



**BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY**  
*Big Pine Indian Reservation*

RRR000675

January 9, 2008

Jane R. Summerson  
 M. Lec Bishop  
 Environmental Impact Statement Office  
 U.S. Department of Energy  
 Office of Civilian Radioactive Waste Management  
 1551 Hillshire Drive  
 Las Vegas, NV 89134

Dear Ms. Summerson and Mr. Bishop:

The Big Pine Paiute Tribe of the Owens Valley (Tribe) would like to comment on three U.S. Department of Energy (DOE) documents related to the Yucca Mountain Repository:

- **Draft Supplemental 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 (Draft Repository SEIS)**
- **Draft Supplemental 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- Nevada Rail Transportation Corridor (Draft Nevada Rail Corridor SEIS)**
- **Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (Draft Rail Alignment EIS).**

The Tribe still maintains close historic and cultural ties with the Yucca Mountain Range. The Paiute people regard the total ecosystem as a living entity and the spirits and beings that dwell there to this day are very important to us. Therefore, the Tribe wishes to comment on the draft DOE documents in order to protect the Yucca Mountain Region as well as the western United States from the harmful effects of spent nuclear fuel and high-level radioactive waste.

#### General Comments

##### #1 Government to Government Consultation Issues

1 [ The Tribe is a unique sovereign nation and requires consultation pursuant to Executive Order 13175. The Consolidated Group of Tribes and Organizations (CGTO) is an approach for information sharing, but should not be considered as consultation as required by Executive Order 13175. The Tribe requests that DOE decision making officials meet directly with the Tribal

Council on the Big Pine Reservation to discuss the Yucca Mountain Repository for consultation requirements to be met.

## #2 Inadequate Comment Period

- 2 [The Tribe sent a letter to Mr. Edward Sproat on November 14, 2007, requesting an extension on the comment period for the Draft Repository SEIS, Draft Nevada Rail Corridor SEIS and Draft Rail Alignment. The extension on the comment time is due to the size and complexity of the documents to be reviewed. The Tribe believes that because there are two documents to be considered that the comment period for the documents should be sequential instead of concurrent. Almost two months later, Mr. Sproat still has not responded to our letter. This poor level of government-to-government consultation is unacceptable.]

## #3 Documents must be sent in a timely manner

- 3 [The Tribe has experienced a continuous problem with the DOE in providing documents in a timely manner. The Tribe received the Draft Repository SEIS, Draft Nevada Rail Corridor and Draft Rail Alignment documents from the DOE one month after the documents were released. The Tribe's Tribal Historic Preservation Officer had to make repeated requests to the Office of Civilian Radioactive Waste Management in Las Vegas in order to obtain the documents. The Tribe would like to see the DOE provide documents in a timely manner so that the Tribe can evaluate the information and provide meaningful comments to the DOE.]

## Draft Repository SEIS Comments

### #1 Western Shoshone National Council Issues

- 4 [The Tribe supports the Western Shoshone National Council in its quest to have the United States Government honor the Ruby Valley Treaty of 1863. The Yucca Mountain Repository is located within lands of the Ruby Valley treaty. A settlement has not been reached which satisfies the United States and the Western Shoshone National Council; therefore, the Tribe is against any actions of the United States to use Yucca Mountain as a Nuclear Waste Repository.

Executive Order 13175 Section 3(a) states that "Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments." The Tribe recognizes that the United States has not fulfilled its obligation to the Western Shoshone people and is in agreement with the United Nation's Committee on the Elimination of Racial Discrimination as it called on the United States to halt the destructive land-use practices it has allowed on some of the 60 million acres the Western Shoshone claim until a settlement is reached on the status of that land.]

### #2 Seismic Hazards

- 5 [The Yucca Mountain Repository is located in an area which is susceptible to earthquakes. The Draft Repository SEIS basically states within its discussion of the seismic hazard on pages 3-22

and 3-23 that scientists are in disagreement over the crustal strain rates in the Yucca Mountain area. Many studies have been conducted by scientists to understand the amount of expected seismic activity in the area. The Tribe does not acknowledge those studies as being conclusive. In fact, not only does the Tribe not find the studies to be conclusive, but the authors of the Draft Repository SEIS state on page 3-23 that, "the recent findings have put the measured strain rates closer to expectations, but questions remain."

The Tribe does not understand how the DOE can determine the correct seismic design of the Repository, if it does not understand the seismic hazards it is trying to mitigate. The DOE is using data which identifies the least amount of expected seismic activity to build a repository of spent nuclear fuel and high-level radioactive waste. The Tribe would like to see the DOE utilize data showing worst case scenarios for seismic hazards. The health of our people, our land, our air and our water are at risk if an earthquake disrupts the "just get it done" science of the DOE.]

### #3 Groundwater Issues

6 [The Draft Repository SEIS states on page 3-29 that, "although carbonate aquifers are regionally extensive, they are not necessarily extensively interconnected and often occur in compartments." The Draft Repository SEIS goes on to say that, "When (carbonate aquifers are) hydraulically connected, carbonate aquifers provide a path for flow between groundwater basins."

