

Approved _____ Date _____

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at _____
Chairperson

8:02 a.m./~~p.m.~~ on March 3, 1992 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:

Pat Mah, Legislative Research Department
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Charles Jones, Director, Division of Environment
Robert Eye, General Counsel, Kansas Department of Health and Environment
Warren Wood, General Counsel, Wolf Creek Nuclear Operating Corp.
Robert D. Hagan, Wolf Creek Nuclear Operating Corp.
Laura McClure

The Chairman opened the hearing on SB 430 - concerning amending the central interstate radioactive waste compact.

Charles Jones discussed the changes in the Compact and why the amendments were proposed (Attachment 1). Mr. Jones and Mr. Eye responded to questions regarding U. S. Ecology.

Warren Wood said they believe the risk of significant problems developing at the low level waste disposal facility is very small, and the potential for the four alternative funding sources being exhausted is remote, and the state's exposure under the current and under proposed shared liability provisions is negligible. In order to advance the Nebraska Project they urge approval of SB 430 (Attachment 2). Mr. Wood and Dr. Hagan responded to questions regarding the Wolf Creek Site and the Nebraska Site.

Laura McClure, past president, of the North Central Kansas Citizens and Kansas Coalition on Nuclear Waste said their organization still believes that each state should have their own nuclear waste site. She posed some questions regarding the language in the bill, and the site that has been selected in Boyd County, Nebraska (Attachment 3).

Senator Frahm moved that the minutes of the meetings of February 25, 26, and 27 be adopted. The motion was seconded by Senator Lee. Motion carried.

The hearing on SB 430 will be continued on March 4, 1992. The meeting adjourned at 8:59 a.m.

1992 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date 3/3/92

PLEASE PRINT GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
Shawn McGrath	KWRC
Kristy Weiter	" "
Dan Haas	KCPH
Bruce GRAHAM	KEPC
John IRWIN	KDHE
Chuck Layman	KDHO
Martha Jenkins	AIA



Department of Health and Environment
Azzie Young, Ph.D., Secretary

Reply to:

Testimony presented to
Senate Energy and Natural Resources Committee
by
The Kansas Department of Health and Environment
Senate Bill 430

Good morning. My name is Charles Jones and I am the Director of the Division of Environment of the Kansas Department of Health and Environment. I am here this morning to discuss Senate Bill 430.

The State of Kansas became a party to the Compact, having enacted legislation to accomplish membership in 1982. That legislation and the Compact are the result of the provisions of the federal Low-level Radioactive Waste Policy Act which requires that states manage the low-level radioactive waste produced within their borders. Members of the Central Interstate Compact are Nebraska, Kansas, Oklahoma, Arkansas and Louisiana. Nebraska was selected as host state in 1989. A site in north-central Nebraska, Boyd County, has been selected by the Compact Commission's contractor, U.S. Ecology, as the host community for the proposed disposal facility.

Subsequent to the selection of Nebraska as host state, a group of Nebraska legislators became concerned that, as currently worded, the Compact does not explicitly allow the State of Nebraska to recover costs from other member states for contingent liabilities and remediation costs related to the proposed facility. For this reason, the proposed amendments to the Compact were enacted by the Nebraska Unicameral and submitted to the other Compact states. Neither of these issues appears to pose significant problems in terms of ongoing Compact operation

Currently, Article III of the Compact, subsection (d) provides as follows:

(d) A host state may establish fees which shall be charged to any user of a regional facility, and which shall be in addition to the rates approved pursuant to Section (c) of this Article, for any regional facility within its borders. Such fees shall be reasonable and

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shall provide the host state with sufficient revenue to cover any costs associated with such facilities. If such fees have been reviewed and approved by the commission, and to the extent that such revenue is insufficient, all party states shall shares the costs in a manner to be determined by the commission. (Emphasis added.)

