



RULES AND DIRECTIVES  
BRANCH  
USNRC

2005 AUG 19 AM 11:00

RECEIVED

6/27/05  
POFR 36967

(H)

SESP Review Complete E-REDS = ADU-03

ALL =

United States Nuclear Regulatory Commission

Template = ADU-03

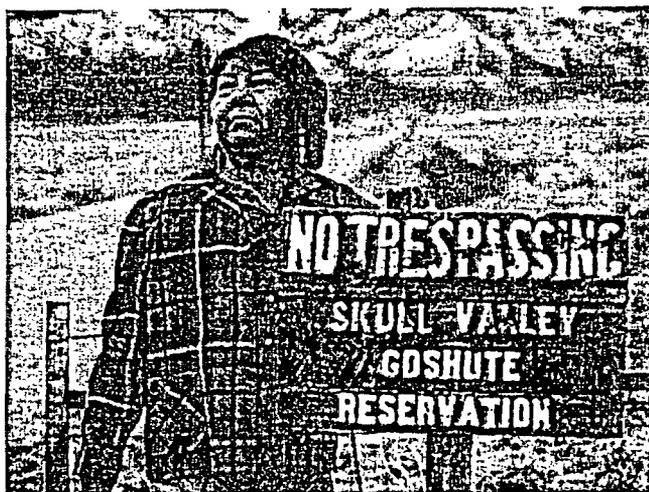
C. FOUVEREAU  
(EX53)

# ENVIRONMENTAL RACISM, TRIBAL SOVEREIGNTY and NUCLEAR WASTE

## High-Level Atomic Waste Dump Targeted at Skull Valley Goshute Indian Reservation in Utah

*"There is nothing moral about buying out a starving man with money."*

*— Keith Lewis, of the Serpent River First Nation in Ontario, reflecting on his impoverished community's over 50 years of working in and living near uranium mines & mills, and the health and environmental catastrophe that has resulted.*



Tribal dump opponent Margene Bullcreek of OGD

Nevadans and Utahans living downwind and downstream from nuclear weapons testing, uranium mining, and radioactive waste dumping have suffered immensely during the Nuclear Age. But even in the "nuclear sacrifice zones" of the desert Southwest, it is Native Americans—from Navajo uranium miners to tribal communities targeted with atomic waste dumps—who have borne the brunt of both the front and back ends of the nuclear fuel cycle.

The tiny Skull Valley Band of Goshute Indians Reservation in Utah is targeted for a very big nuclear waste dump. Private Fuel Storage (PFS), a limited liability corporation representing powerful nuclear utilities, wants to "temporarily" store 40,000 tons of commercial high-level radioactive waste (nearly the total amount that presently exists in the U.S.) next to the two-dozen tribal members who live on the small reservation.

The PFS proposal is the latest in a long tradition of targeting Native American communities for such dumps. But there is another tradition on the targeted reservations as well—fighting back against blatant environmental racism, and winning. Skull Valley Goshute tribal member Margene Bullcreek leads Ohngo Gaudadeh Devia (or OGD, Goshute for "Timber Setting Community"), a grassroots group of tribal members opposed to the dump. In addition to many other activities, OGD has filed an environmental justice contention before the Nuclear Regulatory Commission's (NRC) Atomic Safety Licensing Board (ASLB).

Both the federal government and the commercial nuclear power industry have targeted Native American reservations for such dumps for many years. In 1987, the U.S. Congress created the Office of the Nuclear Waste Negotiator in an effort to open a federal "monitored retrievable storage site" for high-level nuclear waste. The Negotiator sent letters to every federally recognized tribe in the country, offering hundreds of thousands and even millions of dollars to tribal council governments for first considering and then ultimately hosting the dump. Out of the hundreds of tribes approached, the Negotiator eventually courted about two dozen tribal councils in particular.

