

GAO

Report to the Ranking Minority Member,  
Committee on Science, House of  
Representatives

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September 1996

# DEPARTMENT OF ENERGY

## Unethical Conduct at DOE's Yucca Mountain Project



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

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Office of Special Investigations

B-261324

September 30, 1996

The Honorable George E. Brown, Jr.  
Ranking Minority Member  
Committee on Science  
House of Representatives

Dear Mr. Brown:

In the Nuclear Waste Policy Act of 1982, the Congress established federal responsibility for the permanent disposal of highly radioactive waste generated at civilian nuclear power plants and created the Office of Civilian Radioactive Waste Management (OCRWM) within the Department of Energy (DOE) to manage the disposal program. The centerpiece of the disposal program is the Yucca Mountain Site Characterization Project, whose purpose is to investigate Yucca Mountain, Nevada, to determine if that site is suitable for permanent disposal of highly radioactive waste.

You asked us to investigate allegations of conflicts of interest at the Yucca Mountain Project. A similar issue had surfaced in 1987, involving OCRWM's top management and the award of the project's management contract. (See app. I and II.) You were concerned that DOE may not have properly implemented or adequately enforced federal Standards of Ethical Conduct or DOE ethics regulations at the project and that failure to do so may have contributed to contract award and management abuses.

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## Results in Brief

The Principles of Ethical Conduct for federal employees contained in Executive Order 12674 and DOE's regulations for ethical conduct by its employees prohibit, among other things, any action that might result in or create the appearance of the loss of impartiality or independence. However, our investigation and DOE's own reviews revealed the appearance of the loss of impartiality by DOE officials at the Yucca Mountain Project. For example, both the Manager of DOE's Yucca Mountain Project from 1987 to October 1993 and the Deputy Manager from October 1990 to January 1994 had long-term personal relationships with personnel of major project contractors, including the Science Applications International Corporation (SAIC).<sup>1</sup> Moreover, by 1994, DOE had learned that 14 additional, or almost 18 percent of, DOE employees at the project were engaged in relationships that might have created problems concerning the lack of impartiality and independence. DOE determined that four of these

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<sup>1</sup>Prior to the award of the project's management contract to another company in February 1991, SAIC was the technical and management support services contractor for the Yucca Mountain Project and the largest single project contractor, with project revenues of about \$40 million annually.

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relationships represented potential ethical problems, requiring recusal or waiver.

Although senior OCRWM officials in Washington, D.C., knew by 1991 that potential ethical problems existed at the Yucca Mountain Project, they did not act to resolve the situation until late 1993.

Further, our investigation disclosed that this Yucca Mountain Project Manager had engaged in other questionable actions. Evidence shows that he encouraged SAIC to hire a certain subcontractor largely because of the subcontractor's stated political connections that could be used to promote the Project Manager's, as well as SAIC's, priorities for the project rather than DOE's priorities. SAIC awarded a small subcontract to the firm after soliciting bids from it and a second firm in which SAIC held a major interest. Within a few months, and after soliciting bids from the same two firms, SAIC received DOE's consent to award a second contract, much larger in cost and different in scope, to the same subcontractor. The Project Manager also violated DOE policy by improperly participating in a meeting with congressional and contractor officials, where he lobbied for his own positions concerning the project without, as required, first notifying his superiors.

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## Background

The Nuclear Waste Policy Act of 1982 directed DOE to identify and recommend to the President three sites for detailed investigation as a potential permanent repository for nuclear waste. In May 1986, the President selected three candidate sites, including Yucca Mountain, Nevada. However, faced with escalating costs and public resistance to the disposal program, in December 1987 the Congress amended the act by, among other actions, directing DOE to investigate only the Yucca Mountain site.

Before the Congress enacted the 1987 amendments, DOE/OCRWM had decided that a successful disposal program could best be ensured if DOE had a long-term partnership with a management contractor. DOE expected that the proposed management contractor would develop waste storage and transportation capabilities and manage the investigation of candidate repository sites. DOE also expected the number of contractors on the program to decline by transferring the work of some existing contractors to the management contractor.<sup>2</sup>

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<sup>2</sup>See Nuclear Waste: DOE's Management and Organization of the Nevada Repository Project (GAO/RCED-95-27, Dec. 23, 1994).

