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To: NRC-EJReview Resource
Cc: FHBC; Paul Echo Hawk; Yvette Tuell
Subject: [External_Sender] Shoshone-Bannock Tribes Comments on NRC–2021–0137
Attachments: SBT Comments on NRC–2021–0137_October2021.pdf

Please find the attached, Shoshone-Bannock Tribes comments, on the “Systematic Assessment for How the NRC Addresses Environmental Justice in its Programs, Policies and Activities”. If you have any questions, please contact me via email or phone 208-236-1079.

Sincerely,

Talia T. Martin

Director of Tribal/DOE-AIP

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The SHOSHONE-BANNOCK TRIBES

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October 29, 2021

Nuclear Regulatory Commission
Office of Administration
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Washington, DC 20555-0001
ATTN: Program Management, Announcements, and Editing Staff

Submitted via email to: NRC-EJReview@nrc.gov

RE: The Shoshone-Bannock Tribes' Comments on How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (NRC-2021-0137-0001; 86 FR 36307)

Dear NRC:

The Shoshone-Bannock Tribes (Tribes) are responding to the NRC's request for comments on how the NRC addresses environmental justice in its programs, policies, and activities (NRC-2021-0137-0001; 86 FR 36307). Environmental justice was defined in Executive Order 12989 as disproportionately high and adverse human health or environmental effects on its [federal agencies] programs, policies, and activities on minority and low-income populations. We see environmental justice addressed in limited ways, mostly as part of environmental impact analyses under the National Environmental Policy Act (NEPA). But beyond this, there are other aspects of environmental justice that are never addressed, either as part of NEPA or otherwise.

For example, the Tribes' ancestral homelands are located where impacts from nuclear activities are prevalent at the Idaho National Laboratory. We have one ancestral homeland, and as the NRC permits and/or regulates nuclear activities on our homelands, our Tribes experience adverse impacts to these spiritual homelands, our history, and cultural remnants. Unlike Euroamericans whose ancestral homelands are elsewhere, ours are only here and can never be replaced. We cannot just pick up and move somewhere else like so many other people in America. Instead, what we see is the slow degradation of our homelands as nuclear activities continue. This is something that's not addressed when it comes to environmental justice.

Similarly, the Tribes bear disproportionately more risks from nuclear activities. The Snake River Plain Aquifer has been polluted with highly radioactive waste and other toxic material. We have historic cultural resources that have been removed from the landscape. Ancestral graves have been disturbed. And nuclear activities and waste issues continue. So, as more nuclear activity occurs in our inherent territory, we face more risks over time. Non-Tribal communities do not face the same level of risks and impacts as our Tribes do. This is due in part to our historical, cultural, and spiritual ties to the region, but it is also due to the fact that federal agencies do not take into account and analyze impacts and risks from a Tribal perspective. Because there is a complete lack of Tribal perspective, federal agencies like the NRC, fail to

incorporate Traditional Ecological Knowledge into their environmental nor safety analyses and considerations of impacts and risks.

While the Tribes bear far more impacts and risks from nuclear activities, we receive far fewer benefits. For example, the UAMPS Carbon Free Power Project at INL has developed partnerships with the City of Idaho Falls, where the city will receive power from the project. In contrast, the Tribes will receive none. What the Tribes receive from the UAMPS project looks like more impacts on our homelands, people, and historic cultural resources. The Department of Energy supported the UAMPS project with cost-share funding of about \$1.4 Billion for the facility and another \$300 Million for developing the Combined License Application. Here again, the Tribes seen no benefit or inclusion. This is a textbook example of an environmental justice issue. The Tribes receive all of the impacts and risks, but none of the benefit.

This raises many questions: Who is the NRC regulating nuclear activities for? Is it for the benefit of industry at the expense of communities like ours? Is it to protect the public? The NRC is mostly funded by industry and very little by the federal government. As the NRC gathers information on environmental justice matters, they are essentially relying on our Tribes' time and resources to identify issues, solve problems, and figure out how they can better address environmental justice issues. These EJ matters are multifaceted and complex where both Tribal staff and leadership should be directly consulted to discuss these issues, rather than a simple request for comment. Worse, even when the Tribes spend our own time and resources to assist the NRC in these matters, we rarely if ever see any movement to better the environmental justice related impacts and risks. In other words, can the NRC guarantee that our comments, suggestions, or recommendations would even be put into use? The Tribes believe in accordance to the federal trust obligation, NRC should consider our comments and concerns in a meaningful manner.

We have taken the opportunity to address some of the questions in the Federal Register Notice, relevant to the Tribes:

(ii) What formal tools might there be to enhance information gathering from stakeholders and interested persons in NRC's programs, policies, and activities?

