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DOCKET NUMBER  
PROPOSED RULE **PR 2,19,20 et al.**  
**(64FR8640)**

DOCKETED  
USNRC

'99 JUN 30 P4:36

OFFICE OF THE  
RULEMAKING  
ADJUDICATING

Licensing Criteria for Spent Nuclear Fuel and  
High-Level Nuclear Waste in a  
Proposed Geologic Repository at Yucca Mountain

Submitted to the  
United States Nuclear Regulatory Commission

By the  
Western Shoshone National Council  
June 30, 1999

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Template = SECY-067

Acknowledged by card

JUL - 7 1999

SECY-02

The Western Shoshone Nation has governed under the natural laws of the creator since time immemorial. The Western Shoshone Nation governs not from a systematic body of laws setting out in one single and exclusive document the main institutions, form of government and fundamental rights of the citizen, but rather, the parts, historically, handed down orally from one generation to the next. The contemporary black and white print, as in its various conventions, resolutions, treaties, procedures, judicial decisions, and charter constitute additional authorities.

One of the fundamental laws of the Western Shoshone Nation is the sovereignty and supremacy of the National Council assembled. No court of law could ever strike down a National Council act as being unlawful. The National Council is deemed to be the best interpreter of the Western Shoshone law, and therefore there is no rebuttable presumption that any National Council legislation is unharmonious with the law.

The Western Shoshone Nation won formal recognition by the United States through the negotiation and signing of a treaty of "*peace and friendship*" secured for the benefit of the Western Shoshone Nation and the United States. The Treaty of Ruby Valley (18 Statute, 689-692) granted specific rights to the United States. All other rights, power, title and interest within the exterior boundaries of the Western Shoshone Territory are reserved by the Western Shoshone Nation for the use and benefit of Western Shoshone citizens. The Western Shoshone Nation possesses an express reservation of power in freedom of action. The exercise of these powers exists in the National Council of the Western Shoshone Nation. The only rights surrendered by the Western Shoshone Nation to the United States come by the Treaty of Ruby Valley. It is through the Treaty of Ruby Valley that the United States may claim a right or exemption from the laws of the Western Shoshone Nation.

The United States through a formal process of treaty negotiations and enactment has impliedly gave up certain rights to the Western Shoshone Nation. Provision for economic and social activity under the Treaty of Ruby Valley are duly recognized as being reserved rights to be regulated by the Western Shoshone Nation and are the basis for the implied consent of the United States to be bound by those regulations subject to the justicable processes of the National Council.

Further understanding of the lawful basis for the legitimate authority of the National Council is recognized by United States law and international laws as follows:

The Northwest Territorial Ordinance of 1787, *"The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property rights and liberty they shall never be invaded or disturbed."*

US Constitution, Article VI, paragraph II, *"This Constitution and laws of the US which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the US shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."*

Treaty of Guadeloupe Hidalgo 1848, 9 Statute 922, *"Special care shall be taken" against "those invasions (against the Indians) which the United States have solemnly obliged themselves to restrain."*

Act of Congress Organizing the Territory of Nevada 1861, *"...Providing that nothing in this Act contained shall be construed to impair the rights or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the US and the Indians."*

The Western Shoshone government understands that matters based upon the United States Constitution, Western Shoshone National custom, and treaties are political issues, nonetheless, the Nuclear Regulatory Commission must take due notice of the facts in the relationship between the United States and the Western Shoshone Nation to put into operation superior power to protect the health, rights, liberties, freedoms, and environment of the Western Shoshone people from an increasingly aggressive United States bureaucracy.

In January of 1995 the National Council passed Resolution 01-WSNC-95, regulating nuclear material transportation, use, testing, storage and disposal within the exterior boundaries of the Western Shoshone Nation. Popularly known as the Nuclear Free Zone Resolution, it recognizes existing problems from past United States nuclear activities and creates an opportunity, under section 2, for the harmonization of United States regulation under Western Shoshone law. Any lawful nuclear material transportation, use, storage, or disposal can only take place under a claim under the Treaty of Ruby Valley and this resolution.

The following comments are provided on the basis of responsibility and authority of the National Council as the legitimate protector of the interests of the Western Shoshone people to ensure that the Western Shoshone public health, safety and property are protected. United States law provides too

little protection for the Western Shoshone people and absent lawful authority, no part of the Nuclear Regulatory Commission New 10 CFR Part 63 is applicable.

#### Reference Biosphere and Critical Group

Previous United States and United Kingdom nuclear activities have created uncertain risk, which, from the Western Shoshone Nation point of view, will be cumulative with those of a Yucca Mountain repository. We must assume that the Western Shoshone people, with their long existence in the region and living close to the land, will be the critical group. There is no expectation that the hunting, gathering and other subsistence activities will end any time soon, and so, must be considered. Farming and livestock ranching are recent introductions into Western Shoshone society. It is only by considering these new variables to Western Shoshone society that the New 10 CFR Part 63 NRC proposed critical group performance calculations near the mark. Western Shoshone custom, tradition and cultural life ways are completely left out of consideration for potential exposure. The Western Shoshone people are already a vulnerable population. Additional study is needed by the Western Shoshone Nation to understand the new risks posed by a repository at Yucca Mountain and any cumulative effect.

#### Relationship to Generic Criteria at 10 CFR Part 60

The United States Nuclear Regulatory Commission lacks jurisdiction over Yucca Mountain. Unless a claim of lawful authority made pursuant to the Treaty of Ruby Valley, or the Nuclear Free Zone Resolution is made and duly authorized by the National Council, no part of 10 CFR Part 60 lawfully applies to any portion of the proposed Yucca Mountain site.

#### Specific Questions for Public Comment

- 1) The National Council proposes that an Indian tribe be used as the critical group. Further sensitive investigations need to be carried out to fully understand the potential exposure pathways for such a group.
- 3) The National Council makes a serious objection to the DOE undertaking a quality assurance program without strict oversight and review by the Western Shoshone Nation.