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In December 1988, DOE selected a team of contractors—headed by Bechtel Systems Management, Inc. and including SAIC—as the disposal program’s management contractor. However, TRW Environmental Safety Systems, Inc. (TRW) asserted, in a bid protest, the existence of a serious conflict of interest by DOE’s chairman of the contract’s Source Evaluation Board, a previous SAIC employee.<sup>3</sup> In an August 24, 1989, decision on the bid protest, the court agreed, stating that DOE could award the contract to TRW or cancel the procurement action. (See app. I and II.) In February 1991, DOE awarded TRW a 10-year management contract for an estimated \$1 billion to perform systems engineering, development, and management of a system to transport and permanently dispose of highly radioactive waste.

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## DOE Officials Neglected to Ensure Ethical Conduct in the Yucca Mountain Project

Even though there were strong indications that relationships between DOE employees and contractor employees might result in ethical problems, OCRWM officials failed to diligently monitor such relationships. The two most senior DOE officials in OCRWM’s Yucca Mountain Project at the time—the Project Manager (1987-Oct. 1993) and the Deputy Project Manager (Oct. 1990-Jan. 1994)—had personal relationships with contractor employees that violated Executive Order 12674 and DOE regulations by creating at least the appearance of a loss of impartiality. For example, this Project Manager opposed the transition of work from SAIC to the management contractor, TRW, including the work performed by the SAIC official with whom he had a personal relationship. Additional relationships between DOE and contractor employees involved almost 18 percent of DOE’s employees at the project.

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## Executive Order and DOE Regulations to Protect Against the Unethical Conduct of Employees

Executive Order 12674, containing the Principles of Ethical Conduct for federal employees, was promulgated to help ensure public confidence and the integrity of the government by establishing fair standards of ethical conduct for federal employees. It requires federal employees to avoid any actions that create the appearance of a loss of impartiality. DOE regulations<sup>4</sup> require DOE employees to recuse themselves from any job responsibilities that may compromise their objectivity and independence. Adherence to these regulations, particularly as to their application to relationships with contractor employees, is especially important in DOE because of its heavy reliance on contractors. To ensure that DOE’s business is conducted effectively, objectively, and without improper influence or appearance thereof, DOE expects its employees to

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<sup>3</sup>He was also OCRWM’s Acting Director from Nov. 1988 through Mar. 1990.

<sup>4</sup>10 C.F.R. 1010.101(a).

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“. . . avoid any action, whether or not specifically prohibited by the regulations, which might result in, or create the appearance of: (1) using public office for private gain; (2) giving preferential treatment to any person; (3) impeding government efficiency or economy; (4) losing complete independence or impartiality; (5) making a government decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the government.”<sup>5</sup>

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## Appearance of Loss of Impartiality and DOE’s Untimely Response

### Then Project Manager’s Actions Violated DOE Ethics Regulations

DOE’s Manager for the Yucca Mountain Project from 1987 to 1993 had a personal relationship with a female official of a major project contractor, SAIC. Our investigation and an April 1995 report by the DOE Office of Inspector General (OIG) concluded that because of this relationship, the Project Manager, as the Fee-Determining Official and the Contracting Officer’s Technical Representative for the SAIC contract, had lost the appearance of impartiality in the performance of his official duties, contrary to regulations regarding the ethical conduct of employees.

Our investigation and the OIG report disclosed that the Project Manager and the SAIC official had traveled together frequently on official business (over 60 trips in fiscal years 1992 and 1993). Some of these trips involved little apparent business-related justification for the SAIC official, according to one of the Project Manager’s supervisors. Despite denials of anything other than a professional relationship, the officials’ public behavior repeatedly caused DOE, SAIC, and industry officials to raise concerns.

According to the DOE Yucca Mountain Project Special Assistant for Institutional Affairs, the SAIC official functioned primarily as an administrative assistant to the Project Manager, rather than reporting to the Special Assistant as called for within the Yucca Mountain Project organizational structure. One of the Project Manager’s supervisors told us she was astonished to find that an SAIC official, while on official trips with the Yucca Mountain Project Manager, would do trivial tasks while her staff went unsupervised.