Resistance from members within the targeted tribes, however, prevented the proposed dumps from opening. Grace Thorpe, founder of the National Environmental Coalition of Native Americans and an emeritus member of the Nuclear Information & Resource Service board of directors, rallied her fellow tribal members and defeated the dump targeted at her own Sauk and Fox reservation in Oklahoma. Tribal members on other targeted reservations turned to Thorpe, and to such Native-

Nuclear Information and Resource Service/World Information Service on Energy-Amsterdam

Main offices: Washington, DC and Amsterdam, Netherlands

Affiliate offices: Asheville, NC; Bratislava, Slovakia; Brno, Czech Republic; Hiroshima, Japan; Kaliningrad, Russia; Minsk, Belarus;

Rosario, Argentina; Seoul, Korea; Stockholm, Sweden; Tarragona, Spain; Tokyo, Japan; Tomsk, Russia

WISE-Uranium: Arnsdorf, Germany

led groups as Indigenous Environmental Network (IEN) and Honor the Earth, to learn how to organize their community to resist the federal nuclear waste dump.

The Negotiator eventually set his sights on the Mescalero Apache Reservation in New Mexico. But tribal member Rufina Marie Laws spearheaded her community's resistance against her own tribal council and the Negotiator, thwarting the dump. After having failed to open the intended dump, Congress defunded and dissolved the Office of the Nuclear Waste Negotiator in 1994.

The commercial nuclear power industry, however, picked up where the Negotiator had left off. Led by Northern States Power (now Xcel Energy), 8 nuclear utility companies formed a coalition that attempted to overcome the resistance at Mescalero. A tribal referendum, however, doomed the dump to eventual failure.

The utility coalition regrouped as "Private Fuel Storage" (PFS), composed of: Xcel, Consolidated Edison of New York, Genoa Fuel Tech - Dairyland Power of Wisconsin, GPU Nuclear of New Jersey & Pennsylvania, Indiana - Michigan/American Electric Power headquartered in Ohio, Florida Power & Light, Southern California Edison, and Southern Nuclear Operating Company based in Georgia and Alabama. The member utility companies of this limited liability corporation envision their dump to be a big money maker: its doors would be open, for a fee, to waste from any and all other nuclear utilities. After its Mescalero defeat, PFS quickly turned to the Skull Valley Goshutes in Utah, another community that had been on the Negotiator's target list.

(PFS leader Xcel Energy is infamous for environmental racism. In its home State of Minnesota, it operates twin nuclear reactors and an outdoor high-level nuclear waste storage facility on an island flood plain in the Mississippi River, immediately next to the Prairie Island Mdewakanton Indian community. Xcel is the primary importer of electricity from Manitoba Hydro, whose dams have flooded vast expanses of Pimicikamak Cree Nation homelands in northern Canada. Xcel waste incinerators in LaCrosse, Wisconsin spew deadly dioxin into the wind, which has shown up as far away as in Inuit women's breast milk in the Arctic. Due to such widespread abuses, Xcel is now the target of a national corporate accountability campaign organized by affected tribal communities and environmental justice organizations.)

At the same time that it tried to open its own private dump, the nuclear power industry contributed large sums to Congressional and Presidential campaigns, and lobbied hard on Capitol Hill to establish a "temporary storage site" at the Nevada nuclear weapons test site, not far from the proposed federal permanent underground dump for high-level atomic waste at Yucca Mountain, Nevada. Both these proposed "temporary" and permanent dump sites would have been on Western Shoshone land, as affirmed by the 1863 Treaty of Ruby Valley. Yucca Mountain is sacred to the Western Sho-

shone, and their National Council has long campaigned to prevent nuclear dumping there.

Despite the tremendous grassroots victory of successfully stopping the "Mobile Chernobyl" bill (so dubbed because, if enacted, it would have launched the beginning of tens of thousands of dangerous irradiated nuclear fuel shipments to Yucca Mountain) in its tracks on Capitol Hill for over five years, in early 2002 Congress approved moving ahead with the Yucca dump. This was a violation of the Treaty of Ruby Valley with the Western Shoshone Nation which the U.S. Senate approved in 1863.

