## Journal #4529 from sdc 10.18.19

White Buffalo Calf Bundle

How one of America's smallest Indian tribes bounced back from the brink of dying out Resources

Our Kids Face Unprecedented Crises. Standardized Tests Won't Prepare Them.

Food Distribution Programs on Indian Reservations Community Cook Off
Ian Zabarte Report to the Western History Association: GROUNDWATER AND OTHER IMPACTS
OF THE YUCCA MOUNTAIN PROGRAM ON NATIVE AMERICAN COMMUNITIES AND
CULTURAL RESOURCES

Friday Fun

### Our Generation BlackHills- He Sapa Wicouncage Okolakiciye

When Elk Head in the 1908 photo above died in 1916, the White Buffalo Calf Pipe Bundle went to his daughter, Martha Bad Warrior, aka Red Eagle Woman, (b. 1854 - d. 1936). When Martha Bad Warrior died in 1936, the White Buffalo Calf Pipe Bundle went



to her son, Ehli Bad Warrior, (b. 1882 d. 1959). When Ehli Bad Warrior died in 1959, the White **Buffalo Calf Pipe** Bundle went to his sister, Lucy (Bad Warrior) Looking Horse, (b. 1891 - d. 1966). Just before Lucy (Bad Warrior) Looking Horse died in 1966, she chose to pass over her son, Stanley Looking Horse, and pass the White **Buffalo Calf Pipe** Bundle to then 12 year old grandson, **Arvol Looking** Horse, (b. 1954) the current Keeper.



### How one of America's smallest Indian tribes bounced back from the brink of dying

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#### **Resources:**

American Indian Higher Education Consortium Nonprofit Organization
 American Indian Film Institute Nonprofit Organization
 Native American Financial Services Association Financial Service

Native PathwaysSchool

National Indian Education Association Nonprofit Organization

Center for Native American YouthNonprofit Organization

U.S. Indian Affairs

Government Organization

National Sustainable Agriculture Coalition Nonprofit Organization

First Nations Development InstituteNonprofit Organization

The National Young Farmers Coalition

National Indian Child Welfare Association (NICWA)Community Organization

National Congress of American IndiansNonprofit Organization

Representative Sharice Davids

American Indian College Fund

Indigenous environmental activist Takota Iron Eyes is sharing her pa... See More

Every year NAFOA recognizes Native American leaders who create posit... See More

Our Journey to Success event is designed to demonstrate the importan... See More

# Our Kids Face Unprecedented Crises. Standardized Tests Won't Prepare Them. MARION BRADY, TRUTHOUT

The notion that any curriculum, let alone one well over a century old, is equally appropriate for all learners, no matter their differences in personality or lived experience, is ridiculous. But this is exactly what we are using to educate our children in public schools. A curriculum organized around standardized testing is ill-suited for a generation that will need to confront unparalleled global challenges in order to survive. Read the Article →



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Report presented at the #WHA2019 Western History Association 2019 LV
RESOURCES NEEDED FOR DEVELOPING NEW LICENSING CONTENTIONS ON
GROUNDWATER AND OTHER IMPACTS OF THE YUCCA MOUNTAIN PROGRAM ON NATIVE
AMERICAN COMMUNITIES AND CULTURAL RESOURCES<sub>1</sub>

#### INTRODUCTION

The proposed Yucca Mountain high-level nuclear waste repository has the potential to expose Native Americans to radiation through unique exposure pathways should the Department of Energy (DOE) be issued the necessary license(s) for construction, transportation, operation and closure of a geologic repository. Native Americans would participate in advocating for their concerns if resources were available for their involvement.

This report assesses technical and financial resources of the Native Community Action Council (NCAC) to adjudicate existing licensing contentions and to develop additional contentions on groundwater, cultural resources, and other potential impacts to Native Americans from the proposed Yucca Mountain high-level nuclear waste repository.