The Project Manager opposed having several SAIC functions—among them the institutional and external affairs functions headed by the SAIC official—transitioned to TRW, the management contractor. He

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<sup>5</sup>10 C.F.R. 1010.101(a).

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communicated that opposition to individuals who either were in a position to influence or participated in the decision not to transition certain functions, including that for which the SAIC official was responsible. According to SAIC lawyers, if the work had transitioned to TRW as planned, any SAIC employees forced to leave the company would have lost substantial pension and stock/stock option benefits and may have incurred tax liabilities arising from the forced sale of their SAIC stock.

The Yucca Mountain Project Manager's opposition to the transition of SAIC work to TRW put him in direct conflict with OCRWM's then Director (Apr. 1990-Jan. 1993) and then Deputy Director (Nov. 1988-Oct. 1993). According to this former OCRWM Director, the Project Manager took SAIC's side in its dispute with OCRWM management over transitioning SAIC work to TRW. The OCRWM Director also told us that he wanted the Project Manager to implement the management contract with TRW; and although the Project Manager never said no, he delayed repeatedly. The OCRWM Director stated that he did not recognize some of these problems until the end of his tenure as Director.

DOE Management's Untimely Response

Although OCRWM and Yucca Mountain Project officials had reason to be concerned about the relationship between the Yucca Mountain Project Manager and the SAIC official by 1991 or earlier, they took no formal action regarding the relationship until late 1993.

In 1990 or 1991, an industry official expressed concern to the then OCRWM Deputy Director about the relationship between the Project Manager and the SAIC official. The Deputy Director took no action other than warning the Project Manager that he was traveling too much with the SAIC official. In 1990 or 1991, the DOE Director of Public Affairs for the Yucca Mountain Project Office cautioned the Project Manager about an appearance problem. Although the Director of Public Affairs stated that he had discussed this with OCRWM's then Deputy Director, no action was taken, such as reporting this to the DOE OIG. In April 1993, OCRWM's Deputy Director, based on his observations, cautioned the Project Manager. Further, although the then DOE Associate Director for Geologic Disposal, based in Las Vegas, Nevada, became aware of rumors about the relationship in June 1993, no investigation of the relationship was undertaken. During this time, the Project Manager disregarded the warnings he had received.

In mid-September 1993, the Project Manager and the SAIC official engaged in a public altercation at the Phoenix, Arizona, airport. Shortly after that

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incident, the then Acting Director of OCRWM (Jan. 1993-Oct. 1993) requested that the DOE OIG evaluate the relationship between the Project Manager and the SAIC official. On September 27, 1993, the Project Manager was removed from professional contact with the SAIC official and directed to meet with DOE counsel to discuss the relationship. Because the Project Manager told the counsel that he and the SAIC official were “only good friends,” the counsel concluded a recusal was not necessary. The counsel did, however, suggest to the Project Manager that he contact a DOE ethics counselor at headquarters for advice and counsel, which he never did.

In October 1993, DOE took further action, removing the Project Manager from his position and detailing him to another DOE site. He was subsequently reassigned to the DOE Nevada Operations Office at a reduced grade.

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### Then Deputy Project Manager’s Relationship Created Appearance Problems

The Deputy Project Manager from 1990 to 1994 had a personal relationship with a female SAIC employee, beginning in 1984 when the deputy was a Yucca Mountain Branch Chief. Even though this open relationship was public knowledge as early as 1986, no action was taken to ensure that the relationship did not violate federal standards of conduct until 1991. DOE acted again in 1993 and January 1994, shortly after a report of the relationship was aired nationally on the McNeil/Lehrer News Hour.

During the Deputy Project Manager’s relationship, the previously discussed Project Manager did not act on his deputy’s potential ethical problem. However, the deputy did execute a recusal in 1991 to meet a condition of his associate’s employment by a prospective employer. His associate was seeking a job with the project’s management contractor, TRW; and TRW had requested assurances of the Deputy Project Manager’s impartiality. Despite a DOE general counsel’s statement to him that there was no need for the recusal that the then Acting OCRWM Director had suggested, the deputy recused himself. His recusal removed him from decisions regarding the transition of work from SAIC to TRW; TRW’s contract award fee evaluation; and any decisions regarding his associate’s salary, bonuses, and benefits. A subsequent August 1993 recusal somewhat broadened these areas with regard to his associate’s position with TRW.