The County of Inyo has gathered strong scientific evidence through geochemical analysis that the Lower Carbonate Aquifer has several discharge points on the western side of the Funeral Mountains in the Furnace Creek area of Death Valley National Park. The Lower Carbonate Aquifer lies underneath the Yucca Mountain Repository. Within the Draft Repository SEIS a study by the University of Nevada, Las Vegas also concluded that groundwater from the Yucca Mountain region flows into Death Valley National Park.

The DOE is consistent in its stance that the groundwater beneath Yucca Mountain flows into a closed hydrogeologic basin. However, based on independent studies it is revealed that the groundwater beneath Yucca Mountain does flow into other areas, specifically Death Valley National Park. The Tribe believes that the Draft Repository SEIS should contain an impact assessment for plant life, wildlife, wildlife habitat and drinking water supplies in Death Valley National Park that could be impacted by migrating radionuclides from the Yucca Mountain Repository. The Timbisha Shoshone Tribe has homelands within the Death Valley National Park and they utilize groundwater for it's domestic water supply. The SEIS should have considered the drinking water impacts, socio-economic impacts, environmental justice issues, transportation impacts and cultural impacts of the Timbisha Shoshone Tribe. The Tribe would like to see the DOE assess and evaluate the impacts which the repository will have in the Timbisha Shoshone Tribe. Furthermore, the Tribe would like the DOE to perform assessments on other areas which groundwater underlying the Yucca Mountain Repository may travel to.]

7 [The DOE has stated in the Draft Repository SEIS that groundwater pumping will be limited for the project. It also states that the impact it will have on groundwater resources will be much less than the amount current users have. It is very difficult for the Tribe to comment on this and any other DOE document when the DOE continually changes its commitments to fit it's agenda. On June 1, 2007 the State of Nevada issued a cease-and-desist order against the DOE for using State

of Nevada water for an unauthorized purpose. The State of Nevada never granted the DOE permission to use Nevada water for drilling bore holes to gather scientific data. Under a court-approved agreement, the DOE was only supposed to use the state's water for flushing toilets, fire suppression and dust control. The Draft Repository SEIS has similar language to the agreement between the DOE and State of Nevada. How can the Tribe trust the DOE to abide by its plans in the future when it can not abide by its current plans?]

#### #4 Native American Interaction Program

8 [The Draft Repository SEIS states on page S-28 that it is DOE's intention to maintain its commitment to the Native American Interaction Program throughout the implementation of the proposed action. While the text is clear, there is a question by the tribes about the sincerity of the stated intention and commitment of the DOE. Accordingly, the statement should be modified if the DOE does not intend to honor their commitment to working collaboratively with the Consolidated Group of Tribes and Organizations and resume meeting annually as they have previously agreed and not on an activity driven basis as they have recently stated to the CGTO in November 2007.]

9 [The Draft Repository SEIS states that during Tribal update meetings between October 2004 and January 2005 the Consolidated Group of Tribes and Organizations have recommended that additional studies be conducted to address eight areas of concern related to potential adverse impacts to the American Indian landscape on page 3-59. Will this recommendation be acted on?]

10 [On Page 4-93 (4.1.13.2.3 Cultural Resources) the text indicates that the DOE has implemented a worker education program on the protection of archaeological sites and artifacts and suggests limitations to direct and indirect impacts. The CGTO has previously requested to have tribal representatives attend their training to ensure accuracy of information. Moreover, the CGTO has recommended that tribal representatives be afforded the opportunity to provide educational training to workers associated with the Yucca Mountain Project. To date, the DOE has not afforded the CGTO the opportunity to become actively involved in worker education programs. Therefore, the text should be revised to provide an explanation for the oversight and/or an acknowledgment of the recommendation and desire to work collaboratively with the CGTO.]

11 [On Page 4-122 (4.3.2.5 Cultural Resources) the text indicates that before beginning other land disturbances, the DOE would conduct preconstruction surveys to identify cultural sites in the affected areas. The CGTO has recommended that American Indian Monitors be included in these activities of which the DOE has agreed. There is no mention of the inclusion of American Indian Monitors and therefore the text should be revised to include this important component to accurately reflect the DOE's commitment to collaborate with the Consolidated Group of Tribes and Organizations and maintain government-to-government relations.]

#### #5 Transportation, Aging and Disposal (TAD) Canisters

12 [The Draft Repository SEIS states on page 6-1 that "the Department now plans to operate the repository with the use of a primarily canistered approach that calls for the packaging of most commercial spent nuclear fuel at the commercial sites in transportation, aging, and disposal (TAD) canisters." The TAD canisters are referred to throughout the Draft Repository SEIS; however, there are no final specifications or designs of a TAD which can be evaluated.