Hoping to move their deadly wastes as close to Yucca Mountain as soon as possible, nuclear utilities have focused on Nevada's neighbor, Utah. PFS must have done its homework: it would be hard to find a community more economically and politically vulnerable than the Skull Valley Goshutes to the Faustian bargain of getting "big bucks" in exchange for hosting the nation's deadliest poisons.

Just 25 tribal members live on the tiny Skull Valley Band of Goshute Indians Reservation, an hour's drive west and south from Salt Lake City in Tooele County, Utah. The remaining 100 Band members live in surrounding towns in Tooele County, in Salt Lake City, and elsewhere. The reservation is already surrounded by toxic industries. Magnesium Corporation is the nation's worst air polluter, belching voluminous chlorine gas and hydrochloric acid clouds; hazardous waste landfills and incinerators dot the map; with a name straight out of Orwell's 1984, Envirocare dumps "low level" nuclear waste in the next valley and is applying to accept atomic trash hundreds of times more radioactive than its present license allows. Dugway Proving Ground has tested VX nerve gas, leading in 1968 to the "accidental" killing of 6,400 sheep grazing in Skull Valley, whose toxic carcasses were then buried on the reservation without the tribe's knowledge, let alone approval. The U.S. Army stores half its chemical weapon stockpile nearby; and is burning it in an incinerator prone to leaks; jets from Hill Air Force Base drop bombs on Wendover Bombing Range, and fighter crashes and misfired missiles have struck nearby. Tribal members' health is undoubtedly adversely impacted by this alphabet soup of toxins: Now PFS wants to add high-level nuclear waste to the mix.

This toxic trend in Tooele County has left the reservation with almost no alternative economy. Pro-dump tribal chairman Leon Bear summed up his feelings: "We can't do anything here that's green or environmental. Would you buy a tomato from us if you knew what's out here? Of course not. In order to attract any kind of development, we have to be consistent with what surrounds us."

Targeting such a tiny, impoverished Native American community, already so disproportionately overburdened with toxic exposures, to host the nation's nuclear waste dump would seem a textbook violation of environmental justice. But the nuclear utilities did not let

such considerations slow down their push for the PFS dump on the Skull Valley Reservation.

Two days after Christmas in 1996, without the knowledge or approval of the Skull Valley Goshute General Council (the 70 or more adult members who govern the tribe), Tribal Chairman Leon Bear signed a lease agreement with PFS for an undisclosed amount of money. To this day, no tribal member outside the three member tribal executive committee knows how much money the tribe would receive for hosting the nation's atomic waste dump. The NRC staff, which must issue a license in order for the dump to open, has ruled in its Environmental Impact Statement that the dump does not violate environmental justice, because PFS will pay the tribe so handsomely. But the ASLB accepted OGD's environmental justice contention and agreed to look into claims that tribal dump opponents are being denied any share of income from PFS to the tribe. On October 1, 2002, however, the five NRC Commissioners overruled the ASLB, dismissing OGD's sole remaining contention as not relevant to an NRC environmental justice proceeding. Margene Bullcreek plans to appeal that decision.

PFS's strategy is simple: use large amounts of money to buy out any potential opposition to locate a dump on the reservation. In 1999, PFS entered into an undisclosed monetary agreement with resistant local cattle ranchers, and in May 2000 signed a deal with Tooele County in exchange for support of the dump. In an area of economic scarcity, money talks loudly. "It's pretty clear that utilities are willing to spend billions to move the spent fuel out of their back yard into ours," said Utah Governor Mike Leavitt, who adamantly opposes the PFS dump. Although the amount PFS has already begun paying the Skull Valley Band is a proprietary secret, rumors place the figure at \$50 million. By comparison, the government of Russia hopes to charge 800 times as much money per ton of waste from nuclear utilities that want to dump in its country. PFS is renting Goshute sovereignty for bargain basement prices.