Formal government to government and technical staff to staff meetings should be regularly scheduled and attended by NRC staff. SBT works with federal agencies through a 2-tiered approach for consultation. Projects that require consultation should be addressed on a case-by-case basis with the Tribes, to provide opportunity to request consultation. However other tribes have different consultation protocols to follow and NRC should address individual Tribes on their particular consultation protocols.

(iii) Can you describe any challenges that may affect your ability to engage with the NRC on environmental justice issues?

SBT has engaged NRC on agreement state matters, licensing at INL and participated in webinars, meetings, and informal consultation. Unfortunately, there is a lack of tribal resources, such as technical staff, experts and cultural staff to remain involved on long-term projects. Many projects such as siting, licensing and regulating are between 5-20 years and Tribes cannot afford for staff to remain on these projects. Additionally, the lack of regulatory status or jurisdiction does not provide any formal mechanisms or requirements for communication on conversations outside the environmental or safety analysis.

(b) How could the NRC enhance opportunities for members of environmental justice communities to participate in licensing and regulatory activities, including the identification of impacts and other environmental justice concerns?

SBT suggests NRC re-design the model for rulemaking regarding stakeholder engagement. Assess the rulemaking process on how, why, when stakeholder engagement with disadvantaged communities is most

effective. A prescriptive NEPA process is not always effective for gathering information from disadvantaged communities. Engagement should occur pre-NEPA for inclusion into planning, developing, and implementing licensing and NEPA documents. Additionally, provide more opportunity for relationship building between Tribal Government and Reactor owners and operators for the purpose of communication and understanding. Many times, these entities have community outreach goals that can be directed to benefit communities and Tribes.

(d) What has the NRC historically done well, or currently does well that we could do more of or expand with respect to environmental justice in our programs, policies, and activities, including engagement efforts? In your view, what portions of the 2004 Policy Statement are effective?

The policy statement does not address impacts to tribes, specifically. Because of the Sovereign status of the federally recognized tribes, it is important to distinguish tribes from “minority” populations. Additionally, the policy statement utilizes a numerical approach for characterizing the likely extent of impacts. When seeking impacts to Tribes, geographic and contextual information should be considered. Tribes are not always near their ancestral lands and more information on their migration and relocation routes can be used to determine if there will be cultural impacts to the Tribes.

(3) What actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies and activities and agency decision-making, considering the agency's mission and statutory authority?

NRC should seek to approach congress on increasing Federal appropriations for NRC outreach and working with Tribal Governments. NRC requires adequate funding from the federal government for fulfilling the federal trust responsibility to the Tribes during DOE siting, licensing, and operating activities.

(a) Would you recommend that NRC consider any particular organization's environmental justice program(s) in its assessment?

Consider the EPA Environmental Justice program and consultation protocol when working with Tribal governments. EPA provides technical assistance and funding opportunities to address, develop and implement projects for addressing EJ issues. EPA awarded grants and cooperative agreements to disadvantaged communities to address environmental, social, and cultural issues.

(b) Looking to other Federal, State, and Tribal agencies' environmental justice programs, what actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies, and activities?

Upon finalization of the Tribal Policy Statement, the NRC designated an official and tribal liaison to ensure the trust responsibility is fulfilled in licensing and regulatory actions. Environmental Justice matters were not addressed in this policy statement and it is a critical missing piece for improving relations between NRC and the Tribes. NRC should consider updating the policy statement to elaborate on environmental justice goals and implementation.

(c) Considering recent Executive Orders on environmental justice, what actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies, and activities?

One consideration is the Biden Administration’s Justice40 Initiative from the EO 14008. In sharp contrast to the past where we have seen all of the impacts and none of the benefits, Justice40 promises a government-wide approach to deliver 40 percent of the benefits of relevant federal investments to disadvantaged communities like our Tribes. We are hopeful that such benefits will reach the Tribes, and we would like to be a part of helping Justice40 succeed.

If the NRC wanted to solidify some environmental justice requirements so our Tribes were not left to bare all the impacts and risks (and get no benefit), then they surely have a number of ways to make

that happen. The NRC could develop stronger policies, undergo a rulemaking, provide funding for Tribal communities like ours to work on these issues with NRC, and open up opportunities for Tribal involvement in NRC regulatory and licensing activities. The Tribes' proper involvement should be, but rarely is, a part of the NRC's federal trust responsibility to ensure that the Shoshone-Bannock Tribes health, safety, wellbeing, and resources are properly protected. Along that same vein, the Fort Bridger Treaty of 1868 declared that our people were entitled to "absolute and undisturbed use and occupation" of areas like our Fort Hall Reservation. Accordingly, the Tribes should be key in determining what constitutes environmental justice impacts and risks on our own people.

The Tribes appreciate the opportunity to provide these preliminary comments on environmental justice matters at the NRC.

Sincerely,


Devon Boyer, Chairman

CC:

Paul Echo Hawk, Tribal Attorney

Talia Martin, Tribal Department of Energy Director