(continued)

Types of expenditures	Amount
MAC/JAG Tech., Inc.—analyze DOE's site investigation expenditures	21,000
Gamma Engineering Corp.—assess and model effects on volcanic tuff	15,000
Merle S. Lefkoff & Assoc.—train local governments on environmental impact statement process	8,668
Contractors and consultants—socioeconomic	**$532,854**
Decision Science Research Institute—identify and quantify impacts of repository siting	424,132
Latir Energy Consultants—specialized expertise on socioeconomic issues	39,381
University of Nevada at Reno, Dept. of Anthropology—develop health effects assessment	15,946
Reed Hanson—peer review of socioeconomic study	11,914
Michael Bronzini—peer review of socioeconomic study	8,880
Dr. Kai Erikson—peer review of socioeconomic study	7,700
Dr. Bruce Dohrenwend—peer review of socioeconomic study	5,338
Todd La Porte, PhD—peer review of socioeconomic study	4,820
Roy Rappaport—peer review of socioeconomic study	3,312
Roger Kasperson, PhD—peer review of socioeconomic study	2,726
Clifford Russell, PhD.—peer review of socioeconomic study	2,688
William Colglazier, PhD—peer review of socioeconomic study	2,017
Regional Economic Models, Inc.—lease of economic forecasting model	2,000
Dr. Allen Kneese—peer review of socioeconomic study	2,000
Contractors and consultants—transportation	**$241,878**
Robert J. Halstead—expert services on transportation analysis	134,681
University of Nevada at Las Vegas, College of Engineering—transportation analysis	102,197
Western Interstate Energy Board—monitor federal actions on transportation of radioactive materials	5,000
Contractors and consultants—public information	**$346,222**
Kamer, Singer & Associates—public information consultant	243,106
Nevada Nuclear Waste Task Force—assist in implementation of public information program	36,000
Potomac Strategies Group—represent Nuclear Waste Project Office to federal administration and legislature	22,500
University of Nevada at Reno, Center for Environmental Studies—organize seminar/lecture series	17,145

(continued)

Types of expenditures	Amount
Phillip Richardson—report on international nuclear waste disposal programs	13,000
K-DWN Radio—produce and air 30-minute call-in radio show	6,250
Jean Stoess—edit Nuclear Waste Project Office publications and maintain mailing lists	3,185
KRNV Radio—produce and air 30-minute live radio shows	2,250
English Mailing Services—bulk mailing of newsletters, fact sheets, etc.	1,886
Pen-Pals Clipping Service—press clipping of Nevada newspapers	900
Contractors and consultants—legal	**$58,839**
James Davenport—consultation/legal advice	43,668
Kirk Balcom, Esq.—expert computer services on Nuclear Regulatory Commission licensing process	15,171
Local governments	**$380,960**
City of Las Vegas—assist state in examining repository impacts	145,469
City of North Las Vegas—assist state in examining repository impacts	117,504
Western Shoshone Resources, Inc.—study repository impacts	54,851
City of Henderson—assist state in examining repository impacts	35,288
Tribal Council of Moapa/Paiutes—study repository impacts	27,848
State agencies/bureaus	**$77,191**
Legislative Counsel Bureau—review effectiveness of federal/state programs[a]	73,443
Public Service Commission—travel/incidental costs	2,290
Dept. of Military—travel/incidental costs	1,458
Subtotal—contractors and others	**$3,898,153**
Total	**$5,401,023**

[a]The Legislative Counsel Bureau is the staff agency that provides legal, research, and fiscal support to the Nevada legislature. The Bureau also receives funds from the state legislative fund.

Comments From the State of Nevada

BOB MILLER
Governor

STATE OF NEVADA

ROBERT R. LOUX
Executive Director

AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE
Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-3744
Fax: (702) 687-5277

February 29, 1996

Victor S. Rezendes, Director
Energy, Resources, and Science Issues
U.S. General Accounting Office
Washington, DC 29548

Dear Mr. Rezendes:

Thank you for your letter of February 23, 1996 regarding the draft report titled ***Nuclear Waste: Nevada's Use of Nuclear Waste Fund Grants*** (GAO/RCED-96-72R). We have reviewed the report and have the following comments on behalf of the State of Nevada.

