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To: WCS_CISFEIS Resource
Cc: Joe Kennedy; nativerights.sjc@gmail.com; heidiblackeye@gmail.com; Debra Reed
Subject: [External_Sender] Docket ID NRC-2016-0231
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Comments of the Native Community Action Council November 3, 2020 on the NUREG-2239-- Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas
Docket ID NRC-2016-0231
Submitted to: Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001,
ATTN: Program Management, Announcements and Editing Staff: WCS_CISF_EIS@nrc.gov.

COMMENTS:

The Native Community Action Council recommends the No-Action Alternative because the proposed action is illegal since the Nuclear Regulatory Commission makes an unconstitutional assumption of a proposed permanent repository at Yucca Mountain where the Treaty of Ruby Valley (Consolidated Treaty Series Vol. 127 (1863) is in full force and effect, thereby controlling any matter touching Shoshone country at Yucca Mountain.

The proposed Yucca Mountain site is unconstitutional and therefore illegal under law. The No-Action Alternative is the only option available at this time because the Environmental Impact Statement is misleading in intent to assume eventual transport of commercial nuclear waste to the unconstitutional Yucca Mountain site—NRC assuming site acceptability is a congressional matter when, in fact, Congress has acted by the Treaty of Ruby Valley that is controlling as the “supreme law of the land” (US Const. Art.6 Sec.2) making proposed action a violation of the nuclear Waste Policy Act of 1982 that does not allow siting of an interim storage facility until a permanent repository is operable.

The proposed action should be renamed the Interim Storage Partners Consolidated Permanent Storage Facility for Nuclear Spent Fuel in Andrews County, reflecting the de facto permanence of nuclear waste sent there without the unconstitutional proposed permanent Yucca Mountain site. Texas and Andrews County should reevaluate all Nuclear Regulatory Commission assumptions and recalculate all cost benefit and impacts based upon the permanence of the proposed action alternative that, is itself, illegal.

1.4.3 Issues Outside the Scope of the Environmental Impact Statement

Yucca Mountain should be outside the scope of the Environmental Impact Statement because Congress has acted on the issue of ownership by entering into formal relations by the Treaty of Ruby Valley that is not and never has been part of the United States (18 Stat 689).

3.3.2 Transportation from the Generation Site and to a Permanent Repository

The US Nuclear Regulatory Commission assumption is unconstitutionally wrong and

demonstrated malfeasance or at least incompetence both, of which are unacceptable and affirm the Native Community Action Council position supporting the NO-ACTION ALTERNATIVE. The US Nuclear Regulatory Commission assumption intends to mislead reviewers and therefore is lying. The public cannot have confidence in the proposed action.

The US Department of Energy is trespassing on Shoshone property causing damage to Shoshone country and together with the people of the State of Nevada, a coordinate agency in receivership of funds derived from grants/payments equal to taxes from Shoshone property is defrauding the Shoshone people of the benefits that should accrue to the Shoshone Nation from rights, title and interests defined by the Treaty of Ruby Valley in 1863, the basis for relations between US and the Shoshone Nation of Indians.

The US Department of Energy has failed to prove ownership as required by US Nuclear Regulatory Commission Regulations 10 CFR § 60.121 Requirements for Ownership and Control of Interests in Land. This fact is confirmed by Nuclear Regulatory Commission's Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada: Administrative and Programmatic Requirements (NUREG-1949, Volume 4):

“The NRC staff finds that DOE has not met the requirements 10 CFR 63.121(a) and 10 CFR 63.121(d)(1) regarding ownership of land and water rights, respectively.”

Even with the US Department of the Interior, Bureau of Land Management, Master Title Plats that are the land status record of the United States government the US Department of Energy cannot prove ownership to Yucca Mountain in the heart of Shoshone homelands.

It bears making note that the license proponent at Yucca Mountain has created a study protocol of “cultural triage” in the siting of the proposed repository that shall serve as a fact of the intent to destroy both the Shoshone people and damage Shoshone property by nuclear development. The Department of Energy conducted an analysis of the site, creating a study protocol that would allow the DOE to subjectively mitigate Native American site specific cultural resources for the benefit of the United States and profit of the nuclear industrial complex. The process was called “cultural triage” that is defined as, “...a forced choice situation in which an ethnic group is faced with the decision to rank in importance equally valued cultural resources that could be affected by a proposed development project.” (Stoffle1990). The DOE created a systematic process to “mitigate” Native American living lifeways practiced since before the current era in what is genocide, a violation of 18 USC 1091, and the Human Rights Enforcement Act of 2009 (28 USC Section 509B). Secrecy of past radiological exposure of the Shoshone people by the proponent demonstrates intent to commit genocide against the Shoshone people. Involvement by Indian tribes created by the US under Title 25 superintendence of the Secretary of the Interior demonstrated that incompetent tribes cannot consent to be involved and that it is the US that is wholly responsible for the outcomes that result in the destruction of Indian people in whole or in part.

4.3.1.2.2.1 Radiological Impacts to Workers from Incident-Free Transportation of SNF
Interim Storage Partners has not appropriately evaluated doses and risks from shipments from the Consolidated Interim Storage Facility to the proposed repository at Yucca Mountain, Nevada.

The NRC proposed action fails to protect workers and vulnerable populations and is not protective of human health and the environment needed by those populations living lifeways as they exist.

4.3.1.2.2.5 Defueling

The NRC has failed to calculate the impact upon a vulnerable public that includes Native American tribes living close to the land, living lifestyles that include praying, cleansing, healing, hunting, fishing and gathering that is the identity of the people with the land potentially impacted by the proposed transportation shipments to the illegal Yucca Mountain site using culturally appropriate context for determining the likely reasonably maximally exposed individual living along transportation routes. The result is a disproportionate burden of risk that amounts to environmental racism, a form of nuclear colonialism that must be rejected.

5.7.2.1 Proposed CISF Greenhouse Gas Emissions

Every link in the nuclear chain emits green house gases. Mining, milling, fuel fabrication, nuclear generator construction and transportation of fuel to and defueling of a reactor to a repository. Placing the greenhouse gas emissions in an appropriate context of an ongoing existential threat is appropriate but NRC fails to consider a global affect of the proposed action.

8.3.2.1 Economic and Other Costs

The NRC has not demonstrated quality assurance that in the event of a transportation accident that it can, at all, retrieve a dislodged cask off track or off-highway without exposure to the people and land where it may occur and instead affirms a no incident shipping campaign that is another inappropriate assumption.

NRC fails to conduct any further rigorous analysis of spent nuclear fuel incidents in transport that might protect indigenous people or forewarn of impact in any link of the proposed action by transportation of nuclear fuel.

Native American identity is the land and pure water, the cost of which, cannot be quantified if impacted or lost. We cannot assume, as NRC has done in this EIS, that there will be minimal or no impact to our living lifeways. The purpose of the Treaty of Ruby Valley is to ensure the existence of the Shoshone Nation as the supreme law of the land (US Const. Art 6, Sec. 2).

The Native Community Action Council reaffirms and recommends the NO-ACTION ALTERNATIVE and admonishes the NRC of its duty to protect and defend the Constitution of the United States that the Western Bands of the Shoshone Nation of Indians has, and continues to make great, for all Americans by the spirit and terms of the 1863 Treaty of Ruby Valley.

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