This language would appear to provide adequate basis for Nebraska, as host state, to recover all costs related to the proposed facility. Arguably, this provision authorizes Nebraska, with Compact Commission approval, to recover costs, irrespective of their origin or magnitude, from the other party states. The language of Article III, subsection (d) is broad and adequate to address Nebraska's concern that it will be left alone to deal with long-term liability. Linkage of shared liability to fee reviews and approval established a mechanism whereby the Compact could have a hand in controlling disposal costs.

Nevertheless, Nebraska, Louisiana and Arkansas enacted the amendments which are now before you. As to shared liability the amendments are much more detailed as to the costs which are anticipated to be covered and the sources from which payment is expected. As proposed, the amended Article III (d) would authorize the host state to collect sufficient revenue, via fees to users of the facility, to "cover all anticipated present and future costs associated with any regional facility and a reasonable reserve for future contingencies which are not covered by rates . . ." including, but not limited to:

1. The licensure, operation, monitoring, inspection, maintenance, decommission, closure, institutional control, and extended care of a regional facility;
2. response, removal, remedial action or cleanup deemed appropriate and required by the host state as a result of a release of radioactive or hazardous materials from such regional facility;
3. premiums for property and 3rd party liability insurance;
4. protection of the public health and safety, and the environment;
5. compensation and incentives to the host community;
6. any amount due from a judgment or settlement involving a property or third party liability claim for medical expenses and all other damages incurred as a result of personal injury or death, and damages or losses to real or personal property or the environment; and
7. cost of defending or pursuing liability claims against any party or state.

It should be noted that the shared liability provision would take effect only after exhaustive efforts have been undertaken to recover costs from host state fees, insurance policies, facility operators or in-kind services by generators. Liability

would be shared proportionately among the Compact states by percentage of waste disposed in the facility.

The proposed amendments are much more detailed than the general language of the current Article III(d). With regard to shared liability, however, the effect of the amendments remains the same: i.e., Kansas remains a surety of the Nebraska facility. Senate Bill 430 does not alter this conclusion. Where costs are concerned, the amended language--which removes the mechanism for Compact review and approval of fees--may have significant ramifications.

Both the current and proposed language recognize that the State of Kansas must shoulder its proportionate share of liability pertaining to this site. The question is how do you shoulder that responsibility in an effective and equitable fashion. Given the long life and post-closure period of this facility, it is conceivable that liability could befall future generations. Given that possibility, the legal, constitutional and policy question is whether we will attempt to estimate potential liability costs and collect funds to adequately meet those costs from the current generation of ratepayers.

Article IV(h), also, Article I would have the Commission adopt an open records by-law consistent with the open records law of the host state. Any litigation must be filed in U.S. District Court of the host state.

Article IV(d), also, Article I would have the Commission adopt an open meetings by-law consistent with the open meetings law of the host state. Any litigation must be filed in U.S. District Court of the host state.

Article IV(a) would have Nebraska hold two voting members on the Compact Commission and a nonvoting member from the county in which the regional facility is located. With the exception of removing states from the Compact, all Compact actions are subject to simple majority rule. A removal action requires two-thirds majority.

Testimony Presented By:

Charles Jones
Director, Division of Environment
March 3, 1992

TESTIMONY PRESENTED TO
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

by

WOLF CREEK NUCLEAR OPERATING CORPORATION

Warren B. Wood, General Counsel,

and

Dr. Robert C. Hagan, Director Nuclear Services,

IN SUPPORT OF

SENATE BILL 430

March 3, 1992

Mr. Chairman and members of the Committee, good morning. My name is Warren B. Wood. I am General Counsel of Wolf Creek Nuclear Operating Corporation. With me today is Dr. Robert C. Hagan, Director Nuclear Services of the Corporation. We are testifying on behalf of Wolf Creek Nuclear Operating Corporation and its three owners, Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc., in support of Senate Bill 430.

Kansas, Nebraska, Arkansas, Louisiana and Oklahoma belong to the Central Interstate Low-Level Radioactive Waste Compact, established in accordance with federal law (the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U. S. C. A. 2021b through 2021j), for the purpose of

developing a new generation of waste disposal facilities to take the place of the three currently-available facilities in the states of South Carolina, Nevada and Washington.

