

*Article appears in:
"Natural Resources Journal U NM
School of Law Fall 1996, Vol 136, No 4*

Exhibit 15

GRACE THORPE

Our Homes are not Dumps: Creating Nuclear-Free Zones

The Great Spirit instructed us that, as Native people, we have a consecrated bond with our Mother Earth. We have a sacred obligation to our fellow creatures that live upon it. For this reason it is both painful and disturbing that the United States government and the nuclear power industry seen intent on forever ruining some of the little land we have remaining. The nuclear waste issue is causing American Indians to make serious, possibly even genocidal, decisions concerning the environment and the future of our peoples.

I was a corporal, stationed in New Guinea, at the end of World War II when the first atomic bomb was dropped on Hiroshima. The so-called "nuclear age" has passed in the beat of a heart. As impossible as it seems, this year will mark the fiftieth anniversary of that first blast. The question of what to do with the waste produced from commercial and military reactors, involved in weapons manufacture and the generation of nuclear energy, has stumped the minds of the most brilliant physicists and scientists since "Little Boy" was detonated above Japan on August 6, 1945.¹ No safe method has yet been found for the disposal of such waste, the most lethal poison known in the history of humanity. It remains an orphan of the nuclear age.

In rich areas, people have the leisure time to organize and easy access to media and elected representatives. For this reason, the nuclear industry is talking about locating disposal sites in poor regions. Indians are being deluged by requests. Devastation due to nuclear energy, however, is nothing new to Indian peoples.

Between 1950 and 1980, approximately 15,000 persons worked in uranium mines. One-fourth of these were Indian. Many of these mines were located on lands belonging to the Navajos and the Pueblos. In 1993, Dr. Louise Abel of the Indian Health Service disclosed that, of the 600 miners tested who had worked underground for more than a year, only five qualified for payments under the Radiation Exposure Act of 1990. By 1994, only 155 uranium miners and millers or their families had been

* Grace Thorpe, daughter of legendary athlete Jim Thorpe, is a tribal judge and health commissioner for the Sac and Fox Nation of Oklahoma. She also serves as President and directs the National Environmental Coalition of Native Americans.

1. "Little Boy" was the name given to the first device, dropped on Hiroshima by the bomber Enola Gay. Three days later, on August 9, 1945, "Fat Man" was released by Bockscar and detonated above Nagasaki. See Bockscar 'ended' WW II, *Denver Post*, Mar. 19, 1995.

715

awarded compensation, less than half the claims filed at that time.² Radiation from tailings piles, the debris left after the uranium is extracted, has leached into groundwater that feeds Indian homes, farms, and ranches. High concentrations of radon gas continually seep out of the piles and are breathed by Natives in the area. Background levels of radiation are at dangerous levels. Thus Indians living near the mines face the same health risks as those working underground.³

In 1973 and 1974, two nuclear power reactors commenced operation at Prairie Island, Minnesota, only a few hundred yards from the homes, businesses, and child care center of the Prairie Island Mdewankanton Sioux. The facility was on the site of the ancient Indian village and burial mound, dating back at least 2,000 years. On October 2, 1979, a 27-minute release of radiation from the plants forced evacuation of the facility, but the Tribe was not notified until several days later. By 1989, radioactive tritium was detected in the drinking water, forcing the Mdewankanton to dig an 800-foot deep well and water tower, completed in 1993. Prairie Island residents are exposed to six times the cancer risk deemed acceptable by the Minnesota Department of Health⁴

By 1986, the problem of nuclear waste disposal had become acute. The U.S. Department of Energy began to explore the possibility of locating a permanent nuclear repository in Minnesota's basalt and granite hardrock deposits. Among the sites considered was the White Earth Reservation in the northwestern part of the state. The Anishiaabe who live there took the government's interest seriously enough to commission a study of the potential impact. The Minnesota legislature responded by passing the Radioactive Waste Management Act, stating that no such facility could be located within the state without the express authorization of the legislature⁵

The following year, however, Congress voted to locate the permanent repository at Yucca Mountain, about 100 miles northwest of Las Vegas, Nevada, on land belonging to the Western Shoshone. Plans called for the opening of the facility in 2010. The Nuclear Waste Policy Act set in motion a nationwide search for a community that would accept a temporary storage site, until Yucca Mountain came online⁶ Indian tribe's again were specifically targeted.