"The real issue is not the money," Bullcreek, has said. "The real issue is who we are as Native Americans and what we believe in. If we accept these wastes, we're going to lose our tradition."

Bullcreek, a tribal member who resides on the reservation with her children, disagrees with NRC's ruling that the dump presents "no disproportionately high and adverse impacts on low income or minority populations." (Draft EIS, pg. LXX of the introduction).

She first became concerned by the way in which Leon Bear had gone about signing the lease (without first bringing it to the general council for a vote). As she looked into it, she learned about the dangers of high-level nuclear waste, about the ways the PFS dump would threaten her tribe's health, culture, traditions and reservation community life. The NRC's ruling assumes that, given enough money, tribal members such as Bullcreek and her family could simply move from the reservation

if they didn't like the sight of a nuclear waste dump out their kitchen window.

Such false logic fails to recognize traditional tribal members' inextricable spiritual attachment to the land they and their ancestors inhabit.

"Cedar and Sage are sacred here," says Bullcreek. "I cut willow branches over there to cradle my babies like my mother did, and my grandmother did, and her mother and her mother. Their bones are on this land. If you think this is desolate then you don't know the land. You don't know how to be still and listen. There is peace here. I felt I had to be outspoken or lose everything that has been passed down from generations. The stories that tell why we became the people we are and how we should consider our animal life, our air, things that are sacred to us. Leon Bear is trying to convince himself that what he is doing is right, but this waste will destroy who we are."

Bullcreek is fighting the dump because it would ruin that peace and her family's ancient connection to the land. If the dump is built, she has said she would be forced to move away from the homeland she loves. Has NRC considered the fact that for Bullcreek—a fluent speaker of her native tongue—to move away from the community would be yet another severe blow to the endangered Goshute language? What about other similar adverse impacts to the traditional culture? NRC's ruling that the dump is justified because of the large economic benefit for the tribe (DEIS, p. 6-28) also fails to recognize that Leon Bear seems to have no intention of sharing proceeds from PFS with opponents to the dump. OGD's appeal challenges the NRC finding of no environmental justice (EJ) violation.

Tribal opposition to the dump has taken a number of other, complementary paths as well. Tribal member Sammy Blackbear, who lives with his four children on the reservation, has filed a lawsuit against the U.S. Bureau of Indian Affairs (BIA), alleging that it violated its trust responsibility to the tribe by quickly approving an illegitimate lease agreement between Leon Bear and PFS. In Sept. 2001 a quorum of Band members unseated Bear, electing a new tribal council, including Blackbear as vice chairman. The BIA, and NRC, however, refuse to recognize the new council.

Bullcreek and Blackbear are actively working with concerned citizens of Utah to develop an alternative economic plan for their reservation. Both are also working with allies in the political and grassroots arenas outside the reservation, to counter the vast resources of the powerful nuclear utilities and other corporations promoting PFS.

OGD's EJ contention before the NRC Licensing Board held promise for stopping the dump. A successful EJ contention against Louisiana Energy Services (LES) was essential in defeating a proposed uranium enrichment facility targeted at an impoverished rural African-American community (yet another NSP/Xcel led racist scheme). The NRC Licensing Board overseeing the LES

case quoted President Clinton's Executive Order 12898 in its ruling: "[T]o the greatest extent practicable and permitted by law... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Perhaps this is why the NRC Commissioners intervened to throw out the EJ contention. Actions speak louder than words: rather than protecting public health and safety and the environment, NRC promotes the nuclear industry's objectives.

OGD and its legal representatives have had to navigate the complex legal and bureaucratic labyrinth of the NRC for six years, all to no avail. The huge financial costs—difficult for a small group such as OGD to raise—required to effectively participate in the NRC processes poses the question, is the NRC process itself a violation of environmental justice?