However, in early 1994, the newly appointed Project Manager raised concerns about the adequacy of the 1993 recusal with regard to the expanded duties that he envisioned for the deputy position. The project’s



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newly appointed Chief Counsel/ethics officer determined that the recusal was not sufficient to ensure the deputy's impartiality in the new duties. Thus, in late January 1994, the new Yucca Mountain Project Manager placed the Deputy Project Manager in a senior advisory position for which DOE deemed the recusal was sufficient. The former deputy retired in late 1994.

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### Other Potential Ethical Problems at the Project

Days before the September 1993 public incident involving the Project Manager and the SAIC official, OCRWM began to enforce DOE's ethics regulations more actively. In doing so, it exposed a number of other relationships between DOE and contractor employees that posed potential ethical problems. In September 1993, the then Acting Director of OCRWM issued a memorandum entitled, "Ethics Requirements, Federal-Contractor Employee Relationships." All OCRWM employees were required to sign and date the memorandum, indicating that they were aware of their responsibilities.<sup>6</sup>

By mid-1994, an internal memorandum by the Yucca Mountain Project Chief Counsel listed 14 relationships between DOE employees and employees of several contractors that might have posed the appearance of the lack of impartiality and independence. These were in addition to the previously discussed relationships of the Project Manager and Deputy Manager and represented almost 18 percent of the 80 DOE Yucca Mountain Project employees. Upon examination, the Chief Counsel determined that four of these relationships required a recusal or waiver. The others were told that if they had any changes in positions or responsibilities, their cases would require a reexamination.

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### Other Questionable Actions by Then Yucca Mountain Project Manager

The former Yucca Mountain Project Manager took other questionable actions while in that position. Specifically, he precipitated SAIC's hiring of a project subcontractor, Integrated Resources Group (IRG), primarily because of IRG's political connections that could provide him an opportunity to promote his positions, which were contrary to those of DOE. With those connections, the Project Manager went outside official channels to lobby the Congress for his concept of how the project should be run and funded. Further, the Project Manager's lobbying activities

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<sup>6</sup>Annual ethics training is now mandatory for all Yucca Mountain employees who are required to file annual Financial Disclosure Statements. According to DOE officials, the training consists of a 1-hour presentation by the project's Chief Counsel and covers a variety of ethics issues, including personal relationships and the need to alert a supervisor concerning these for appropriate action.

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included his improper attendance at a meeting with congressional and contractor officials to discuss the project's future.

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### Project Manager Disagreed With OCRWM Directorate

The Project Manager disagreed with the information that OCRWM's Directors were conveying to the Congress and the Secretary of Energy about the Yucca Mountain Project. He was concerned that the Secretary of Energy did not consider the waste program a major priority and that OCRWM's then Acting Director (Nov. 1988-Mar. 1990) was not effective in communicating the progress being made on the project. The Project Manager also believed that opponents of the project were very effective in implying that the project was making little advancement. He encouraged project contractors to convey to the Congress and the Secretary of Energy the improvements that were being made on the project. Further, the Project Manager opposed the project's management contract with TRW. Under the contract, SAIC, with whose official the Project Manager had a personal relationship, would have relinquished much of its work.

According to OCRWM's subsequent Director (Apr. 1990-Jan. 1993), the Yucca Mountain Project Manager did not think that the OCRWM directorate knew what was best for the project. The Project Manager, according to this OCRWM Director, wanted to run the program, independent of Washington.

The Project Manager's desire to be the OCRWM director became a point of contention between the Project Manager and his then immediate supervisor, the OCRWM Deputy Director (Nov. 1988-Oct. 1993). According to this Deputy Director, he told the Project Manager several times to stop "seeking the OCRWM directorship." The then OCRWM Director (Apr. 1990-Jan. 1993) said that the Project Manager would come to Washington just to lobby the Congress for himself and other things of interest to him.