2. PETER H. EICHSTAEDT, *YOU POISON US: URANIUM AND NATIVE AMERICANS* 151, 170 (1994).

3. *Id.* at 142-46.

4. Jeff Armstrong, *Prairie Island confronts Nuclear Threat*, *THE CIRCLE*, Apr. 1994, at 16-17.

5. *Id.* at 16.

6. George Johnson, *Nuclear Waste Dump Gets Tribe's Approval in Revote*, *N.Y. TIMES*, Mar. 11, 1995, at 6.

One by one, tribes who considered accepting the so-called Monitored Retrievable Storage (MRS) facility on tribal land decided against it. Today, of the 17 tribes who began discussions and study, only three remain: the Mescalero Apache of New Mexico, the Goshutes in Utah, and the Fort McDermitt Reservation in Nevada (which houses both Paiutes and Western Shoshones). In addition, Pojoaque Pueblo in New Mexico announced in March 1995 that it was considering locating the MRS on tribal lands. This move, however, was an overt power-play to persuade the New Mexico legislature to halt a bill that would expand gambling in the state to the detriment of the Pojoaque's own gaming interests. According to Pojoaque Governor Jacob Viarrial, if the public does not want his Tribe to store the waste, they should put pressure on the lawmakers to put a halt to the expansion of gaming off reservations.⁷

The National Environmental Coalition of Native Americans (NECONA) was formed in 1993 in Las Vegas to lobby against the MRS or any nuclear waste disposal on Indian lands and to encourage Native Nations to declare themselves Nuclear Free Zones instead. As the number of tribes considering the MRS dwindled, pressure on Washington mounted. NECONA persuaded U.S. Senator Jeff Bingaman of New Mexico, who had been one of the moving forces behind the Radiation Exposure Compensation Act for uranium miners, to oppose the MRS on the energy and appropriations committees. As a result, Congress withheld funding for the program⁸

With the federal government out of the MRS-construction business, but with the problem of waste disposal still unresolved, utilities began to get desperate. Dozens of plants would be forced to shut-down or find alternative sources of fuel unless a temporary storage site were boated in the near future. Thirty-three utilities, accounting for 94 reactors, began seeking a location. Led by Northern States Power (NSP), the consortium approached Minnesota about locating a facility adjacent to the NSP plant at Prairie Island. Although the plant supplies 15 percent of the state's electricity, "not a single kilowatt reaches the Mdewankanton community it borders."⁹

The Prairie Island Sioux had applied for a Phase I MRS grant, which provided DOE funds for initial feasibility studies. According to tribal officials, however, the application was tactical. The intent was to use the government's own money to prove that neither an MRS nor a nuclear power plant should be located at Prairie Island¹⁰ One study

7. *MRS Plans Back on Burner: Pueblo Pursues Own Nuclear Waste Plan*, INDIAN COUNTRY TODAY, Mar. 16, 1995, at 2.

8. Johnson, *supra* note 6, at 6.

9. Armstrong, *supra* note 4, at 16.

10. *Id.* at 17.

showed that the cancer risk would be 23 times greater than the state standard. At the time of the NSP initiative, a survey showed that 91.6 percent of the tribe opposed construction of the MRS.¹¹ The tribe fought the NSP proposal before the legislature and won. They subsequently declared the Prairie Island Reservation a Nuclear Free Zone.

Meanwhile, NSP has signed an agreement with the Mescalero Apache to move ahead with development of an MRS, in New Mexico. Under the terms of the agreement, the tribe was to seek two 20 year licenses to store up to 40,000 metric tons of spent nuclear fuel. Total revenues over the 40-year life of the facility, estimated at \$2.3 billion, would bring as much as \$250 million in benefits to the Tribe.¹² The Tribal Council believed that it could proceed with the program by its own authority. It was confident enough of victory to put the issue to tribal members in the form of a public referendum. According, however, to a Native newspaper, *The Circle*, opponents of the storage facility considered the Mescalero tribal government, headed by Chairman Wendell Chino, "dictatorial," and likely to conduct a campaign of intimidation and vote fraud if a referendum takes place.¹³