I won't go into the history of the Compact here, as that was adequately addressed by Dr. Stanley Grant, former Acting Secretary of the Kansas Department of Health and Environment, when he testified before the Committee regarding this bill on April 9, 1991. His written comments are in the record.

Senate Bill 430 would amend the Central Interstate Low-Level Radioactive Waste Compact, K. S. A. 65-34a01, primarily in four areas:

1. Shared Liability. The Bill clarifies the concept that the five member states potentially could share in costs and liabilities resulting from operation of the waste disposal facility, and it establishes an order of four different funding sources which must be exhausted before state funding responsibility might begin. (Article III[d].)

2. Open Meetings. The Bill requires Compact Commission meetings to comply with the host state's open meetings laws. (Article IV[d].)

3. Open Records. The Bill requires Compact Commission files, records and data to be subject to the host state's open records laws. (Article IV[m].)

4. Commission Members. The Bill provides that the host state shall be represented on the Compact Commission by two at-large voting members and one non-voting member from the county in which the waste disposal facility is located. (Article IV[a].)

Open Meetings and Open Records

The Open Meetings and Open Records amendments are not controversial. Even without these amendments, the Compact Commission already has begun making its meetings and records open to the public. The additional part of the amendment making any open meetings or open records issues reviewable solely by the U. S. District Court of the host state likewise should not be controversial.

Compact Commission Membership

The Compact Commission presently is comprised of five voting members-- one from each member state. The addition of another voting member from the host state is not objectionable. The host state arguably should have a greater voice on the Commission since that state will be most affected by Commission decisions. Addition of a non-voting member from the site's county also is not objectionable. It again will allow more direct involvement by those most directly affected by Commission decisions.

Shared Liability Among Party States

The present compact already provides in general terms that the member states potentially could share in costs associated with the facility. Article III[d] allows the host state to establish fees to be charged to any user of the facility which shall provide the host state with sufficient

revenue to cover costs associated with the facility. The paragraph concludes:

If such fees have been reviewed and approved by the Commission and to the extent that such revenue is insufficient, all party states shall share the costs in a manner to be determined by the Commission.

The proposed amendment removes the necessity for Commission approval of host state fees, although it allows a 120 day period in which the Commission may provide comments on proposed host state fees. The amendment specifies the types of costs which may be covered by host state fees. It also establishes an order of funding sources against which to proceed before shared state liability might begin. Those sources are:

1. Low-level radioactive waste funds managed by the host state;
2. Insurance or surety policy proceeds applicable to the facility;
3. Proceeds of reasonable collection efforts against the facility operator;
4. Payments from or in-kind services by generators.

Even if the states are required to contribute under this section, they are not precluded from pursuing additional recovery efforts against the facility operator or insurer or any waste generators. Finally, applicable statutes of limitation regarding claims against other parties or states will not run while the states are pursuing reasonable collection efforts.

Background of the Amendment

The Compact in essence is a contract among the member states to jointly develop a new low-level radioactive waste disposal facility to handle all such waste generated within the Compact region. Although a large majority

of the waste is generated by the seven commercial nuclear power units in the Compact region, it will also handle waste generated by hospitals, universities, and other industries in the region.

The Compact cannot be amended by fewer than all the member states. If even one state fails to approve the amendments, the original Compact will remain in full force.

To date, Nebraska, Arkansas and Louisiana have approved the proposed amendments. In Oklahoma, the amendments have passed out of a Senate committee and are before the full Senate. We have no reason to believe that Oklahoma ~~likewise~~ will not approve the amendments.

The amendments were proposed by the state of Nebraska after it was selected as the host state. Although the amendments presently are favorable to Nebraska as the host state, it is likely that in about 30 years, a second facility will be built in another state in the Compact region, and these provisions would be of benefit to the second host state.