#### **BACKGROUND**

The NCAC is composed of Western Shoshone and Southern Paiute people2 brought together by a common need to address impacts experienced in tribal community that are known to be plausible from exposure to ionizing radiation released from nuclear weapons tested in the Great Basin. Both people possess an oral history of continuous use of the Yucca Mountain region that is *the people's* identity. The Western Shoshone and Southern Paiute people speak a similar Numic Uto-Aztecan language and possess similar cultural lifeways that overlap the Yucca Mountain region making combining both people for assessment an appropriate approach. (MAP 1).

In 1992, Native Americans hosted the Healing Global Wounds Conference and Pow-Wow at the University of Nevada Las Vegas. The event was a catalyst for collaboration between Joe Sanchez, Citizen Alert Native American Program, Dianne Quigley, Childhood Cancer Research Institute and Eric Fromberg, Clark University creating the Nuclear Risk Management for Native Communities Project (NRMNC). The NRNMC operated as a project of Citizen Alert Native American Program and became an autonomous organization in 2003, the Native Community Action Council (NCAC).

The NCAC sought to gain a deeper understanding between Indian tribes (community) and science (technical partners) to study what happened to tribal communities down-wind from the Nevada Test Site, now the Nevada National Security Site; and to develop appropriate protective health measures and policies. The project was one of the first collaborative health projects taking direction from Western Shoshone and Southern Paiute communities. Tribal communities identified plants, animals, other resources to be investigated for potential health effects with the goal of protecting health through investigative research, community education and development of community-based capabilities.

The NCAC considered the importance of lifestyle in review of the 1979 Off-Site Radiation Exposure Review Project (ORERP). The ORERP's goal was to estimate potential dose for any person who lived in an area where fallout from the NTS was deposited—both external and internal. The ORERP estimated exposure based upon the shepherd lifestyle that may estimate external dose accurately but is unrepresentative of internal dose because of missing exposure pathways including hunting, fishing, gathering and religious practices. The NCAC identified needed adjustments to the DOE the ORERP to account for missing Native American lifestyle to

include: (1) models for missing exposure pathways, and (2) the included pathway models needed to be corrected to reflect Native American tradition lifeway practices.

This paper is based on a report prepared by Principal Man Ian Zabarte, Western Bands of the Shoshone Nation of

Indians, for the Nevada Agency for Nuclear Projects in September 2019.

Western Shoshone (Newe) and Southern Paiute (Nuwu) people speak of themselves as "the people" in Numic Uto-Aztecan language

#### YUCCA MOUNTAIN LICENSING

In 2001 the Environmental Protection Agency (EPA) issued radiation protection standards for the proposed Yucca Mountain repository intended to protect those living closest to the proposed Yucca Mountain repository. The 2001 disposal standards included a 10,000-year compliance period for protection of individuals and groundwater resources from potential release of radionuclides from the proposed Yucca Mountain site. The EPA required dose projections beyond the 10,000-year compliance period but did not establish a specific compliance standard for the longer-term projections. After a series of legal battles, the EPA and NRC adopted regulations that would limit radiation doses resulting from groundwater contamination to 15 millirem/year for the first 10,000 years and 100 millirem/year for the next 990,000 years. In 2008, the DOE issued a Final Environmental Impact Statement (FEIS) that identified the "region of influence" as fifty (50) miles on each side of the Caliente and/or Mina rail alignment to the proposed Yucca Mountain site. The region of influence is an area known to include Western Shoshone and Southern Paiute ancestral lands and Executive Order created reservations near the proposed Yucca Mountain site.

On June 3, 2008, the Department of Energy (DOE) submitted a License Application (LA) to the Nuclear Regulatory Commission (NRC), seeking authorization to construct a high-level waste geologic repository at Yucca Mountain, Nevada. Potential parties then had to certify their documentary material on the Licensing Support Network (LSN) and file contentions with the Nuclear Regulatory Commission (NRC) Atomic Safety Licensing Board Panel (ASLBP). The NCAC saw gaps in the LA that omitted the fact of Western Shoshone and Southern Paiute use and occupancy (Indian title) had not been extinguished; and that, Native American exposure risk would be significantly higher than the non-Native Americas based upon lifestyle differences. The NCAC prepared to intervene in the licensing proceedings to ensure their concerns were addressed.

The intent of the NCAC participation was to ensure Native American concerns were adequately considered and in doing so the record of the proceedings was as complete as possible. The obstacle for NCAC to participate as was achieving standing as a party in the NRC ASLBP. The NCAC produced three (3) single, stand-alone contentions: A. Land Ownership and Control, (B) Water Rights, both legal contentions; and a (C) National Environmental Policy Act (NEPA) contention, a safety contention -- submitted to the NRC electronically on December 22, 20083 in

Docket # 63-001 Yucca Mountain.

On August 27, 2009 the ASLBP issued an ORDER granting party status to the NCAC and designating the acronym NCA was assigned by CAB-04. Each of the three (3) contentions submitted by NCAC were duplicated by the Timbisha Shoshone Tribe (TIM) and the Timbisha Shoshone Yucca Mountain Oversight Program (TSO) and submitted separately to the ASLBP. Contentions of TIM and TSO were later both combined as the Joint Timbisha Shoshone (JTS) for the proceedings at the NRC ASLBP Construction Authorization Board (CAB). On March 3, 2010, the DOE filed a motion with the CAB to withdraw the LA with prejudice.

Then, on September 30, 2011 CAB04 issued a Memorandum and Order suspending the adjudicatory proceeding.4

On October 17, 2011 the Government Accounting Office (GAO) issued a report: Nuclear Fuel Cycle Options: DOE Needs to Enhance Planning for Technology Assessment and Collaboration with Industry and Other Countries (GAO-12-70).

"Nuclear energy, which supplied about 20 percent of the nation's electric power in 2010, offers a domestic source of electricity with low emissions but also presents difficulties--including what to do with nuclear fuel after it has been used and removed from commercial power reactors. This material, known as spent nuclear fuel, is highly radioactive and considered one of the most hazardous materials on earth."

On August 13, 2013, the US Court of Appeals for the District of Columbia Circuit granted a writ of Mandamus against the NRC and directed the Agency to "promptly continue with the legally mandated licensing process" associated with the captioned matter.5

In order to continue the legally mandated Yucca Mountain licensing proceedings the Safety Evaluation Report<sub>6</sub> (SER) Volume 1-5 was completed by the NRC Staff; and in 2016, the Supplement to the DOE Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada<sub>7</sub> (SEIS) was also completed by the NRC Staff.

Native Community Action Council Petition to Intervene as a Full Party before the Atomic Safety Licensing Board

Panel in Docket No. 63-001, December 22, 2008.

<sup>4</sup> LBP-11-24, 74 NRC.

Akin County, No. 11-1271 (DC Circuit August 13, 2013).

In August 2010 the NRC issued: Safety Evaluation Report General Information (NUREG-1949, Volume 1); In January of 2015 NRC issued: Safety Evaluation Report Repository Safety Before Permanent Closure (NUREG- 1949, Volume 2); In October of 2014 Safety Evaluation Report Repository Safety after Permanent Closure (NUREG-1949, Volume 3); In December 2014 NRC issued: Safety Evaluation Report Administrative and Programmatic Requirements (NUREG-1949, Volume 4); In January of 2015 the NRC

issued: Safety Evaluation Report Proposed Conditions on the Construction Authorization and Probable Subjects of License Specifications (NUREG-1949, Volume 5).

#### In the SEIS at 3.3.5 NRC Staff Conclusion:

"Thus, the NRC staff concludes that DOE would need to assess whether further consultation and investigation are necessary to account for potential impacts on cultural resources that may be located in areas where groundwater discharges to the surface."

#### Also, in the SEIS at 3.4.1 Assessments in DOE's EIS:

"In its EISs, DOE provided an analysis of environmental justice impacts but did not identify groundwater as a resource area for which potential environmental justice impacts could occur. Because DOE did not provide an environmental justice analysis for impacts from groundwater or from surface discharges of groundwater, the NRC staff concludes that, consistent with the finding in the ADR with regard to the need for further supplementation, this discussion in the EISs is incomplete."

In the SEIS the NRC Staff describes the affected environment and assesses the potential environmental impacts with respect to potential contaminant releases from the repository on the aquifer environment, soils, ecology, and public health, as well as the potential for disproportionate impacts on minority or low-income populations. The NRC Staff concluded without further field work that:

Section 3.4.3. The NRC staff acknowledges the sensitivities and cultural practices of the Timbisha Shoshone Tribe concerning the use and purity of springs in the Furnace Creek area. Based on the analysis above, the NRC staff determines that there would be no disproportionately high and adverse human health or environmental effects from uses or discharges of groundwater flowing from the repository on minority or low-income segments of the populations in the Amargosa Valley area and in Death Valley National Park."

For the Environmental Justice (EJ)<sub>8</sub> statement the NRC Staff considered the impact on two (2) population centers that are recent introductions to the landscape, the town of Amargosa Valley and Death Valley National Park. Both historic population centers have experienced recent growth in farming and tourism from the mid-twentieth (20th) century and are not representative of Native American lifestyle and therefore are not appropriate for determining EJ impacts upon Native Americans. The NRC Staff Concluded: "Based on the analysis above, the NRC staff determines that there would be no disproportionately high and adverse human health or environmental effects from uses or discharges of groundwater flowing from the repository on minority or low-income segments of the populations in the Amargosa Valley area and in Death Valley National Park." (NRC 2016 SEIS Final Report p,3-40)

NUREG 2184 intended to bridge deficiencies identified by NRC Staff in its September 5, 2008 Adoption Determination Report (ADR).

Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations, February 16, 1994

Between 1986-1991 the State of Nevada conducted its own assessment based on Native American concerns as part of Nevada's larger socioeconomic studies. Dr. Catherine Fowler, et.al., reviewed the ethnographic literature, most between 1920's-1930's on Yucca Mountain for accuracy and to determine if Native Americans had other concerns.9

"Consultation with involved Native Americans confirmed the general accuracy of both ethnographic and archeological interpretation, but also indicated that other features with less obvious physical manifestations were present: sites with mythological reference, water sources considered sacred, plants and animals used for medicines as well as foods, potential burial areas, etc. These, too, are potentially eligible for protection and mitigation by federal laws."

Lifestyle is important and those people who are part of the ecosystem must be involved. According to Pauline Esteves, Shoshone elder and member of the Timbisha Shoshone Tribe, "The water that is used on our tribal reservation is directly threatened by the proposed Yucca Mountain repository. I am informed that the groundwater flows down gradient from Yucca Mountain through the Amargosa Desert and into Death Valley, where our tribal reservation is located." 10

#### **DISCUSSION**

The DOE was required to address the impacts from the proposed repository under the NEPA. The DOE created a process for involvement of Native Americans to consent to a process that concludes that the "overall effect of the proposed repository on the long-term preservation of archeological and historic sites in the analyzed area would be beneficial." The NEPA does not allow destruction of the landscape then allow the agency accountable to claim beneficial effects from abandoning the site. The circular logic is not accepted to fulfill NEPA requirements. Native Americans view the Great Basin landscape as a seamless interconnected environment with "the people" centrally located to speak for all beings, animate and inanimate. Native Americans are good at looking far into the past and into the future, taking visionary perspective in relation to place and space, expanding and contracting "vision." Visioning takes place by ceremony and quest. The southwest desert region is considered "deep spiritual visioning" by Native Americans.

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Catherine S. Fowler, Maribeth Hamby, Elmer Rusco, and Mary Rusco, Cultural Resource Consultants, Ltd., Native Americans and Yucca Mountain Revised and Updated Summary Report on Research Undertaken Between 1987 and 1991, Volume I, Reno, Nevada, (1991)

10

Declaration of Pauline Esteves in Support of Petition to Intervene by Native Community Action Council, US NRC ASLBP Docket 63-001, March 6, 2009.

<sup>11</sup> Zabarte, I, 2019.

Western Shoshone and Southern Paiute people continue to rely upon the wealth of natural resources for sustenance and cultural identity. Annually, many ceremonies are held, and tribal community is drawn together and created. Medicine is gathered such as juniper, sage and Indian

tea all abundant in the Yucca Mountain region. Desert ram, deer and antelope are harvested, and pine-nuts gathered that, in some cases, are consumed at the time of gathering.

Western Shoshone and Southern Paiute people received substantial exposure that was not described or accounted for by the DOE. Based on lifestyle differences – (a) diet--what foods the Western Shoshone and Southern Paiute people hunted and gathered then how they prepared the food; (b) mobility--where the people went, what they did there and how much time they spent there); and (c) shelter--where their homes were and what they were made from.

A Southern Paiute man provided a sense of the close relationship between Native Americans and the land that speaks to them:

"As a Southern Paiute Indian, my spiritual connection to the land defines my identity. Because of my religious and cultural beliefs, when the land is harmed, I also suffer harm. From the perspective of non-Indians, we would say that when a part of the land is taken away, a part of the Bible is taken away. Destruction of the land, whether by radioactive contamination or construction of a spent nuclear fuel storage facility, destroys a part of me. My beliefs about the connection between my health and the health of the land extends to the Yucca Mountain site."

Additional study of potential impact from the repository are needed to identify, address or mitigate significant adverse health impact and consider the disproportionate burden those impacts will have on the health, welfare and spiritual well-being the Western Shoshone and Southern Paiute people. Also missing exposure pathways unique to Native Americans utilizing traditional lifestyles that include religious ceremony, visioning, hunting, gathering—living lifeways should be created.

Not to assess certain impacts may be a violation of the American Indian Religious Freedom Act (PL 95-341), by denying Native Americans access to land necessary for the free exercise of their religion affirmed by:

"policy of the United States to protect and preserve for American Indians the inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship though ceremonials and traditional rites."

Potential impact from groundwater radiation released of the repository may increase exposure risk to the Shoshone and Paiute people significantly higher based upon lifestyle differences that have not been adequately studied. Setting radiation protection standards for those individuals living a western farming lifestyle in Amargosa Valley or living seasonally a tourism-based lifestyle in Death Valley National Park are not appropriate.

In order to adequately assess impacts and identify unique exposure pathways further study of Native American cultural resources would be required and was recommended in 1998 by the involved tribes to include:13

- a. Ethnoarchaeology;
- b. Ethnobotany;
- c. Ethnozoology;
- d. Rock Art;
- e. Traditional Cultural properties;
- f. Ethnogeography;
- g. Cultural Landscapes.

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Declaration of Calvin Meyers in Support of Petition to Intervene by Native Community Action Council, US NRC ASLBP Docket 63-001, March 6, 2009.

13

American Indian Perspectives on the Yucca Mountain Site Characterization, Consolidated Groups of Tribes and Organizations (1998).

#### **CONCLUSION**

A broad scope needs be taken to reevaluate the adequacy of studies conducted by parties involved in assessing impacts from the proposed Yucca Mountain repository. Impacts to Native Americans must be assessed with them as an essential part of the ecosystem based on their origin, thousands year old history and cultural relationship to the land.

It is notable that the NRC staff in their 2016 EIS Supplement, calculated that even if DOE installed thousands of titanium drip shields, one over each waste package, to reduce groundwater contamination from the proposed repository, some off-site contamination resulting in individual radiological doses up to 1.3 millirem/year would occur over the one-million-year regulatory compliance period. The State of Nevada's consultants have calculated that without drip shields, the 10,000 year standard (15 millirem/year) could be exceeded in less than 900 years and the million-year standard (100 millirem/year) could be exceeded in 2,000 years.

The DOE and NRC analyses are insufficient to adequately identify, address and mitigate potential adverse impacts to resources used by the Western Shoshone and Southern Paiute people in the Yucca Mountain region. The DOE has not considered a broad range of potential impacts on the health through unique exposure pathways; cultural resources; or disseminate facts and conclusions for comment; respond to legitimate concerns; and communicate the risks bearing upon Native American communities. The DOE has instead placed Native Americans at a disadvantage by focusing the entirety of their world view into the funnel of cultural resources studies that is necessary but, effectively silencing research outside that narrow scope.

It is imperative that the NCAC continue its legal and technical challenges to the proposed Yucca Mountain site in licensing. Native American must be given the opportunity to advocate for themselves and the irreplaceable biological and cultural resources that give spiritual, religious and traditional significance to the people.

#### FINANCIAL AND TECHNICAL RESOURCES

The NCAC has relied upon its own funds from grants specifically to cover the costs of representing the three (3) original contentions submitted to the ASLBP. Should licensing resume, those costs of adjudicating the original contentions would be borne by the legal team representing the NCAC in the ASLBP CAB hearings. However, creating additional contentions will place an unanticipated burden on NCAC legal team that make another approach necessary. Collaboration between community and science is a useful tool. Joint contentions are possible and should be considered as an appropriate method for parties to consider lifestyle differences that contribute to disproportionate impacts borne by Native Americans.

Technical work would need to review the adequacy of the DOE FEIS 2002 and 2008, and SEIS 2016 for direct and indirect effects on Shoshone and Paiute use, occupancy, water resources, biological resources, cultural resources, archeological, land use practices, hazardous materials transportation, socioeconomics and environmental justice—to ensure a complete understanding of the potential impacts.

Additionally, missing exposure pathways need to be identified and models created, and the existing models needed to be corrected to reflect Native American tradition lifeway practices. A thorough review and assessment is needed to identify gaps in the data and interpret the results in a culturally appropriate context by Native Americans to obtain intended meaning.

A preliminary study could be prepared to look at Western Shoshone and Southern Paiute traditional practices in the Yucca Mountain region and take six (6) months and cost approximately \$40,000 dollars. The focus would be in identifying traditional practices that are recurring and may add increased risk of exposure from repository releases into the groundwater.

Because of the close relationship NCAC has as a grassroots community-based organization it is able to gain access to tribal stakeholders and is willing to do so at this time.

Ten thousand years was only yesterday for the Western Shoshone and Southern Paiute people and there is still time to protect the extant living lifeways from potential impacts of the proposed Yucca Mountain nuclear waste repository.

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Recommendations of the involved tribes to include a. Ethnoarchaeology; b. Ethnobotany; c. Ethnozoology; d. Rock Art; e. Traditional Cultural properties, f. Ethnogeography; and g. Cultural Landscapes.

#### **ACRONYMS**

ADR – Adoption Determination Report

CAB – Construction Authorization Board

EPA – Environmental Protection Agency

GAO –Government Accounting Office

LSN –Licensing Support Network

NCAC – Native Community Action Council

ASLBP – Atomic Safety Licensing Board Panel

DOE – Department of Energy

FEIS – Final Environmental Impact Statement

LA – License Application

NAS – National Academy of Sciences

NEPA – National Environmental Policy Act

NRMNC - Nuclear Risk Management for Native Communities

NRC – Nuclear Regulatory Commission

ORERP -- Off-Site Radiation Exposure Review Project

SEIS – Supplemental Environmental Impact Statement

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MAP 1 The Assessment of Radiation Exposure in Native American Communities from Nuclear Weapons Testing in Nevada

Fromberg, Goble, Sanchez and Quigley, Risk Analysis, Vol. 20, No.1, (2000).

Friday Fun: Abraham Lincoln, Washington Nationals fan (https://

<u>historynewsnetwork.org/article/173273)</u> by Sidney Blumenthal

The long history of baseball in D.C. after the Nationals clenchend a National League Conference Series appearance. https://historynewsnetwork.org/newsletter.html