I used to work for the National Congress of American Indians when Wendell Chino was its chair. He's been Mescalero chairman since 1962, and he has done great things for the people there; I respected him. He is tough, however, and can be a very imposing figure. The sad thing is that the Mescalero don't need this nuclear waste. They have a five-star resort, a casino, two ski lifts, and a sawmill. They have wonderful resources for forestry. Everybody thinks, Ah, the poor Apache, they need this development," but they don't!¹⁴

The referendum took place on January 31, 1995. The Mescaleros voted down the MRS by a vote of 490 to 362. Shortly after the vote, however, a petition began circulating, calling for a new election. According to Fred Peso, the vice chairman, "A group of grass-roots people presented the petition to the tribal council." Peso blamed, "outside interference from environmentalists and other anti-tribal groups" for the defeat of the proposal.¹⁵ In reality, Wendell Chino's powerful political

11. *Id.* at 16.

12. Harlan McKosato, *Mescalero Nuclear Site Back on Track*, INDIAN COUNTRY TODAY, Mar. 16, 1995, at 1.

13. Armstrong, *supra* note 4, at 17.

14. According to a recent article by D.C. Coles, a Chiricahua Apache, despite these successful business ventures, unemployment remains a problem. Unemployment was estimated at 30 percent, with much of the rest of the work force underemployed. Health and education levels remain below the national averages. D.C. Cole, *Apache*, in NATIVE AMERICA IN THE TWENTIETH CENTURY: AN ENCYCLOPEDIA, 46 (Mary David, ed. 1994). The nuclear project is anticipated to produce between 200-300 jobs. See McKosato, *supra* note 12, at 1.

15. Johnson, *supra* note 6, at 6.

Fall 1996]

THORPE ARTICLE

719

machine was behind the petition. The Tribal Government controls jobs, housing, schools, and the court system. One of the organizers of the petition drive, Fred Kaydahzinne, is director of the federally subsidized tribal housing program. As Rufina Marie Laws, one of the referendum's opponents stated, "it was real hard for people to turn him down."¹⁶ Petition organizers gathered more than 700 signatures calling for a new vote. When a second ballot was held on March 9, 1995, the measure passed 593 to 372.

There is a great deal of uncertainty as to what will happen now at Mescalero. Opponents of the MRS could seek yet another referendum. They have stated that they will appeal the second vote to the Tribal Court, but they are not optimistic. The State of New Mexico has prohibited transport of spent nuclear fuel on state highways, in an attempt to derail the proposal. Vice Chairman Peso has announced that the Tribe will proceed with licensing applications and technological studies. Officials of NSP have announced that they will move ahead with plans for the project. Contracts are being finalized, and licensing is anticipated to be concluded by December 1996¹⁷

If the Mescaleros withdraw, there are the Skull Valley Goshutes in Utah and the tribes at Fort McDermitt standing right behind them. Both reservations are isolated, and unemployment is a problem on both. At the moment, Fort McDermitt seems to be out of the running because it straddles the Nevada state line. The law says that the MRS and the permanent site cannot be in the same state, but that could change. The Goshutes already have waste incinerators, nerve gas plants, and a bombing range bordering their lands. There is a feeling of indifference about the MRS among the few people who live on the reservation. They have signed an accord with Richard Stallings, a federal negotiator charged with locating a temporary storage site, to provide a framework for further talks, and the University of Utah has agreed to undertake a feasibility study with the utilities¹⁸

We should also not believe that the problem is limited to the United States. First Nations in Canada are facing the issue. An article in the free trade agreement between Canada and the United States prohibits Canada from preventing nuclear waste coming into the country. The Meadow Lake Cree in Saskatchewan are in discussion with the Atomic Energy of Canada Ltd. (AECL), a corporation of the Canadian government, concerning becoming a permanent repository.

16. *Id.*

17. McKosato, *supra* note 12, at 1-2; see also *Apache Continue with Nuclear Dump Plan*, INDIAN COUNTRY TODAY, June 8, 1995, at A2.

18. See, *Goshutes Sign Nuclear Waste Agreement*, NEWS FROM INDIAN COUNTRY, Dec. 1994, at 5.

719

According to recent reports, they have also held negotiations with the Mescalero to become the storage site for wastes temporarily housed at the proposed Arizona facility. Meanwhile AECL continues to market nuclear technology throughout the Americas¹⁹ The situation in Mexico is terrible. They have very little environmental regulation. At NECONA, we hear reports of "jelly babies," babies born without any bones, due to environmental contamination.