Effect of Failure to Approve Senate Bill 430

Although there has been much publicity about problems in the Central Interstate Compact, as well as other compacts in the nation, the fact remains that of the nine compacts and eight unaffiliated states in the nation, the Central Interstate Compact is one of only three compacts and one unaffiliated state that have met all the federally-mandated milestones to date.

It appears that no compact or unaffiliated state will meet the January 1, 1993, deadline of having a disposal facility in operation. However, we expect that the Compact will meet the January 1, 1996, final deadline for having a facility in operation. If that deadline is not met, federal law requires that the states shall be obligated to take title to and possession of all low-level radioactive waste generated within each state, and they shall be liable for all damages incurred by each generator as a consequence of failure of the state to take possession of the waste as soon as the generator notifies the state that the waste is available for shipment. (Section 2021e[d][2][C] of the federal law.) (This provision presently is under review by the U. S. Supreme Court.)

Some have advocated that Kansas should withdraw from the Compact rather than passing Senate Bill 430. We believe that the economic ramifications of withdrawing from the Compact are much more serious to Kansas than proceeding as a reliable member of the Compact.

Withdrawal from the Compact will not solve the problem of waste disposal. In fact, instead of the prospect of a disposal facility in Nebraska, Kansas would be faced with developing a new facility in Kansas. Instead of sharing the cost of one facility among five states, Kansas would be required to fund 100 percent of a new facility. Kansas would have no other states with whom potential liability could be shared.

If Kansas withdrew from the Compact, we interpret present compact language to require the state to continue to pay its share of compact costs for another five years. Thus, not only would Kansas have to pay 100 percent of the cost of its own facility, it would have to continue paying its share

of the cost of the Nebraska facility as well.

Finally, as we read federal court decisions from other jurisdictions, Kansas would be unable to exclude waste generated outside the state. Under federal law, compacts can exclude waste generated outside the compact member states.

Some have advocated siting a low-level radioactive waste disposal facility at Wolf Creek Generating Station. According to a study done by the firm Dames and Moore for the Compact Commission, the area in which Wolf Creek is located does not meet regulatory requirements for a permanent disposal site. We believe Kansas would be faced with the prospect of selecting a new disposal site, a very-time consuming process which would further delay development of a facility and increase disposal costs.

Conclusion

We believe that the risk of a significant problem developing at the waste disposal facility is so small, and that the potential for all four alternative funding sources being exhausted is so remote, that the state's exposure under the current and under proposed shared liability provisions is negligible. In order to allow the Nebraska project to move forward with as little delay as possible, we urge approval of Senate Bill 430.

Dr. Hagan and I would be happy to answer any questions you may have on this subject.

March 3, 1992

Senate Energy and Natural Resources Committee
Senator Doyen, Chairman
Concerning Senate Bill 430

Good morning, I'm Laura McClure past president of the North Central Kansas Citizens and the Kansas Coalition on Nuclear Waste. Our groups have worked on this issue for many years, it was and still is our belief that each state should take care of it's own Nuclear waste.

First I would like to take a look at a few questions I have concerning language in the bill.

On page 2, lines 22-31, giving the definition of institutional control..."and other necessary activities at the site as determined by the host state and administration of funds to cover the costs for these activities." Is this giving Nebraska a blank check?

On page 4, lines 3-10...this section gives Nebraska the ability to set the fees the states will pay for access to the waste facility. It takes it out of the hands of the Compact Commission (where we have a vote) and gives it solely to Nebraska. If we found the fees to be unreasonable we would have to take Nebraska to court. The fees are now over \$300.00 per cubic foot of waste, up from the original \$120.00 figure given by U.S. Ecology.

On page 5, lines 3-8...does this make it easier for U.S. Ecology or the generators to shift their liabilities to the states through Bankruptcy? Does this take away the incentives for the developer to build and operate the site properly?

After hearings on SB 430 last session Legislative Research was provided some questions pertaining to this bill. One of those questions was; What are the implications of the bankruptcy language in the Nebraska amendments?