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### Project Manager Influenced Hiring of a Subcontractor

In early 1990, the Yucca Mountain Project Manager saw an opportunity to provide the Congress his perspective on the Yucca Mountain Project when he was approached by the president of IRG, a management consulting company, about doing technical work in the project. IRG's president promoted his political connections, and the Project Manager said that the IRG's involvement would be in the best interest of the project. After the Project Manager determined that the IRG president did have political connections, he referred the individual to SAIC officials and encouraged them to hire IRG as a subcontractor.

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SAIC's initial contract award to IRG—to evaluate project training requirements relative to the Nuclear Regulatory Commission's licensing process—was made in March 1990 for \$15,000. The SAIC Assistant Vice President responsible for licensing support activities, including work that was to be subcontracted to IRG, told us he doubted that SAIC would have contracted with IRG had it not been for the political contacts of IRG's president and the Project Manager's desire to have IRG in the project. He said that when SAIC considered IRG for a subcontract, it looked at IRG's corporate capabilities, i.e., IRG had considerable expertise in nuclear facility licensing support and regulatory commitment tracking systems. He added, however, that the Project Manager's expressed desire was the motivation behind SAIC's consideration of IRG and except for that expressed desire, SAIC probably would not have subcontracted the work. Another SAIC official recalled clear direction from the Project Manager to SAIC that, if it was procedurally and legally possible, he wanted IRG in the project.

Further, once IRG was under contract to SAIC, as IRG's president told us, he became a direct congressional contact for the Project Manager. IRG's president also told us that he believed his efforts, and those of SAIC's hired lobbyists, were instrumental in bringing about a high-level DOE review of the management contract's transition plan. As we reported in December 1994,<sup>7</sup> DOE deferred transferring some SAIC work addressed in the plan until after a June 1993 performance assessment of SAIC. Once the assessment was performed, none of the assessed work was transferred from SAIC to TRW.

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### SAIC's Second Subcontract Award

SAIC awarded a second subcontract in July 1990 to IRG for over \$224,000 after receiving consent from a DOE Contracting Officer pursuant to F.A.R. part 44. That part prescribes policies and procedures for consent to subcontract. "Consent to subcontract" is defined at 44.101 as the Contracting Officer's written consent for the prime contractor to enter into a particular subcontract.

In a May 30, 1990, letter, SAIC originally requested DOE's consent to add a \$185,000 amendment to IRG's March 1990 subcontract for \$15,000. According to a Yucca Mountain Project Contracting Officer in 1994, such a request was "irregular," stating that any modification over 20 percent of a contract's value is of "concern" according to the Competition in Contracting Act. DOE apparently never acted on SAIC's request.

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<sup>7</sup>(GAO/RCED-95-27, Dec. 23, 1994).

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In early July 1990, SAIC requested bids from the two predetermined firms that had bid on the March 1990 contract—IRG and a larger business in which SAIC held a 49-percent interest and whose unsalaried Chief Financial Officer at the time was an SAIC official in contracting. On July 12, 1990, SAIC requested by letter that DOE approve its decision to award the second time and materials subcontract to IRG as the low bidder for \$224,450. In that letter, SAIC advised the Contracting Officer that only two firms had been solicited, largely to perform regulatory compliance strategy reviews and to develop/present related training at the project but also to recommend methods for successful interaction with various entities, including the Congress.

On July 13, 1990, the DOE Contracting Officer approved the subcontract award. In determining whether to consent to a subcontract award on a time-and-materials basis, the Contracting Officer must exercise particularly careful and thorough consideration of several factors, including whether the contractor has a sound basis for selecting and determining the responsibility of the proposed subcontractor. (F.A.R. 44.202(a)(7)) Further, the “Competition in Subcontracting” clause at F.A.R. 52.244-5, which provides that contractors must select subcontractors on a competitive basis to the maximum extent practical and consider the objectives and requirements of each contract, was in SAIC’s contract.

Although the second subcontract called for different services and the resulting amount of the award was significantly higher than that of the first subcontract, the Contracting Officer apparently did not object to SAIC’s method of competition. However, according to the project’s Chief Counsel, it was highly unusual for SAIC to have only two companies bid for the work that was subcontracted to IRG. The work was not very specialized, and a large pool of companies could have been considered. To have solicited only two bids, she said, defeats the purpose of competition to get the best price for the government.

