

United States Senate

WASHINGTON, DC 20510

February 1, 2019

The Honorable James Richard “Rick” Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Secretary Perry,

Following up on yesterday evening’s Congressional briefing on the U.S. Department of Energy’s (DOE) and National Nuclear Security Administration’s (NNSA) January 30 Notice of Information, which revealed that a one half-ton shipment of weapons-grade plutonium had already been transferred to the Nevada National Security Site (NNSS), we write to you today to express our continued outrage at your Department’s breach of trust enacted by your Department with the State of Nevada. The decisions and subsequent actions made by you and officials under your leadership have caused potentially irreparable damage to a previously-collaborative state-federal relationship. It is imperative for you and your Department to course-correct in order to avoid a complete erosion of public trust.

As you are aware, beginning on August 28, 2018, DOE/NNSA informed the State of Nevada and the Nevada Congressional Delegation of the Department’s intent to make public a Supplemental Analysis proposing the transfer of up to one metric ton of plutonium for indefinite storage at the NNSS. Soon after, you received multiple letters from Nevada’s Members of Congress requesting further information and analysis on the safety and planning of such a transfer, accepted phone calls and letters of inquiry directly from the Governor of the State of Nevada, and allowed your staff to meet with officials from the State of Nevada at DOE Headquarters in Washington, DC to discuss the State’s concerns with the proposal. Despite these clear objections, your staff ceased collaboration and discussion with the Nevada-DOE Working Group – a state-federal collaborative body created in 2014 by a mutually-agreed upon Memorandum of Understanding between the State of Nevada and the Department to address issues such as the prospective plutonium shipments.

Furthermore, when the State of Nevada filed a complaint and motion for preliminary injunction in federal court to prevent DOE/NNSA from shipping the plutonium and requiring a full environmental impact evaluation, your Department not only actively engaged in these judicial proceedings, but fought to suppress Nevada officials from providing testimony, only to later promise to delay plutonium shipments in exchange for Nevada delaying any further court proceedings.

All the while, your Department knew full well that shipments had already been made, and the plutonium was already sitting within the borders of our home state. It is not only unconscionable

that you and your subordinates chose to make these shipments against the expressed opposition to the Governor of Nevada and Nevada's Federally-elected officials, but that you allowed your staff to seemingly participate in good-faith negotiations while also misleading a federal judge and falsely portraying the Department's position in federal court proceedings.

Over the course of several months, you and your staff had multiple opportunities to set the record straight, whether that be in classified settings or in confidence; rather, you chose to mislead the State of Nevada and neglect disclosing the truth at multiple junctures. The leadership displayed, along with any sound legal advice provided across this entire ordeal is severely lacking.

We are dismayed by the disregard previously given to the concerns expressed by our state. It remains our duty as Nevada's elected representatives to protect our state's residents, their livelihoods, and our local environment. In doing so, we remain steadfast in our opposition to the storage of plutonium currently in our state, the potential shipment of plutonium to be stored in our state at a future date, and the storage of high-level nuclear waste and spent nuclear fuel. With that, we request your immediate answers to the following questions:

1. Why was the classified information about the shipments withheld for this length of time? Why was the information specifically released on January 30, 2019, a day before DOE/NNSA's promised date to delay shipments?
2. Did the judge in South Carolina, who ordered the shipments, know about these shipments before January 30? If not, did DOE/NNSA subsequently notify the judge in South Carolina about the shipments on January 30, 2019?
3. News reports say DOE/NNSA also made shipments totaling ½ metric ton of plutonium to the PANTEX facility in Texas. Are these reports true? Did DOE/NNSA inform the State of Texas about these shipments?
4. Did any shipments occur before the release of the Supplement Analysis in August 2018?
5. What was the route taken from South Carolina to transport these materials to Nevada?
6. How many shipments were made to Nevada, and what modes of transportation were used?
7. What form was the plutonium in when shipped and what kind of container was the plutonium shipped in?
8. Did the Office of Secure Transportation (OST) follow all of its pre-shipment planning procedures prior to shipping these materials?
9. What role do state, local, and tribal law enforcement agencies, and their personnel, perform in the event of an accident or terrorist attack during OST shipments such as those to Nevada?
10. Did OST meet with any state, local, or tribal authorities in Nevada as part of the pre-shipment planning?

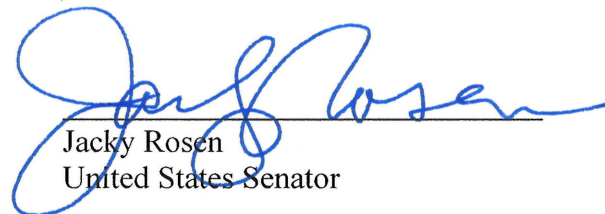
11. Did OST meet with any state, local, or tribal authorities along the routes to Nevada as part of the pre-shipment planning?
12. Did OST provide any advance notice of the shipments to state, local, or tribal authorities along the routes?
13. How much plutonium can be stored in the Device Assembly Facility (DAF)?
14. Does the DAF have a plan that includes regular monitoring to make sure the canisters and contents are not compromised by corrosion or leakage? Why is this not discussed in the Supplement Analysis as part of the required NEPA evaluation of the impacts of storage?
15. How does DOE plan to comply with the second part of the South Carolina Federal Court order, which requires removal from SRS of an additional 6 metric tons or so, by January 2022?
16. How will DOE comply with NEPA, as required by the South Carolina Federal Court order, in planning for the removal of additional plutonium from SRS by January 2022?
17. What is the earliest date at which Los Alamos National lab (LANL) would be prepared to receive the plutonium shipped to NNSS?
18. When was United States District Judge Miranda Du notified that plutonium shipments were made to Nevada?

We understand some of this information may require a classified briefing, and we request that such a briefing be scheduled at the earliest time possible to discuss these matters in greater depth. We request that all non-classified responses to our questions be delivered to our offices by February 15, 2019. Likewise, we strongly urge you going forward to engage in more truthful and honest discussions with our state's new governor and staff, as well as the other members of the Nevada Congressional Delegation. The protection of our communities and national security, alike, depends upon the mutual trust and partnership between all levels of government.

Sincerely,



Catherine Cortez-Masto
United States Senator



Jacky Rosen
United States Senator

CC: Lisa E. Gordon-Hagerty, Under Secretary of Nuclear Security and Administrator of the National Nuclear Security Administration