

**National
Congress of
American
Indians**

Executive Committee

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W. Ron Allen
Jamestown S'Klallam Tribe

First Vice President
Ernie Stevens, Jr.
Oneida Nation of Wisconsin

Recording Secretary
Lela Kaskalla
Nambé Pueblo

Treasurer
Russell (Bud) Mason
Three Affiliated Tribes

Area Vice Presidents

Aberdeen Area
Gerald M. Clifford
Oglala Sioux

Albuquerque Area
Joe A. Garcia
Ohkay Owingeh
San Juan Pueblo

Anadarko Area
Gary McAdams
Wichita & Affiliated Tribes

Billings Area
Earl Old Person
Blackfeet Tribe

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Portland Area
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Table Bluff Reservation-Wiyot

Southeast Area
A. Bruce Jones
Lumbee Tribe

Executive Director
JoAnn K. Chase
Mandan, Hidatsa & Arikara

2010 Massachusetts Ave., NW
Second Floor
Washington, DC 20036
202.466.7767
202.466.7797 facsimile

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March 31, 1998

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR 2**

(62 FR 60789)

6

Attention: Rulemakings and Adjudication Staff

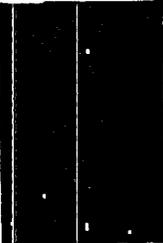
Thank you for the opportunity for the National Congress of American Indians to provide comments to the proposed rule to amend the Nuclear Regulatory Commission Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository. The NCAI is a member of the NRC Licensing Support System Advisory Review Panel. As the oldest largest national Indian advocacy organization in the country the NCAI has a membership of 225 American Indian and Alaska Native governments.

Thank you for accepting into the record our comments on this important issue. We look forward to implementation of the comments into the proposed rule changes by the Nuclear Regulatory Commission. If you have any questions regarding our comments, please call Robert Holden, Director of the NCAI Nuclear Waste Program, (202) 466-7767, fax 466-7797.

Sincerely,

JoAnn K. Chase
Executive Director

Attachment



**National
Congress of
American
Indians**

**Comments of the National Congress of American Indians
on the U.S. Nuclear Regulatory Commission Proposal to Amend the
Rules of Practice for Issuance of Licenses for a High-Level
Radioactive Waste Geologic Repository**

March 31, 1998

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The following comments reflect initial concerns of the National Congress of American Indians on the U.S. Nuclear Regulatory Commission proposal to amend the Rules of Practice for Issuance of Licenses for a high-level radioactive waste geologic repository. Additional comments will be provided as this action proceeds.

1. Tribal governments and peoples in the area are impacted by site characterization of Yucca Mountain and will indeed be impacted by placement of a geologic repository at Yucca Mountain. We are concerned that tribal governments indigenous to the area for hundreds of years before the contemporary governments and populations moved to the area, may not be included as parties to the licensing proceedings. In regard to Section 2.715, tribal governments are not specifically included. The NCAI urges a broad interpretation affording tribal representatives an opportunity to be a party. This is perhaps not within the purview of the proposed rulemaking, but the matter should be addressed in either a policy decision or another formal rulemaking.

The NCAI plays a national role providing feedback on various issues and dissemination of information, but in the scope of government to government protocol and standing, those tribal governments directly impacted by the NRC licensing activities should be active participants. The NRC may be aware the State of Nevada and some county governments are supportive of meaningful tribal participation. We are mindful of budgetary and other constraints, but the process will remain one of inequity if the State of Nevada and selected counties are deemed parties to the licensing process while tribes continue to be excluded. Several federally recognized tribes have been working with the Department of Energy on cultural resource management issues. These tribes are designated as "impacted", which has no legal or political meaning, but more a descriptive term for the DOE. The NCAI recommends that the NRC set up a process to work with federally recognized Indian nations to determine which tribes are interested in representation and will be part of an interactive process on licensing issues.

2. The NCAI believes the Licensing Support System Advisory Review Panel should continue to function in its advisory capacity with the addition of

tribal government members. The NCAI is appreciative of its membership and will continue to serve as a member of the NRC Licensing Support System Advisory Review Panel. The NCAI supports and encourages individual Indian nation participation on the LSSARP to include tribes in the Yucca Mountain area. Several local units of government serve on the LSSARP but tribal governments with a closer nexus for trust responsibility protection by federal government are not members. We believe a process for inclusion should be made for membership of tribes. The National Congress of American Indians supports the notion that Yucca Mountain area tribes should be included as parties to the licensing activities and proceedings.

The Foreword of a 1990 DOE supported study states, "Yucca Mountain symbolizes the cultural diversity and conflicting values in America: To some government officials, state and federal, it is a vast, useless landscape fit only for the toxic waste of modern society. It has an owner who has the right to define how it is used. To the Southern Paiute, Owens Valley Paiute, Western Shoshone, and other groups of Native Americans in the Las Vegas area, Yucca Mountain is a bountiful harvest of plants, animals, and cultural remembrances. It means food, medicine, religious inspiration, and cultural history. It is a living place without ownership; it is there for all to use as needed. The contrast in attitudes between western civilization and Native American cultures is stark and immediate." (Native American Cultural Resources Resource Studies at Yucca Mountain, Nevada; Stoffle, Halmo, Olmsted, and Evans; Institute for Social Research, University of Michigan; 1990).

Indian tribes have a government to government relationship with the United States grounded in the U.S. Constitution and solemn and extant treaties which bind the parties to this day. Indeed, from the earliest days of the U.S., tribal sovereignty has been recognized. As far back as 1832 the United States Supreme Court ruled that the Indian tribes are "*distinct, independent public communities.*" (Worcester v. Georgia, 31 U.S. (6 Pet.) 559 (1832)).

On April 24, 1994, President Clinton issued a "Memorandum for the Heads of Executive Departments and Agencies on Government to Government Relations With Native American Tribal Governments." The Memorandum states that in order to ensure the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following [excerpts]: (a) *The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government to government relationship with federally recognized tribal governments.* (b) *Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.* (c) *Each executive department and agency shall assess the impact of Federal Government plans, projects, programs and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.*

3. We have stated in the past and we again restate to the Nuclear Regulatory Commission that it should adhere to a consistent federal policy based on treaties, federal law, and the

NRC's responsibilities as a federal agency to ensure that tribal rights and interests are identified and fully considered in decision-making regulatory processes. Thank you for the opportunity for the National Congress of American Indians to provide comments on the proposed rulemaking.

A statement from an unnamed tribal chairperson contained in the cultural resources study mentioned above will serve as closing remarks :

" The best thing that could happen to the United States of America is for a group of us Indian people to be elected to address the Supreme Court. Because there are so many things that they don't really understand. It is like this black thing I am holding. Where did it come from? The earth, right, because all material is from the earth. Who is to say that this part [pointing to one part of the object] is more important than that one over there [pointing to another part of the object]. We have to put these 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 an 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 it's 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." (Native American Cultural Resources Resource Studies at Yucca Mountain, Nevada; Stoffle, Halmo, Olmsted, and Evans; Institute for Social Research, University of Michigan; 1990).