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## **Re: Docket No. 06-IEP-1N. Comments of Cal Rad Forum on Draft Consultant Report, "Nuclear Power in California: 2007 Status Report"**

To The California Energy Commission Docket Office:

The California Radioactive Materials Management Forum (Cal Rad) appreciates this opportunity to comment on the Commission's Draft Consultant Report, "Nuclear Power in California: 2007 Status Report." The draft report is deficient in at least two issues related to disposal of low-level radioactive waste: 1) the report neglects the State of California's responsibility for the demise of the proposed Ward Valley low-level radioactive waste disposal facility — placing all the blame on the federal government, and 2) the report understates the State of California's legal and contractual obligations to develop a low-level radioactive waste disposal facility to be used by organizations that use radioactive materials and generate low-level waste in the Southwestern Compact region.

Cal Rad Forum is an association of organizations that use radioactive materials, generate low-level radioactive waste (LLRW), or otherwise have an interest in the safe management and disposal of LLRW. Our members include universities, utilities with nuclear power plants, industries including biotech and pharmaceutical companies, medical centers, and professional societies.

Our comments are specifically directed to those portions of the draft report on pages 7, 27, 83, 101-104, 106-107, and 226 concerning low-level radioactive waste.

### 1) Responsibility for the demise of the proposed Ward Valley low-level radioactive waste disposal project.

The State of California, not the federal government, is ultimately to blame for its failure to develop a LLRW disposal facility. The draft report puts all of the blame for the failure of the proposed Ward Valley project

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on the federal government's unwillingness to transfer federal land at Ward Valley to the State (e.g., pages 7 and 83) and its later unwillingness to transfer the land without conditions considered onerous by the State (See pages 103-104) — all during the Clinton administration. The State believed these conditions, set by the Department of the Interior, interfered with California's status as an "Agreement State," under the Atomic Energy Act and U.S. Nuclear Regulatory Commission (NRC) oversight. However, the report fails to note 1) California's withdrawal, in 1999, from a lawsuit in federal court initiated by the State to force the land transfer, and 2) the passage by the State Legislature, in 2002, of Assembly Bill 2214 (Keeley) — at the urging of then-Governor Davis — which cancelled the Ward Valley project on specious safety grounds. AB 2214 also set conditions which may make it difficult, or impossible, to license a disposal facility consistent with NRC regulations. Nor did AB 2214, or any subsequent action by the State, initiate a new attempt to develop a disposal project. Had AB 2214 not been enacted, the State could have made a new request for the land transfer — say in 2004 — to a new administration in Washington, DC and likely acquired the federal land at Ward Valley.

2) California's obligations to develop a disposal facility for low-level radioactive waste.

The language of the Draft Consultant's Report understates California's responsibility under State and federal laws to develop and operate a LLRW disposal facility for users of radioactive materials in California, Arizona, North Dakota, and South Dakota. The Draft Report says (page 7), "According to California's compact with other western states, California is to be the host state for any commercial low-level waste facility to be opened in the compact states." And (on page 226), "According to California's compact with other western states, California is to be the host state of any low-level waste facility to be opened in the compact states." (Emphasis added.) This implies that California has responsibility only if any disposal facility is opened. But under State and federal law (see P.L. 100-712), California is required to develop a regional LLRW disposal facility. We recommend that the Report note that California has a legal and contractual obligation to be the host state and assure that a LLRW disposal facility (commercial or otherwise) is opened in a timely manner and operated for 30 years for users of radioactive materials in the Southwestern Compact region. Failure to do so will subject the State to substantial liability for additional costs incurred by organizations that use radioactive materials who cannot dispose of their wastes and must store them for an indefinite period of time prior to ultimate disposal — just as the federal government has incurred substantial liability to utilities throughout the country for its failure to open Yucca Mountain for spent fuel by the mandated date. The Draft Report correctly notes (e.g., pages 27, 83, 101, 102, 104, 106-107, and 226) that, as of July 1, 2008, it is anticipated that there will be no disposal option for LLRW classes B and C for users of radioactive materials in the Southwestern Compact region who will have to store these wastes.

If there are any questions about these comments, please call me at 925/283-5210.

Sincerely,

Alan Pasternak