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**Project Manager  
Inappropriately Lobbied  
Congress, Attending  
Congressional/Contractor  
Meeting**

In April 1992, the DOE Yucca Mountain Project Manager engaged in lobbying activities outside proper official channels by attending a meeting that included congressional officials and representatives from SAIC and IRG to discuss the project’s future. The meeting—for which IRG’s president told us he was the catalyst—breached DOE policy on congressional contacts by senior DOE officials because the Project Manager did not obtain prior Secretarial approval to attend the meeting and because the meeting was not carried out in accordance with the existing policy.

Participants stated that discussions at the meeting included (1) future funding for the Yucca Mountain Project and (2) how the Congress could alter the way the project was funded. The evidence shows that the Project Manager argued that the project was substantially underfunded, needing additional funding to meet its scheduled completion date, and discussed how best to use that and other funding. According to the IRG president, he believed that he too was helpful in explaining how additional funding would be used at the project. The Project Manager also discussed removing the project from the annual budget appropriations process and going to an off-budget funding that would give DOE direct access to the Nuclear Waste Fund, financed by the owners and generators of nuclear waste.<sup>8</sup> This latter proposal would have required legislation to accomplish.

The then Secretary of Energy told us that this meeting was a breach of DOE policy for interacting with Members of Congress and was unethical on the Project Manager's part. The meeting was neither coordinated with DOE officials beforehand nor carried out according to the existing policy. When the Secretary learned after the fact that SAIC representatives had been present at the meeting, he was concerned because of the previously discussed corporate struggle over project work that was taking place between SAIC and the OCRWM management contractor, TRW. According to the former Secretary, the Project Manager acknowledged that he should have left the meeting when he saw who was there.

## Agency Comments and Our Evaluation

The current Director, OCRWM; Deputy Director, OCRWM; and other DOE officials provided us their comments on a draft of this report. They were in general agreement with the contents of the draft but expressed concern that, with the draft's identification of DOE officials by title alone, readers may incorrectly attribute the actions discussed to previous or subsequent officeholders. To address that overall concern, we have included in the report's text the dates during which the respective individuals held office. (See also app. II.) In addition, where appropriate, we have clarified sections for which the officials provided additional details.

## Scope and Methodology

We conducted this inquiry between May 1994 and April 1996 at several locations including the DOE/Office of Civilian Radioactive Waste Management, Washington, D.C.; DOE/Yucca Mountain Project Office and Nevada Operations Office, Las Vegas, Nevada; SAIC Corporate

<sup>8</sup>Although the Project Manager proposed, as early as April 1992, that funding for the Yucca Mountain Project be taken off-budget, the then Acting Director of OCRWM stated in April 1993 that DOE had not yet decided on the preferred method of funding for the project (see GAO/RCED-93-124, May 21, 1993).

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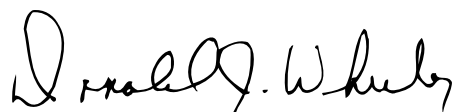
Headquarters, LaJolla, California, and SAIC, Las Vegas, Nevada; and IRG, Metairie, Louisiana, and Las Vegas, Nevada. We interviewed current and former DOE officials and staff and current SAIC and IRG officials. We reviewed DOE, SAIC, and IRG contract files, including solicitations for bids, evaluations of proposals, contractual scopes of work, and contract awards; IRG time and expense reports, and SAIC management and support services charges to DOE; documentary materials regarding the award and implementation of the OCRWM management and operating contract; and federal law and regulation regarding conflicts of interest and lobbying activities.

In the course of our investigation, we coordinated with the DOE OIG. We will provide the OIG a copy of this report.

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As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date of the letter. At that time, we will send copies of the report to interested congressional committees and the Secretary of Energy. We will also make copies available to others on request. If you have further questions or concerns, please contact me at (202) 512-6722. Major contributors are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Donald J. Wheeler". The signature is written in a cursive style with a large initial "D".