Tribal officials at Mescalero and other reservations that have considered the MRS contend that the issue is one of sovereignty. They use the issue of sovereignty against the environment. It is a very tough tightrope to walk. How can you say to a tribe, "Hey, you shouldn't be doing this. You should be protecting the earth." Then they would turn around and reply, "Hey, we can do as we please. This is Indian sovereignty." In one sense, they would be right. Allowing utilities to build MRS facilities on our lands, however, is not truly an expression of sovereignty. Those supporting such sites are selling our sovereignty. The utilities are using our names and our trust lands to bypass environmental regulations. The issue is not sovereignty. The issue is Mother Earth's preservation and survival. The issue is environmental racism. The purpose of NECONA is to invite tribes to express their sovereign national rights in a more creative way in favor of our Mother, by joining the growing number of tribal governments that are choosing to declare their lands Nuclear Free Zones²⁰ Fred Peso at Mescalero has declared, "It is ironic that the state continues to fight our tribe [over the MRS] when New Mexico has enjoyed the benefits of nuclear projects since 1945.²¹ The real irony is that after years of trying to destroy it, the United States is promoting Indian national sovereignty-just so they can dump their waste on Native land²²

The DOE and the utilities have said that it is natural that we, as Native peoples, should accept radioactive waste on our lands. They have convinced some of our traditionalists that as keepers of the land they must accept it. As Russell Means has said, however, "We have always

19. Joyce Nelson. *Candu Diplomacy and NAFTA's Nuclear Agenda*, Z MAGAZINE, June 1995, at 30-32.

20. See Grace Thorpe, *Statement to the National Congress of American Indians*, Sparks, Nev., Sept. 1, 1993 [hereinafter *Statement*]. Currently 15 tribes have passed resolutions declaring their lands to be Nuclear Free Zones. The first was the Sac and Fox Nation of Oklahoma, of which Ms. Thorpe is a member. In addition, through the efforts of Norma Kassi, the Yukon Territory in Canada has declared itself a Nuclear Free Zone as well.

21. Johnson, *supra* note 6, at 6.

22. Russell Means, Comment at the North American Native Workshop on Environmental Justice, Iliff School of Theology, Denver, Colo. (Mar. 17, 1995).

had our false prophets.²³ The government and the nuclear power industry attempt to flatter us about our abilities as "earth stewards." Yet as I declared to the National Congress of American Indians in 1993, "It is a perversion of our beliefs and an insult to our intelligence to say that we are 'natural stewards' of these wastes."²⁴ The real intent of the government and the utilities is to rid themselves of this extremely hazardous garbage on Indian lands so they are free to generate more of it.

Our traditional spiritual leaders have warned us for hundreds of years about taking resources from the earth. They have warned that the earth will become unbalanced and be destroyed. In one of the stories the Navajos have about their origins, they were warned about the dangers of uranium. The People emerged from the third world into the fourth and present world and were given a choice. They were told to choose between two yellow powders. One was yellow dust from the rocks, and the other was corn pollen. The [People] chose corn pollen, and the gods nodded in assent. They also issued a warning. Having chosen the corn pollen, the Navajos were to leave the yellow dust in the ground. If it was ever removed, it would bring evil.²⁵

Wherever there are uranium mines, wherever there are nuclear power plants, and wherever our people have been downwind on nuclear tests, the cancer rate goes up. Among the Western Shoshone in Nevada as a result of nuclear testing, many of the people now have thyroid cancer. They are dying a younger death. They have leukemia, which was unheard of in earlier times. In Minnesota, archaeologists excavating Prairie Island thousands of years in the future could be exposed to levels of radiation high enough to cause cancer.²⁶ Pollution and toxic waste from the Hanford nuclear weapons facility threatens all Native peoples who depend on the Columbia River salmon for their existence.²⁷ A few years ago, a vial of nuclear material the size of a human little finger was lost on the road from Los Angeles to Sacramento. An SOS went out to all the newspapers and radio and television stations about this little silver vial: If you find it, don't pick it up. Alert us immediately. If you pick it up and put it in your pocket for two days, you'll get sick. If you keep it a week, it can kill you. If you breathe the equivalent of 100th of a grain of salt, it can cause lung cancer."