If the NRC's ruling—that the proposed dump is not an EJ violation because PFS will pay the tribe a relatively large sum of money—stands uncontested, it could serve as a precedent to "justify" federal regulatory agencies licensing toxic facilities that target impoverished minority communities, so long as the polluting corporation "compensates" the victims with "enough" money to "live with it" or relocate elsewhere. Offering reservation communities "enough" money to "put up with" or relocate away from proposed toxic facilities on their homeland nevertheless despoils or removes the land in which traditional culture and spirituality is rooted.

Dangling big bucks in front of impoverished reservation communities, tempting them to do something they otherwise would not, enables corporations to "divide and conquer," by setting tribal councils against traditionals, and tribal members against each other. Even though no waste has been dumped yet, Bullcreek says PFS is already ripping her community apart.

The outcome of the PFS fight may also set important precedents for tribal sovereignty and environmental protection on reservations. The nuclear power industry is attempting to evade environmental regulations and State of Utah opposition by hiding behind the shield of tribal sovereignty. If successful, this could threaten to undermine tribal sovereignty itself.

"Sovereignty isn't selling your independence and your heritage to the highest bidder," Bullcreek says. "What choice will we have after they park all that radioactive waste on our land?"

The lease agreement signed by Leon Bear and PFS requires that the tribe "use its sovereign nation status to support and promote this Lease and Project," and that the tribe "not, at any time, pass any law, rule or regulation which could adversely affect or burden this Lease or the Project..." (Lease between Skull Valley Band of Goshute Indians and PFS, May 20, 1997, p. 18). The lease also forbids the tribe from setting any envi-

ronmental protection standards that are stronger than federal standards (p.24). The agreement, in effect, forfeits control of the reservation dumpsite to PFS, and regulation to the federal NRC.

Calling on the State of Utah to take action by entering dialogue with the Goshutes about compensation, remediation and clean up of existing environmental devastation on and around Skull Valley, Indigenous Environmental Network director Tom Goldtooth said "We recognize the sovereignty of the Skull Valley Tribal Council to make decisions on behalf of their people, but the Tribe is in this situation to begin with because of unjust policies that have negatively impacted their inherent rights to maintain a healthy, economically viable community. The Tribe is not the enemy here, Private Fuel Storage is. The State needs to look at policies that threaten the Tribe's health and well-being and work to rectify those first."

"The nuclear industry is using Native land and Native people as a loophole to keep their reactors running," says Honor the Earth spokesperson Winona LaDuke. "The nuclear industry needs to be called to the table for seeking a political solution to the deadly environmental problem of nuclear waste they created by targeting isolated Native communities. It's bad policy and it's wrong."

"Our reservation is sacred. This is the only land we have—the only thing the government left us after taking most of our country," Bullcreek said.

Radioactivity, because of its disproportionate harmful impact on Native Americans over the past 60 years, has been called the "smallpox blanket of the Nuclear Age," referring to the practice of giving infested blankets to tribes to wipe them out and clear their lands for expropriation.

"It is time to right the injustices of the past, and develop just and honorable relationships with Native peoples," said Winona LaDuke. Despite this, NRC seems intent upon granting PFS's license in early 2003. OGD is on the front line of the struggle for Native American environmental justice against corporate greed and environmental racism.

It's not too late to stop these dumps. Host a letter writing party targeting newspaper editors, elected officials, or PFS corporate CEO's. Work to help pass resolutions in your town, then country, then state opposing waste shipments through your community bound for western dumps. Hold a rally and press conference at nuclear reactors, utility headquarters, or along "Mobile Chernobyl" waste transport routes. Hold an educational fund-raiser to benefit OGD. Contact NIRS for more.

*Update 10/25/02, by Kevin Kamps,  
Nuclear Waste Specialist, Nuclear Information and Resource Service, 1424 16<sup>th</sup> Street, NW, Suite 404, Washington, D.C., 20036. 202.328.0002; f: 202.462.2183;  
[kevin@nirs.org](mailto:kevin@nirs.org)  
<http://www.nirs.org>*