The State of Nevada strongly disagrees with the findings of the report in its entirety and asserts that all costs questioned in the report were allowable and appropriate. Certain of the report's findings are unsupported by the arbitrary interpretations of inapplicable statutes such as the rarely enforced criminal sanctions applicable only to federal officers and employees contained in the Anti-Lobbying Act, 18 U.S.C. 1913, and the "general rider" provision, repealed since 1984, in the Treasury, Postal Service and General Government Appropriations Act, 1980, Pub. L. No. 96-74, 607 (a), 93 Stat. 559, 575 (1975). Nothing in the Nuclear Waste Policy Act of 1982, as amended (NWPA), or in the annual Energy and Water Development Appropriation Acts, provides a textual basis for other contrived interpretations contained in the report. These statutes expressly prohibit the expenditure by the State for certain stated activities, none of which were implicated by the facts underlying the findings of the report. The actual facts support an interpretation that the costs were allowable and appropriate, a conclusion which is further compelled by the history and nature of the federal program to develop a high-level nuclear waste repository in Nevada.

The federal high-level radioactive waste repository program and the responsibility for critically monitoring and providing oversight for the program and for assessing its adverse impacts were imposed upon the State of Nevada against its will and without its consent. Congress has known, at least since 1989, that the citizens of the State, acting through their

Legislature, were adamantly opposed to the repository. Knowing this, the Congress has not precluded the State from using the annual appropriations to finance its oversight role even though it has been obvious that the funds were being used to develop a basis for supporting a statement of reasons (as provided for in the NWPA) why Yucca Mountain is not a suitable choice as a repository site. In this regard, the Congress and the Nation have benefitted by Nevada's vigorous oversight. To maintain, at this late date, that the State has misused the funds appropriated to it for this purpose, based upon its success in demonstrating substantial deficiencies in the site and identifying the problems that a national high-level waste transportation campaign will cause for the program, while politically useful to those who are determined to victimize the State of Nevada regardless of the facts, is not supportable by any reasonable interpretation of the law.

Detailed responses to specific issues raised in the report were provided to the GAO in previous correspondence and in communications with GAO representatives. Should you have questions regarding Nevada's response or need additional information, please feel free to contact me.

Sincerely,

Robert R. Loux
Executive Director

RRL/cs

cc Governor Bob Miller
Attorney General Frankie Sue Del Pappa
Commission on Nuclear Projects
Senator Harry Reid
Senator Richard Bryan
Congressman Barbara Vucanovich
Congressman John Ensign

Comments From the Department of Energy

Department of Energy
Washington, DC 20585

March 11, 1996

Mr. Victor S. Rezendes
Director
Energy, Resources and Science Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

The Office of Civilian Radioactive Waste Management (OCRWM) has reviewed your draft report, "NUCLEAR WASTE: Nevada's Use of Nuclear Waste Grant Funds" (GAO/RCED-96-72).

We appreciate the requirement for the funds provided to the State of Nevada to be expended in accordance with the authorized purposes; however, we do not concur in the recommendation, which we believe assigns an inappropriate function to the program.

If the GAO believes that further Federal oversight of the State's expenditures and review of the appropriateness of past uses of funds is required, we believe that the recommendation should not assign that responsibility to OCRWM, but to another appropriate agency.

We appreciate the opportunity to offer comments on your draft.

Sincerely,

Daniel A. Dreyfus, Director
Office of Civilian Radioactive
Waste Management

Printed with soy ink on recycled paper

Scope and Methodology

To determine if Nevada has engaged in prohibited activities, we reviewed the state's expenditures of grant funds for public information and legal services contracts from 1991 through 1995. We reviewed the scope of work and deliverables for each contract and identified activities that were out-of-state, involved other organizations or groups, or involved congressional contact. Because of concerns raised, we also reviewed the costs of the Project Office's multistate tour in 1993 and recent litigation between Nevada and Lincoln County and the city of Caliente. We discussed these activities with responsible state officials. In conjunction, we reviewed the Nuclear Waste Policy Act of 1982, as amended in 1987, applicable Energy and Water Development Appropriations Acts, and other federal legislation and case law having a bearing on permissible uses of federal funds by grantees.

To determine what controls are in place to ensure that Nevada appropriately spends its federal funds, we identified controls required under the provisions of the Nuclear Waste Policy Act, DOE's appropriations acts, and federal regulations. We determined what controls had been implemented through discussions with DOE officials and reviews of documents. We also discussed the scope and findings of the most recent independent audit of the state's expenditures of grant funds with representatives of the audit firm.

To determine if DOE has recovered funds improperly spent by the state, we contacted DOE's responsible contracting officer and obtained available documentation on DOE's efforts to recover these funds.

Major Contributors to This Report

Bernice Steinhardt, Associate Director
Dwayne E. Weigel, Assistant Director
Eugene Buchert, Evaluator-in-Charge
Brad Dobbins, Evaluator
Mindi Weisenbloom, Senior Attorney

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

PRINTED ON RECYCLED PAPER

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested