

Response to IPC--Fifth set of public comments by Beyond Nuclear on DOE's proceeding to define the "Consent-Based Siting" of radioactive waste dumps

STOP RADIOACTIVE RACISM!

In the lead up to the January 20, 2016 "Kick Off" meeting for "Consent-Based Siting, held in Washington, D.C., DOE asked the public to comment on

(1) How can the Department of Energy ensure that the process for selecting a site is fair?

Consent based siting seeks to ensure fairness in the distribution of costs, benefits, risks and responsibilities now and in future generations. How, in your view, can fairness be best assured by the process for selecting a site?

Of course, it was difficult to comment upon that question, as DOE did not make a public comment opportunity possible during that "Kick Off" meeting. That oversight marked a very inauspicious beginning for this "Consent-Based Siting" proceeding, one that DOE never has rectified, unfortunately.

But to answer that question regarding fairness, the Department of Energy must cease and desist from targeting Native American tribes and communities, and their lands. So too must the U.S. Nuclear Regulatory Commission, nuclear power industry, and the rest of the nuclear establishment in industry, government, academia, etc. This is environmental injustice, this is radioactive racism. This must be stopped.

To further explain this point, I would like to reproduce here below an extended extract from my public comments delivered to the Blue Ribbon Commission on American's Nuclear Future, at its "Kick Off" meeting in Washington, D.C. in late March 2010:

*At first glance, it would seem that this panel's name is inappropriate. For a panel that is supposed to address the lack of a solution to the high-level radioactive waste crisis, the name "Blue Ribbon Commission on America's Nuclear Future" seems a bit odd. But it may be ironically fitting, for forever deadly radioactive waste which has no solution **IS** the future of nuclear power in America, and around the world for that matter. As Michael Keegan of the Coalition for a Nuclear-Free Great Lakes has put it, "Electricity is but the fleeting byproduct from atomic reactors. The actual product is forever deadly radioactive waste."*

Forever deadly is no exaggeration. The U.S. Environmental Protection Agency, under court order, now recognizes a one million year hazard associated with high-level radioactive waste, at least in its applicable Yucca Mountain repository regulations. One million years equates to 40,000 human generations. A few generations of

electricity, in exchange for 40,000 generations of radiological hazard, is quite a future for nuclear power, quite a burden for us to offload onto our descendants.

As Yucca Mountain, Nevada is Western Shoshone Indian land by the “peace and friendship” Treaty of Ruby Valley signed by the U.S. government in 1863, I’d like to thank President Obama and Energy Secretary Chu for the tremendous environmental justice victory the dumpsite’s cancellation represents.

It also represents a tremendous environmental victory. Any radioactive waste that had been buried at Yucca would have leaked out, massively, over time, turning all points downstream into a nuclear sacrifice zone. The drinking water beneath Yucca serves a farming community downstream, as well as a National Wildlife Refuge, National Park, and the Timbisha Shoshone Indian Band. The dumpsite also could have cataclysmically failed in an earthquake or even volcanic eruption at that seismically active area. No wonder, then, that over 1,000 national and grassroots environmental groups opposed the dump at Yucca Mountain, and are now relieved and thankful that President Obama and Energy Secretary Chu have cancelled the dumpsite and the thousands of high-level radioactive waste trucks, trains, and barges that would have carried the wastes through most states bound for Nevada.

I would also like to thank President Obama for recognizing Grace Thorpe on March 3, 2009 in his “Women Taking the Lead to Save our Planet” Women’s History Month 2009 Proclamation. President Obama proclaimed:

“Grace Thorpe, another leading environmental advocate, also connected environmental protection with human well-being by emphasizing the vulnerability of certain populations to environmental hazards. In 1992, she launched a successful campaign to organize Native Americans to oppose the storage of nuclear waste on their reservations, which she said contradicted Native American principles of stewardship of the earth. She also proposed that America invest in alternative energy sources such as hydroelectricity, solar power, and wind power.”

Grace Thorpe, who passed away a few years ago now, was a Sauk and Fox as well as Pokagon Potawatomi Indian best known for restoring her father’s – “Athlete of the Century” Jim Thorpe’s -- Olympic gold medals to the Thorpe family.

But she also led the effort on her Sauk and Fox Reservation in Oklahoma to immediately put a stop to any consideration that her community become an “interim” parking lot dump for commercial high-level radioactive waste. She then went on the road, and helped stop such environmentally racist targeting of dozens more Native American tribes by the U.S. Department of Energy’s “Nuclear Waste Negotiator.” She was instrumental in seeing that the Nuclear Waste Negotiator program was de-funded and done away with in 1992, five years after it came into existence.

But in that time, the Nuclear Waste Negotiator gave “federally recognized” Indian tribe a whole new meaning. It seems the federal government “recognized” that politically and economically vulnerable Native American reservation communities could serve as the “path of least resistance” for parking high-level radioactive wastes with nowhere else to go for decades, or perhaps even forever. Every single federally recognized tribe in the country received a solicitation letter from the DOE’s Nuclear Waste Negotiator. Sixty tribal chairmen or councils, in their economic desperation, expressed interest.

But traditionals and environmentalists within those targeted tribal communities worked with Grace and others to put a stop to the radioactive racism. Rufina Marie Laws and Joe Geronimo at Mescalero Apache, New Mexico, led efforts to defend their community – one of the first “Downwinder” communities in the world, as it is immediately downwind of the Alamogordo site where the “Trinity” plutonium bomb was tested on July 16, 1945. First the Nuclear Waste Negotiator’s federal “monitored retrievable storage” site was defeated. Later, a private industry attempt to do what the federal government was unable to at Mescalero was likewise defeated.

But undaunted and shameless, the nuclear power industry’s “Private Fuel Storage, Limited Liability Corporation” picked up where it had left off at Mescalero, and attempted to force its parking lot dump on the tiny Skull Valley Goshute Indian Reservation in Utah. Margene Bullcreek and Sammy Blackbear put a stop to it.

These bitter struggles lasted many long years, leaving wounds in these communities that will take a very long time to heal, even though no radioactive waste was ever delivered to either Mescalero or Skull Valley. The anti-dump tribal members suffered severe harassment and even death threats for their courageous stand.

Winona LaDuke of Honor the Earth, an Ojibwe environmental leader from the White Earth Reservation in Minnesota, has helped lead the national effort to stop radioactive waste dumps targeted at Indian lands. She has said “The best minds in nuclear science have been hard at work for over 50 years to figure out a solution to the radioactive waste problem, and now they’ve finally got it – haul it down a dirt road and dump it on an Indian reservation.”

Tom Goldtooth of Indigenous Environmental Network, another leader against radioactive waste dumps on Native lands, reminds us that environmental justice principles must be at the forefront of decision making in the 21st century.

Joe Campbell at the Prairie Island Indian Community in Minnesota also deserves praise, for opposing the generation of high-level radioactive waste at the Prairie Island Nuclear Power Plant. Incredibly, the dry cask storage facility there, in the floodplain of the Mississippi River, is located a mere 600 yards from the tribal day care center and the nearest tribal residences.

At this time when the Yucca Mountain dumpsite proposal has been so wisely cancelled by President Obama and Energy Secretary Chu, I would also like to honor the Western Shoshone National Council for its tireless vigilance against the dump, as well as against nuclear weapons testing at the Nevada Test Site. Corbin Harney, Western Shoshone spiritual leader, founder of the Shundahai Network, passed away in 2007. For decades, he led and inspired the grassroots resistance to the dump and nuclear weapons testing. Other Western Shoshone leaders are fortunately still with us, including Ian Zabarte, Secretary of State of the Western Shoshone National Council, who for 25 years, in an unpaid voluntary capacity, has served as a legal and technical policy coordinator in the Western Shoshone Nation's vigilant resistance against the Yucca Mountain dumpsite proposal.

I urgently call upon this Blue Ribbon Commission to put a stop, once and for all, to the shameful history of targeting Native American communities and lands with radioactive waste dumps.

Thank you.

Most unfortunately, the Blue Ribbon Commission ignored my comments, and my pleas, to cease and desist with such radioactive racism. In its Final Report of January 2012, the Blue Ribbon Commission went right on listing Native American tribes, communities, reservations, and lands as a category of potential sites for so-called centralized interim storage (*de facto* permanent parking lot dumps), as well as permanent burial dumps.

But then again, the Blue Ribbon Commission ignored most to all public comments coming from concerned individuals, environmental group representatives, Native American traditionals, etc. It's as if the Blue Ribbon Commission report could have been written before the 2010 to 2012 process of holding numerous meetings across the U.S., allowing public comment opportunities, etc. In fact, it would seem that is exactly what happened. The Blue Ribbon Commission had a predetermined agenda, and bulldozed it through, in spite of the thousands of public comments provided, in good faith.

As I mentioned in previous comments to DOE on this "Consent-Based Siting" IPC (Invitation for Public Comment), and as I pointed out at the Chicago meeting on March 29, 2016, Ernest Moniz, now Energy Secretary, was a member of the Blue Ribbon Commission; John Kotek, now DOE Acting Assistant Undersecretary for Nuclear Energy, was staff director for the Blue Ribbon Commission; Timothy Frazier was Designated Federal Official, from DOE Office of Nuclear Energy, for the Blue Ribbon Commission, and now works as a private consultant for DOE on "Consent-Based Siting"; Mary Woolen, a government-public liaison for the Blue Ribbon Commission, now works as a private consultant for DOE in a similar role on "Consent-Based Siting." Given these very selfsame individuals having ignored such public comments as mine above from 2010 to 2012, I have little to no confidence

that this “Consent-Based Siting” proceeding public comment opportunity is any more sincere.

To add insult to injury, DOE invited David Leroy, DOE’s former Nuclear Waste Negotiator, to present as a panelist at the July 14, 2016 “Consent-Based Siting” meeting in Boise, held on the eve of the anniversary of the Trinity test in 1945, which blanketed the Mescalero Apache reservation with the first bomb fallout of the Atomic Age, as well as the 1979 uranium tailings disaster that radioactively contaminated Diné drinking and irrigation water in Church Rock, New Mexico.

As I mentioned during my comments to the Blue Ribbon Commission in 2010, Grace Thorp helped stop not only the parking lot dump targeted at her own Sauk and Fox Reservation in Oklahoma, but also such environmentally racist targeting of dozens more Native American tribes by the U.S. Department of Energy’s “Nuclear Waste Negotiator.” She was also instrumental in seeing that the Nuclear Waste Negotiator program was de-funded and done away with in 1992, five years after it came into existence.

President Barack Obama honored Grace Thorpe for her work in 2009. His proclamation is attached to these comments. DOE dishonored her memory, by having the former Nuclear Waste Negotiator speak in 2016. It rubbed salt in the wounds of DOE’s past radioactive racism.

In 2005, myself (working as Nuclear Waste Specialist at Nuclear Information and Resource Service) and a colleague at Public Citizen, Melissa Kemp, co-authored a document entitled *Radioactive Racism: The History of Targeting Native American Communities with High-Level Atomic Waste Dumps*.

The document chronicled the DOE Office of Nuclear Waste Negotiator’s shameful actions over the course of several years.

It quoted the following infamous statement made by David Leroy himself:

*"We cannot rewrite the history of imbalance between our peoples. We can, however, write the future. It is the Native American cultures of this continent which have long adhered to the concept of planning for many generations of future unborn children in the decisions which are made today. This contrasts with the modern practices of American governments at all levels where planning and budgeting are done with most of the emphasis upon only the next fiscal year. With atomic facilities designed to safely hold radioactive materials with half-lives of thousands of years, **it is the Native American culture and perspective that is best designed to correctly consider and balance the benefits and burdens of these proposals.** ---David Leroy, U.S. Nuclear Waste Negotiator, addressing the National Congress of American Indians in 1991. [emphasis added; see footnote for reference below.]*

Which is why we'd like to indefinitely park high-level radioactive waste in large quantities on your reservation lands, Nuclear Waste Negotiator Leroy could have added. Of course, Leroy's intimation that "benefits" could make such "burdens" worth it, is itself objectionable. Buying off low-income communities of color to shoulder toxic or radioactive burdens that wealthier and whiter communities are unwilling to accept, is a text book example of environmental racism, or environmental injustice. In this case, it is radioactive racism.

As Keith Lewis, environmental director for the Serpent River First Nation of Ontario put it, "There is nothing moral about tempting a starving man with money." He spoke in the context of the radioactively ruinous aftermath of uranium mining at Elliot Lake, but his wise words, reflecting the ravages borne by his community to the present day, apply equally well to radioactive waste dumping.

The footnote accompanying the Nuclear Waste Negotiator's infamous statement above sheds more light on the outrage it generated amongst Native American traditionals, environmental and environmental justice activists:

Leroy, David. "Federalism on Your Terms: An Invitation for Dialogue, Government to Government." Address to National Congress of American Indians. San Francisco, CA. 4 Dec. 1991. In this speech, David Leroy argues that Native American Tribes are incredibly suited (even preferable) for storing the country's high-level nuclear waste. He cites the Native American values of long-term health and sustainability as reason for this. Coming on the eve of the 500th anniversary of what many Native Americans and modern historians regard as Columbus's brutal invasion of this hemisphere, quoting the famous Duwamish leader Sealh (more commonly known as Chief Seattle) many times, Leroy's words were regarded as Machiavellian and Orwellian by many of those in attendance. After the speech, one man called Leroy's linkage of the Native ethic and nuclear waste "the granddaddy of all oxymorons," and a Duwamish woman asked Leroy why, if he so liked quoting Sealh, her tribe had been dispossessed of what later became the City of Seattle and still not received full federal recognition (Wahpepah, Wilda. "Tribal Leaders Get N-Waste Pitch". The Oregonian, 5 Dec. 1991).

The 2005 document *Radioactive Racism* is also attached to these comments. I request that DOE include *Radioactive Racism* as a part and parcel of my comments, and reproduce it in its entirety in the official record of public comments as if rewritten in its entirety herein.

To add to the irony of targeting Native American lands and communities for high-level radioactive waste dumps is the fact that many reservations receive no electricity from atomic reactors. The same can be said of the ravages of uranium mining and milling on Native lands – most of those communities don't derive any benefit from nuclear-generated electricity. It seems most to all of the burden is being targeted at Native Americans, while they are offered few to none of the benefits.

Even the “incentives” – or legal bribes, buy off money – being considered, are objectionably small. The rumored “incentives” offered to the Skull Valley Goshutes band in Utah, to “host” 40,000 metric tons of commercial irradiated nuclear fuel for 20 years, or 40 years, or – truth be told -- perhaps forever, was \$50 to 200 million. Compare this to an annual DOE budget of tens of billions of dollars. Or the *daily* net profits at a single nuclear power plant, such as Indian Point, New York, of well over a million dollars. Such “incentives” – while desperately needed by low-income communities of color, such as historically and even contemporarily long oppressed Native American reservations – are unjustly and insultingly small in size, compared to the filthy riches amassed by the nuclear power establishment, at public expense.

But then again, how Native Americans have been targeted for all the burden, and none of the benefit, is how the nuclear power industry, and its friends at DOE, treat all future generations, of every race and ethnic group. Future generations will get none of the benefit, but all of the risk, from high-level radioactive waste, forevermore.

David Leroy was downplaying the risks when he stated in 1991 that *“atomic facilities [are] designed to safely hold radioactive materials with half-lives of thousands of years...”*. As the U.S. National Academy of Science has warned in 2004, and again in 2016, high-level radioactive waste storage pools in the U.S. are at risk of catastrophic releases of hazardous radioactivity, due to zirconium cladding fires that could release up to 100% of the volatile Cesium-137 stored in the pools. And as mentioned in my previously submitted comments in this proceeding, U.S. EPA has acknowledged – under court order – that irradiated nuclear fuel and high-level radioactive waste remains hazardous not for thousands of years, but rather for a million years. But even this figure is an underestimate. Hazardous Iodine-129, for example, present in irradiated nuclear fuel, has a half-life of 15.7 million years. Thus, its hazardous persistence lasts 157 to 314 million years.

As Michael Keegan of Coalition for a Nuclear-Free Great Lakes puts it, “Electricity is but the fleeting byproduct of nuclear power. The actual product is forever deadly high-level radioactive waste.”

This is a curse on all future generations. We must stop making it. And we must stop trying to dump it on Native American, and other low income, people of color communities. We must stop radioactive racism.

DOE also asked at the Jan. 20, 2016 “Kick-Off” meeting:

(2) What models and experience should the Department of Energy use in designing the process?

The challenges and opportunities of site selection drive us to continue to learn from previous or ongoing examples. From your perspective, what experience and models do

you think are the most relevant to consider and draw from in designing the process for selecting a site?

There is a very long list of negative examples, and many of them are DOE's own creation. Targeting Native Americans is at the top of that list, including the dumpsite targeted at Yucca Mountain, Nevada – Western Shoshone Indian land, as acknowledged by the U.S. government when it signed the "peace and friendship" Treaty of Ruby Valley of 1863, making it the highest law of the land, equal in stature to the Constitution itself.

"Consent-Based Siting" must mean fully informed consent, adhering to the strictest protocols of environmental justice principles. Keith Lewis's quote above was a powerful rebuttal to U.S. Republican Senators' (such as Jim Risch of Idaho) thinly veiled "incentives" cynicism, made as out-loud jokes as code for legalized bribery, as during summer 2013 U.S. Energy and Natural Resources hearings regarding so-called "Consent-Based Siting" of radioactive waste centralized interim storage sites, to supposedly carry out the mandate of the Blue Ribbon Commission's recommendations, as documented in its January 2012 *Final Report*.

DOE also asked in the lead up to the Jan. 20, 2016 "Kick-Off" meeting:

(3) Who should be involved in the process for selecting a site, and what is their role?

The Department believes that there may be a wide range of communities who will want to learn more and be involved in selecting a site. Participation in the process for selecting a site carries important responsibilities. What are your views on who should be involved and the roles participants should have?

Per the Blue Ribbon Commission's second highest recommendation, the DOE should NOT be a participant in "Consent-Based Siting." DOE has irreparably betrayed the public trust, too many times, over too many years.

Transport corridor communities should be involved, along any potential high-level radioactive waste truck/roadway, train/railway, or barge/waterway routes.

All neighboring communities surrounding targeted dumpsites must be involved meaningful. This must include all those downwind, downstream, up the food chain, and down the generations, at risk of the radioactive waste's forever deadly hazard.

Every jurisdiction must grant its consent. Dissent at any level, no matter how "low," should block the proposed dump. Yet even states, such as Nevada, New Mexico, Idaho, and others, can say "NO!" to being dumped on, over and over again, but DOE STILL won't take them off the target list.

DOE seems to be deaf to community groups such as SRS Watch, Nukewatch South, the Sierra Club, etc., as at SRS in SC, or such community groups as SRIC (Southwest Research Information Center) and many others in New Mexico, vis-à-vis the Eddy-Lea Counties/WIPP parking lot dump proposal. Yet DOE can clearly hear the pro-dump boosters, who they continue to work with, to advance dump proposals. DOE needs to stop pretending to be neutral. It is not. But then again, DOE and the pro-dump boosters have huge areas of overlap between themselves. That's what happens when a nuclear power industry promotional agency is put in charge – or puts itself in charge – of high-level radioactive waste management, and setting the definition for “Consent-Based Siting,” as in the instant proceeding. This conflict of interest is unacceptable. The Blue Ribbon Commission concluded as much, recommending that DOE could not be involved any longer, after so betraying the public trust in the past. Just as the U.S. Atomic Energy Commission was split in two – DOE to promote nuclear power, and NRC to regulate nuclear safety – “Consent-Based Siting” for the safe storage and disposal of irradiated nuclear fuel cannot be entrusted to DOE/Office of Nuclear Energy, the promoter of the nuclear power industry.

DOE also asked:

(4) What information and resources do you think would facilitate your participation?

The Department of Energy is committed to ensuring that people and communities have sufficient information and access to resources for engaging fully and effectively in siting. What information and resources would be essential to enable you to learn the most about and participate in the siting process?

Participant funding for opponents to proposed dumps should be provided, as they provide in Canada for similar proceedings. Public Citizen has made this same recommendation in this proceeding. Along similar lines, in order for fully informed consent-based siting to occur, the full information from opponents to proposed dumps should be made accessible, and share in full, by DOE, at DOE expense, with the targeted communities.

DOE also asked:

(5) What else should be considered?

The questions posed in this document are a starting point for discussion on the design of the process for consent-based siting of nuclear waste facilities, the Department of Energy would like to hear about and discuss any related questions, issues, and ideas that you think are important.

DOE should consider all previous related public comments. For example, U.S. Senator Ron Wyden (D-OR), Chair of the U.S. Senate ENR Committee (Energy and Natural Resources), solicited public comments in summer 2013 regarding his bill to enact the recommendations of the Blue Ribbon Commission *Final Report*. DOE should consider all the comments submitted to Senator Wyden coming from concerned members of the public, environmental groups, and opponents to the bill.

DOE should all critical public comments made to the Blue Ribbon Commission from 2010 to 2012. Not just the BRC Final Report should be considered, but ALL CRITICAL PUBLIC COMMENTS to BRC, made from 2010 to 2012, that were, most unfortunately, largely to entirely ignored by the BRC in its *Final Report*.

All critical public comments made during the DOE's Draft Environmental Impact Statement public comment periods regarding the proposed Yucca Mountain dump proceedings, over the decade beginning in 1999, should be considered by DOE.

In short, DOE must cease and desist from burning our critical public comments down the Orwellian Memory Hole, as if they never happened.

Sincerely,

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