Ken Niles comments to the BRC – September 13, 2011

The Western Governors have an extensive track record in regards to their positions on radioactive material transportation.

I'm sorry to say that the draft Blue Ribbon Commission Report falls far short of those expectations expressed by the Western Governors.

The challenges of developing and implementing a national transportation program for spent nuclear fuel and high-level waste appear to be greatly underestimated and the entire topic of transportation seems almost an afterthought, with less than four pages of the report dedicated to the topic.

Transportation is not listed as one of the seven key elements, except as a part of the responsibility of the new organization the BRC recommends be created. These very limited recommendations do not provide a new federal agency with the specific guidelines needed to reflect hard-won lessons learned in spent nuclear fuel/high-level waste transportation systems design.

It is absolutely essential that the final report provides much more specific guidance and specific recommendations for the design and implementation of the transportation program.

The draft BRC report says "The current system of standards and regulations governing the transport of spent fuel and other nuclear materials has functioned well, and the safety record for past shipments of these types of materials is excellent." This implies that just meeting current standards and regulations for shipments is sufficient. However, to inspire public acceptance of these shipments, the spent nuclear fuel/high-level waste transportation program must do more than just meet current regulatory requirements.

The draft recommendations do not recognize the widespread public concern regarding the safety of spent nuclear fuel/high-level waste transport. The federal nuclear waste program will involve an unprecedented number of shipments of large quantities of spent nuclear fuel and high-level waste over the nation's highways and rails for decades. Public confidence and acceptance of these shipments is key, and should not be assumed.

The WIPP transportation program is often touted as the model for a transportation program for spent nuclear fuel and high-level waste. The draft BRC report acknowledges this program, but fails to credit the more than 20 year involvement of the Western states as partners and erroneously credits the U.S. Department of Energy – DOE – with designing the system. It was, in fact, the Western states that proposed and negotiated with DOE the extra-regulatory standards that were eventually incorporated into the program.

The draft report does talk about the success of the WIPP transportation program and the collaboration with the states. It advocates for an early beginning to the transportation planning – "planning and coordination for the transport of spent fuel and high-level waste is complex and should commence at

the very start of a project to develop consolidated storage capacity." But the recommendation does not define what this work is or the roles of the various participants.

The report also says "DOE has a well-established practice of working with state and regional groups and other organizations to coordinate and provide technical assistance for transportation. Future programs should build upon these proven approaches." But again, no specific recommendation of engaging the states as partners to develop a comprehensive, best-practice, extra-regulatory transportation program modeled on the WIPP program.

When the Western Governors approached DOE in the late 1980s about working together to develop a transportation program for shipments to WIPP, the direction from the Governors to their state representatives was for "safe and uneventful" transportation. And it is these "best practice" above-regulatory standards that do much both to increase safety, and to help assure uneventful transportation. Let me give you one brief example of what we mean by uneventful. If a WIPP truck, or in the future, a spent fuel truck, slides into a ditch at 10 miles an hour during a snowstorm, it's not likely a safety issue, but the event will generate tremendous scrutiny and rhetoric, and likely would shut shipments down for a period of time.

The development of a similar, comprehensive transportation safety program modeled again on best-practice above-regulatory standards, is what is needed for this program, and it should be developed in a cooperative, collaborative partnership between the federal government and the states, working through their respective regional groups.

We believe it is crucial for the Blue Ribbon Commission to make specific recommendations that get us to that result. Don't assume this will otherwise occur.

There are a few other areas related to transportation where the report again raises issues, but stops short of a full endorsement or recommendation. As you've heard, we're looking for more specific recommendations.

- The draft report proposes going forward with the Package Performance Study, "if it has independent value" – which is not identified. The Western states have strongly supported such a study and encourage the BRC's final report to include this as a specific recommendation.

- The Western states have long advocated for full-scale testing of casks to be used to transport spent fuel. The draft report refers to a National Academy study endorsing this practice, but offered no recommendation of its own. Again, we believe a specific recommendation in support of full-scale cask testing is warranted.

- The draft report advocates completing the development of procedures and regulations for providing Section 180 (c) assistance – but offers no suggested improvements for that part of the

Nuclear Waste Policy Act. The Western states support amendment of this section of the NWPA, to allow for a broader use of funds to sufficiently prepare transportation routes in advance of these shipments, as well as carry out a transportation safety program. Funds should be allowed to be used for accident prevention as well as response, so that the funds could be used to support vehicle inspections, carrier reviews, and other important activities that clearly result in lowering the chance of an incident.

- The report does reference a number of recommendations from the National Academies report called "Going the Distance," but is silent on the issue of implementing a mostly rail transportation program. For many reasons, that policy is supported by the Western states. This spring, an ad hoc group from the Western Governors' Association provided a number of recommendations to the Blue Ribbon Commission, including the necessity of gaining full commitment and cooperation from the rail industry to design and implement a transportation program for spent fuel and high-level waste. When the Western states attempted to work with the rail industry and DOE in 2003 to modify the current WIPP transportation program to accommodate potential shipments by rail, we ran into strong resistance from the railroads about a participatory partnership role for the states. We would like to see the Blue Ribbon Commission also address this issue as one of their transportation recommendations.

- One very strong area of disagreement that the Western states have with the recommendations within the draft report, concerns the age of spent fuel that could be shipped to an interim storage facility. The Western states have long advocated a policy of shipping "oldest fuel first" in order to greatly reduce the potential impacts from a transportation incident. This position is consistent with a recommendation from the National Academies report "Going the Distance." The draft BRC report, in effect, advocates shipping fresh, hot fuel, as a way to increase flexibility in both at-reactor and consolidated storage sites. We strongly disagree with that recommendation.