Now those who visited all these horrors upon us want us to

23. Grace Thorpe, *Radioactive Racism? Native Americans and the Nuclear Waste Legacy*, INDIAN COUNTRY TODAY, Mar. 16, 1995, at A5.

24. Thorpe, *Statement*, *supra* note 20.

25. EICHSTAEDT, *supra* note 2 at 47 (quoting Anna Rondon, Nov. 1992).

26. Armstrong, *supra* note 4, at 16.

27. David Rich Lewis, *Environmental Issues*, in Davis, at 189.

accept their nuclear waste, too. Darelynn Lehto, the vice president of the Prairie Island Mdeewankanton, testified before the Minnesota State Senate during the fight against MRS there, "It is the worst kind of environmental racism to force our tribe to live with the dangers of nuclear waste simply because no one else is willing to do so.²⁸ Why do we tolerate it? How long can we tolerate it? What kind of society permits the manufacture of products that cannot be safely disposed? NECONA is currently lobbying Congress for a bill that will say simply, "Nothing is to be manufactured, used, or reproduced in the United States that cannot be safely disposed of." Is that too simple a thing for a legislator to understand? Probably it is, but it makes sense, doesn't it?

Spent nuclear fuel is permeated with plutonium, the principal ingredient in atomic weapons. Plutonium has a half-life of 24,360 years. Significant amounts would therefore remain active for more than 50,000 years. The so-called permanent repository proposed for Yucca Mountain is designed to hold canisters containing nuclear waste for only 10,000 years. The steel containers holding the material would disintegrate long before the radioactivity had decayed²⁹

Yucca Mountain, however, is nowhere near on its way to becoming the permanent repository. It was originally to have begun receiving waste in 1998, but near unanimous opposition in Nevada slowed the process. In 1992, an earthquake measuring 5.6 on the Richter scale struck the area, raising additional questions as to the site's viability³⁰ Most recently, scientists at the Los Alamos National Laboratory in New Mexico raised the possibility that wastes buried at the Nevada a location could explode after the steel container canisters dissolve, setting off a nuclear chain reaction³¹

These factors make the targeted date of 2010 when Yucca Mountain currently is estimated to be accepting shipments of waste look improbable. Mescalero tribal officials, in obtaining their tribe's permission, emphasized that their proposed facility was strictly temporary and that at no time would the tribe take possession of the fuel³² What will happen, however, if Yucca Mountain does not come online as projected? What if no permanent storage site is available at the end of the MRS' 40 years of a "temporary" storage? New Mexico Attorney General Tom Udall has raised similar questions. He fears that the state

28. Darelynn Lehto, testimony before Minn. State Senate, Mar. 29, 1994, quoted in THE CIRCLE, Apr. 1994, at 17.

29. William J. Broad, *Scientist Fear Atomic Explosion of Buried Waste*, N.Y. TIMES, Mar. 5, 1995, at 17.

30. Armstrong, *supra* note 4, at 16-17.

31. Broad, *supra* note 29, at 1, 18.

32. McKosato, *supra* note 12, at A2.

Fall 1996]

THORPE ARTICLE

723

"may ultimately have to pick up the pieces."³³ Indians suspect we know who will be left holding the bag.

The debate over nuclear waste has already done serious damage to harmonious relationships among our people. Why must we go through this divisive agony again?³⁴

As a mother and a grandmother, I am concerned about the survival of our people just as Mother Earth is concerned about the survival of her children. There is currently a moratorium on construction of nuclear power plants in the United States. There is also current legislation, however, that would allow new building if arrangements are made for the waste. Is this the legacy that we want to leave for our children and for our Mother Earth? The Iroquois say that in making any decision one should consider the impact for seven generations to come. As Thom Fasset, who is Iroquois, reminds us, taking such a view on these issues often makes us feel we are alone, rolling a stone up a hill. It keeps rolling back down on us.³⁵ That may be the only way, however, for us to live up to our sacred duty to the land and to all of creation.

33. Johnson, *supra* note 6, at 6.

34. Thorpe, *Radioactive Racism?*, *supra* note 23, at A5.

35. Thom White Wolf Fasset, North American Native Workshop on Environmental Justice, Iliff School of Theology, Denver, Colo., Mar. 17, 1995.