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Their answer; "The Nebraska amendments to Article III-d of the compact provide that, if fees are not sufficient to pay costs associated with the facility, all states and generators using the facility share liability for the deficit. However, recovery against other sources of funds is first required, including recovery from the facility operator. The bankruptcy language simply limits the collection efforts that must be made against the operator if the operator files for bankruptcy and the proceeding is not dismissed within 60 days. In that case, if a state is required to pay a part of the deficit the state would then have to try to recover its money from the operator."

Now lets talk about the site itself.

(SEE ATTACHMENT 1) pages 8 and 9... According to Federal and State law "The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100 year floodplain or wetland."

Why did U.S.Ecology choose 320 acres that contains 42.6 acres of wetlands and is partially located in the 100 year floodplain of two streams? On page 11 of the attachment you will also see that the Boyd County site has an extremely shallow water table of 5 to 15 feet. Do you think the developer can "demonstrate that there is no alternative site that is obviously superior to the proposed site?"

Before you commit our citizens to future expense I would ask you to request the Kansas Geological Survey to study the information U.S. Ecology has provided to KDHE to make a determination of the licensability of the Boyd County site.

Which raises another question. What is the procedure if the site in Boyd County fails to meet the licensing criteria? Do we go through the host state selection procedure again because U.S. Ecology has stated that this site is the best site in the state of Nebraska? Do we start over with another developer?

Should we agree to the major changes that Nebraska is proposing?

No. We are being asked to accept more of the liabilities for an unsound, politically selected site and give up our right to vote on fee increases for waste charges...I do not feel this is in the best interests of our State or our future generations.

If the state of Kansas refuses to ratify the Nebraska amendments to the compact and insists on retaining the existing compact, what liabilities will the state of Kansas incur? Could Nebraska in any way construe that Kansas broke the compact by refusing to ratify the amendments and charge Kansas with penalties for breaking the compact?

According to research..."No liabilities would be incurred by failure to ratify the proposed amendments. If anything, Nebraska could be deemed to have broken the compact by adopting a statute which denies access to the facility by a state that does not ratify the amendments (section 1 of the amendments). This contravenes the terms of the compact which require access to be given and could be grounds for revoking Nebraska's membership."

You can also cite the compact law itself; 65.34a01 article VI section b "No party state shall pass or enforce any law or regulation which is inconsistent with this compact."

"Whatever site selection process is used by the applicant, ...it should be logically sound, defensible, and useful for decision making."

NRC 4.18, Sec. 2.1

"It should be demonstrated that the candidate sites are among the best that could reasonably be found."

NRC 4.18, Sec. 2.1.2.3

"It should be possible to demonstrate that there is no alternative site that is obviously superior to the proposed site."

NRC 4.18, Sec. 2.1.2.4

The purpose of this section is to specify the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal facility. 10 CFR Part 61.50: (a)(1)

The disposal site must be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high hazard area or wetland, as defined in Executive Order 1198, "Floodplain Management Guidelines." 10 CFR Part 61.50: (a)(5)

"In evaluating sites for LLW disposal, it is important that a reasonable effort be made to select candidate sites with natural conditions that will maintain radionuclide releases to the general environment as low as is reasonably achievable. The NRC staff considers the long-term contribution of the natural conditions of the site essential in protecting the general population against releases of radioactive material."

NRC 4.19, Sec. B

"The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives of [Title 194] Chapter 4 will be met."

Title 194, Ch. 5, 002.02C

"In general, sites should not be located in areas where extensive hydraulic design features will be needed to provide flood protection or erosion protection for the site ... because (1) they may lose their effectiveness over time without maintenance ..."

