

**Statement of Robert Holden, Nuclear Waste Program Director
National Congress of American Indians
Nuclear Regulatory Commission Briefing on the Department of Energy Draft
Environmental Impact Statement for a Proposed High-level Nuclear Waste Repository**

January 21, 2000

Thank you for the opportunity to participate in this hearing regarding the evaluation of the Department of Energy (DOE) Draft Environmental Impact Statement of the proposed high-level radioactive waste repository at Yucca Mountain. I will speak to some of the policy matters which this organization has tracked for its member tribal governments. This organization has conducted a tribal nuclear waste issues program under a cooperative agreement with the DOE Office of Civilian Radioactive Waste Management (OCRWM).

The impacts of this federal action upon indigenous peoples, lands, and resources is critical to the human rights of the people to reside in their homelands. The NCAI does not believe that the impacted tribal governments of this federal action have had an ample opportunity to analyze and respond to the full inventory of technical studies performed at Yucca Mountain. This is not to say they have not received notice of the studies and progress reports done during the site characterization. Without exception, tribal governments in the Yucca Mountain region have not had the luxury of acquiring a team of technical experts to assess the data and conclusions. The DOE is well aware of the fiscal barriers which prevents tribes from assembling a research team. The NCAI believes the DOE has a fiduciary responsibility to provide the Yucca Mountain area tribes with resources that would enable them to respond to the Draft EIS

The relationship between the federal government and tribal governments originates from treaties which were signed following the formation of the United States between these sovereigns. A guiding principle of the tribal/federal relationship is the legally enforceable trust responsibility of the United States to protect tribal self-determination, tribal lands, assets, resources and treaty rights, as well as carry out the directions of federal statutes and court cases. One of the intents of the federal guardianship is to mitigate the devastating effects of loss of lands upon which the tribal populations have lived for thousands of years. The obligations of the tribal trust doctrine are often perceived as burdensome to federal officials when embarking on federal actions which impact tribal governments and peoples. This is because of the government to government notice and consultation requirements necessary for federal guardianship can be time consuming, will cause delays in scheduling, and are added costs to the respective agency or contractor.

There are various points in the history of this country when individuals own up to misgivings and inaction of the federal government in exercising their responsibilities. For instance, the goal of Indian Reorganization Act of 1934 (IRA), 25 U.S.C. s.465, was to provide for the recovery of the Indian land base and reestablish tribal economic,

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governmental and cultural life: One of the IRA's principal authors, Congressman Howard of Nebraska, noted at that time, "...[T]he land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship."

The tribes in the Yucca Mountain region still maintain close historic and cultural ties with the land. The total ecosystem is a living entity and the spirits and beings that dwell there to this day are still meaningful to them and as real and vivid as you and I and the people in this room. Many tribal people indigenous to the Yucca Mountain region have informed DOE officials that this area has special meaning and expressed opposition to the project. One tribal chairman stated, "We have to put ... things into perspective. It is like this thing [the high-level waste proposal] that came out. They are saying, 'we are not damaging that, all we are going to do is to cut down that tree.' As Indian person I feel I am important, but am I more important than that tree or is that tree more important than me. We are on this earth, we are insignificant. Indian people say, 'What's more important; the earth that we stand on, the air that we breathe, or the water that we drink?' They all have their reason to be here and that is what we have to get over to the United States Supreme Court. We are nothing, but to put it all together it forms a circle. And we all have to live together no matter what, because its our earth. These things are here, we didn't put them here, so who are we to move them. We didn't create them, but we are here to protect them."

The Draft EIS does not go far enough to address cumulative impacts which are likely results because of past present and future impacts from NTS activities. For instance, the DOE mentions a proposed federal action to return certain lands of the Timbisha Shoshone. An important factor left out regarding this return is that the land was subjected to years of radioactive fallout from the Nevada Test Site. The amount of radiation exposure experienced by the indigenous people residing in the area has not been assessed nor have any baseline health studies been conducted. The people still living in the area may have experienced significantly higher levels of exposure because of the many exposure pathways common to Native American peoples. The added impacts of long term releases from the transportation of radioactive waste and spent nuclear fuel can not be accurately calculated. The status of the Indian nation populations should give rise to a higher degree of assurance that they will be protected from increased exposures.

A joint NCI/CDC effort to assess human health impacts from bomb testing at the NTS is currently underway. The people whose homelands near the Nevada Test Site were subjected to multiple detonations of atomic weapons. This project affirms what Native American peoples in the area have known for years—that radioactive fallout caused significant negative health impacts which includes chromosomal damage, debilitating diseases, and mortality.

Utmost protective considerations must be accorded to the people indigenous to this

area. An apparent conclusion or response to the Timbisha land return issue may be that the reservation is being created well after the Yucca Mountain has begun, thereby absolving the DOE of its trust responsibility. Once again, the Timbisha Shoshone have lived there thousands of years prior to any encroachment or intrusion of federal actions.

The fact of primary habitation of indigenous peoples, whom the federal trust responsibility is to protect, is an important point in regard to the divergence of opinion of ground-water protection requirements. The DOE acknowledges that further studies of impacts are needed along transportation corridors.

The tribal peoples in the Yucca Mountain area have close historical and cultural connection with their homelands. These ties are the lynchpin of their cultural integrity and survival. The treaty rights are clear and compelling evidence that the DOE must provide tribal governments in the Yucca Mountain region with sufficient resources to secure qualified technical staff to analyze the thousands of documents generated during the life of this project. If tribal decision-makers are not able to independently review and interpret the draft EIS and supporting data, the only conclusion that can be drawn is that they have been left out of the process.

Thank you for the opportunity to present these views of the National Congress of American Indians.