Donald J. Wheeler  
Acting Director

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## Abbreviations

DOE	Department of Energy
GAO	General Accounting Office
IRG	Integrated Resources Group
OCRWM	Office of Civilian Radioactive Waste Management
OIG	Office of Inspector General
OSI	Office of Special Investigations
RCED	Resources, Community, and Economic Development Division
SAIC	Science Applications International Corporation
TRW	TRW Environmental Safety Systems, Inc.



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# An Earlier OCRWM Ethical Issue

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An ethical problem surfaced in 1987 at the highest levels of OCRWM management: A conflict of interest by OCRWM's chairman of the Source Evaluation Board for a Yucca Mountain management contract severely undermined OCRWM's effort to award the contract in a timely manner. The board chairman, after returning to DOE from private industry, did not, as initially instructed by DOE, recuse himself from participation as a supervisory employee in certain DOE actions involving SAIC. This resulted in a bid protest and subsequent set-aside of the contract award. The board chairman also served as OCRWM's Acting Director from November 1988 to March 1990.

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## Board Chairman/Acting OCRWM Director Did Not Heed DOE's Initial Postemployment Restrictions

The chairman of the Source Evaluation Board for the Yucca Mountain contract, a longtime DOE employee, left the agency in about 1983 to work in private industry and returned to DOE on June 2, 1986. One employer while he was in the private sector was SAIC. Immediately prior to his return to DOE and while still in SAIC's employ, DOE's Office of General Counsel advised him by letter that for 1 year after returning to DOE he could not participate as a supervisory employee in any DOE action in which SAIC was substantially, directly, or materially involved. However, DOE's Office of General Counsel subsequently prepared an interoffice memorandum which concluded that its earlier advice was in error. The individual had become chairman of the Source Evaluation Board for the OCRWM management contract on May 1, 1987, which was about 1 month before the restriction was to expire.

In December 1988, DOE selected Bechtel Systems Management, Inc., which had teamed with SAIC and other companies, as the management contractor. Shortly thereafter, TRW, an unsuccessful bidder, filed a bid protest and motion to enjoin DOE from awarding the contract to Bechtel. These were based, in part, on allegations that the chairman of the Source Evaluation Board had violated the DOE Reorganization Act's conflict-of-interest provision at 42 U.S.C. 7216 by participating in a procurement that involved a previous employer within 1 year of joining DOE. That provision prohibits a supervisory employee for 1 year from participating in any DOE proceeding in which his former employer is substantially, directly, or materially involved.

In August 1989, the Claims Court held that the board chairman/ Acting Director had violated 42 U.S.C. 7216 by participating in the procurement involving SAIC. In its decision, the court rejected DOE's pre-hearing attempt to reverse its first instruction. It said, "[O]ne might reasonably have

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expected that [the board chairman], out of an abundance of caution, would have recused himself in any matter in which SAIC was involved during the restricted period. Unfortunately, such did not occur. . . .” (TRW Env'tl. Safety Sys., Inc. v. United States, 18 Cl. Ct. 33, 63 (1989)). TRW, therefore, was granted its motion for a permanent injunction.<sup>9</sup> The court ruled that DOE could not award the contract to any original bidder other than TRW. DOE awarded the management contract to TRW in February 1991.

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<sup>9</sup>It is still the position of DOE's Office of General Counsel that there was no prohibition against the individual's serving on the Source Evaluation Board. According to DOE officials, DOE chose not to appeal the court's decision for policy reasons.

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# Dates of Positions Held by Certain DOE Officials Discussed in This Report

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<b>Position</b>	<b>Dates</b>
Manager, Yucca Mountain Project	1987 to October 1993
Deputy Manager, Yucca Mountain Project	October 1990 to January 1994
Chairman, Source Evaluation Board for Yucca Mountain Management Contract and Acting Director, Office of Civilian Radioactive Waste Management	Appointed May 1987 November 1988 to March 1990
Director, Office of Civilian Radioactive Waste Management	April 1990 to January 1993

# Major Contributors to This Report

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Barbara C. Coles, Senior Attorney

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Permit No. G100**

**Official Business  
Penalty for Private Use \$300**

**Address Correction Requested**

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