NRC 4.19, Sec. 1.4

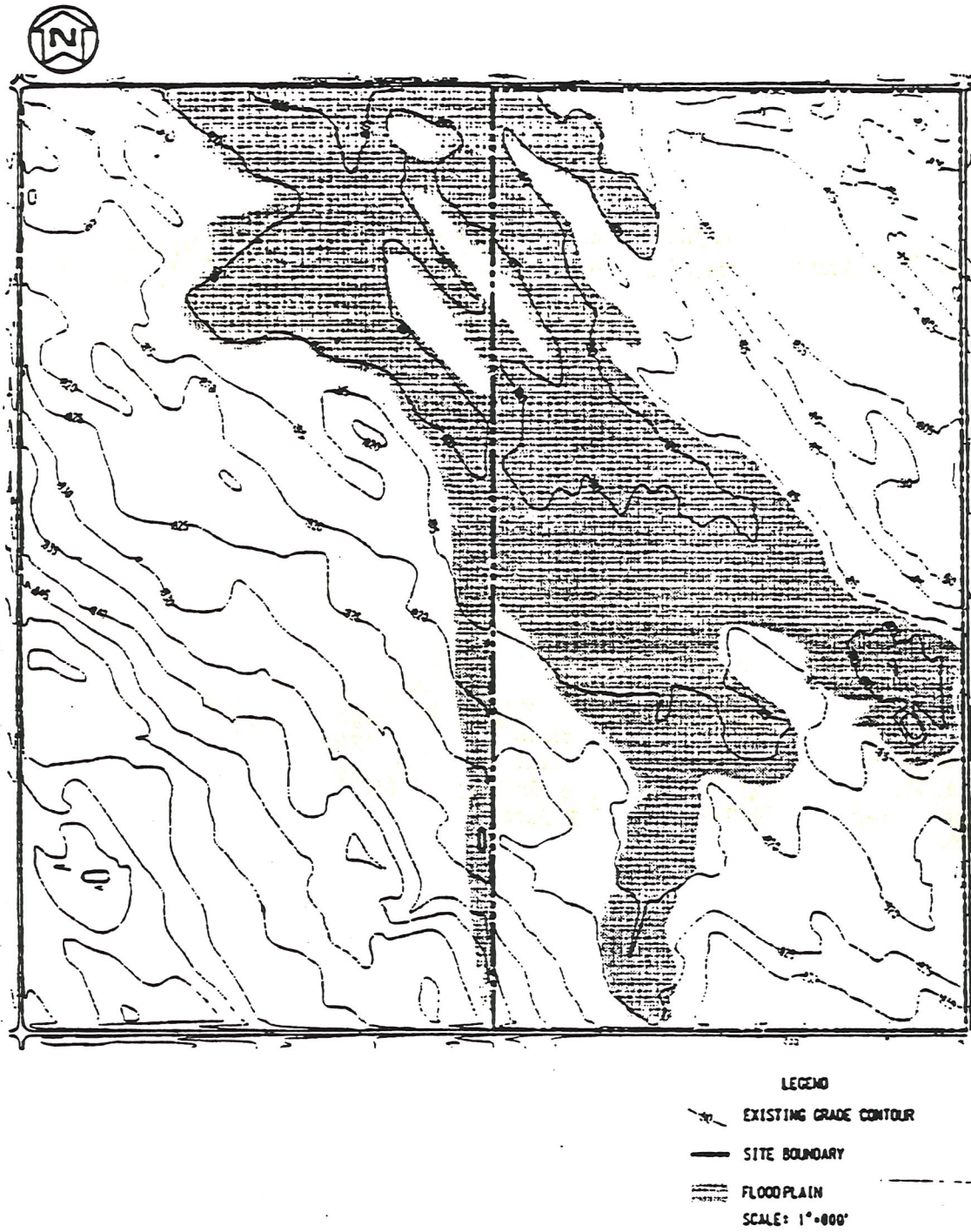


Figure 2.4-2. One-hundred-year floodplains of the ephemeral streams of the Butte site.

3.1B COMMENT

The ER (page 6-39) states that "The site boundary is defined by security fencing that surrounds the 320 acres of the site. This boundary provides a buffer zone that separates the public from the waste disposal units." Hence, the applicant acknowledges that the entire 320 acres constitutes the *disposal site* as defined in Title 194. Further, the applicant acknowledges that the 320-acre site contains 42.6 acres of U.S. Army Corps of Engineers jurisdictional wetlands (Table 4-47 of the ER) and that part of the site is in the existing 100-year floodplain of two ephemeral streams (page 5-84 of the ER). Although the facility layout is designed so that the disposal units are not located in the wetlands and although the site will be graded with drainage structures so that the disposal units will not be affected by flooding, these characteristics of the proposed disposal site are clearly contrary to the intent of site suitability requirements in Chapter 5 of Title 194.

The primary intent of these requirements is not protection of wetlands (pursuant to Section 404 of the Clean Water Act) or protection of occupants of floodplains (pursuant to Executive Order 11988). The primary concern is selecting sites with natural conditions that contribute substantially to the long-term isolation of waste. Periodic ponding of surface water because of poor drainage may reduce the stability of the disposal units and waste forms and could transport any releases rapidly to the general population. Considering the indications (presence of wetlands and 100-year floodplain) that the proposed disposal site is not generally well drained, why is the Boyd County site even considered a suitable site, much less the preferred site?

Poor natural conditions, such as poor drainage, place an unacceptably great reliance on the long-term performance of the engineered facility (including drainage structures). Note that in reference to high-level waste, Congress and the NRC have held that an unacceptable site cannot be rehabilitated by an engineered system. Why is this not the case for the Boyd County site, especially since Title 194 appears to put the burden for acceptable performance on the natural site conditions with complementary support from the facility design?

3.2A BASIS

"Facilities shall be sited ... with an objective of zero-release and with reasonable assurance that exposures to individuals are within the limits established in the performance objectives in 002 through 005 of this Chapter."

Title 194, Ch. 4, 001

"Reasonable effort should be made to limit releases of radioactivity in effluents to the general environment as low as is reasonably achievable."

3.3B COMMENT

At the outset of the siting process (statewide to 111 PSA's), emphasis was placed on a quantitative ranking based on objective criteria. Subsequently, during the Delphi process in which 27 representative PSA's were ranked by the Citizens Advisory Committee, some shifting of preferences was noted when the locations of the PSA's were provided (page 4-10 of the ER). The basis for this shifting of preferences with respect to location is not described. Nonetheless, it is noted that all three of the candidate sites selected from among the 111 PSA's are located within 30 miles of the state border. Explain this coincidence and elaborate on the technical basis for the shifting of preferences with respect to location.

Moreover, when selecting the preferred site from among the three candidates, comparisons were qualitative and subjective instead of being quantitative and objective as they appear to have been in the preceding statewide-to-PSA and PSA-to-candidate screenings. As characterized in the ER, the Boyd County site has an extremely shallow water table (5-15 feet), has wetlands within the disposal site, and is partially within a 100-year floodplain. Given that groundwater and surface water were consistently ranked the first and third most important considerations in the site selection process (Table 4-1 of the ER), how is it shown that there is no alternative site that is obviously superior to the Boyd County site?

3.4A BASIS

"In presenting the analysis [of the proposed site selection], a tabular format showing side-by-side comparison of alternatives with respect to the selection factors should be used insofar as possible."

NRC 4.18, Sec. 2.1.2.4

3.4B COMMENT

The applicant followed the NRC guidance for presenting the selection of the preferred site in the form of a tabular comparison between the candidate sites (Table 4-47 of the ER). However, the ER appears to be a flawed document that is promoting the Boyd County (Butte) site at the expense of an impartial evaluation based on fact. For example, in the side-by-side comparison in Table 4-47, it is stated that "Waste disposal will not take place within the 100-year floodplain of the ephemeral streams" on the Nuckolls and Nemaha sites. Later in the ER (Page 5-84), it is acknowledged that part of the Boyd County site will lie in such a floodplain. Please comment on the observation that this omission in Table 4-47 is intentionally misleading and avoids juxtaposing a potentially disqualifying characteristic of the Boyd County site with a favorable characteristic of the alternatives.

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