The Tribe believes that the DOE is writing documents in the wrong order. First, a final TAD design should be completed and evaluated to ensure that the TAD design is able to deliver the results necessary to protect the health of our earth and the people who live on it today and in the future. If the TAD design is not a viable option after testing, then the DOE should develop a different approach to the canisters. If the TAD design has proved to be a viable option then the DOE should proceed with developing a Draft Repository SEIS with TAD canisters as the primary packaging of nuclear fuel.

It is very difficult for the Tribe and the DOE to evaluate this Draft Repository SEIS without a final TAD design. The DOE is using a TAD concept as the primary basis for operation of the repository through the Draft Repository SEIS. How can the DOE establish this entire SEIS on a concept which is yet to be fully designed?

27 [On page 6-5 of the Draft Repository SEIS it states that 90 percent of the commercial spent nuclear fuel will be shipped in rail casks that contained TADs. It further states that approximately 9,500 rail casks will be shipped to Yucca Mountain. 90 percent of 9,500 is 8,550. Therefore, according to the arithmetic presented in the Draft Repository SEIS on page 6-5 about 8,550 rail casks with TADs will be shipped. However, on page 6-8 of the Draft Repository SEIS it states that about 6,500 empty TAP canisters will be shipped to commercial generator sites. Why the large discrepancy? Any models which were used to calculate estimates based on these numbers need to be updated.

Here are additional concerns which the Tribe also has related to the use of TAD canisters:

If the DOE sites and Nuclear Waste Generators will be loading the TADs at their facilities, then the DOE needs to conduct additional studies on the impact TADs will cause at the off-site facility locations. These studies should be included in the Final SEIS.

Currently, the DOE sites and Nuclear Waste Generators have container systems for storage and transport. Will TADs be compatible with the containers used currently?

Due to rail access not currently being available at Yucca Mountain, the DOE must assess the impacts of transportation through the use of oversized/heavy-haul trucks to transport TADs.]

#### #6 Environmental Justice Issues

13 [On Page 6-23 (6.3.5 Environmental Justice) the text provides information used in its analysis with the conclusion that no disproportionately high and adverse impacts would be likely to minority and low-income populations from the national transportation of spent nuclear fuel and high-level radioactive waste to Yucca Mountain. The analysis does not consider previous analysis by the Nevada Test Site that concludes that "disproportionately high and adverse impacts from DOE/NTS activities continue to affect American Indians noted by the CGTO that need to be addressed." The text should adapt this language since the CGTO made the same recommendation to the YMP and that site is located near the Nevada Test Site.]

#### #7 Computer Model Issues

14 [It was reported in the Las Vegas Review Journal that the Nuclear Waste Technical Review Board could not endorse a rebuilt computer model that would serve as a building block for DOE's bid to license a nuclear waste repository. The review board concluded that a reworked water infiltration model assembled by DOE and Sandia National Laboratories did not consider all available data, was not calibrated with other site information and did not consider likely

significant evaporation. The rebuilt computer model was the result of an email scandal suggesting that USGS hydrologists were falsifying quality assurance records of their work. The rebuilt computer model suggests that the DOE tried to shortcut research in order to stay close to its schedule. The Draft SEIS has been completed based on models which the DOE has constructed. The Tribe is concerned that the DOE in its desire to construct the Repository may be utilizing data from faulty models.]

#### #8 Environmental Impacts of Repository Construction, Operation and Monitoring, and Closure

- 15 [On August 16, 2006, the Tribe commented on the DOE's Draft Environmental Assessment (EA), concerning infrastructure improvements for the proposed Yucca Mountain Repository. Instead of completing a Final EA, the issues in this EA were incorporated in Chapter 4 of the Repository SEIS. Our comments for the draft EA are still relevant for these issues in the Repository SEIS, and can be found in *Attachment 1.*] ... Continued

#### #9 The No-Action Alternative

- 16 [This draft Repository SEIS incorporates by reference the No-Action Alternative in the 2002 Final Yucca Mountain EIS, and thus again does not provide a *true* No-Action Alternative. Instead of No Action—which means just that—scenario 1 states that spent nuclear fuel would be maintained at the reactor sites for a 10,000 year period, and scenario 2 states that the spent nuclear fuel would be maintained at the reactor sites for 100 years, and then all care and maintenance would be terminated for the remainder of a 10,000 year period. These scenarios are ridiculous, and a reasonable No-Action Alternative needs to be stated according to NEPA regulations.]

#### Draft Nevada Rail Corridor SEIS and Draft Rail Alignment Comments

##### #1 Mina Rail Corridor

- 17 [The Mina Rail Corridor travels through the Walker River Paiute Reservation and is listed as a proposed action in the Draft Nevada Rail Corridor SEIS. The Walker River Paiute Tribe made a resolution in May 2007 to oppose the transportation of nuclear waste through the Walker River Paiute Reservation. The Tribe is supportive of the Walker River Paiute Tribe's resolution opposing the transportation of nuclear waste through the Walker River Paiute Reservation and is supportive of the DOE's decision to declare the Mina Rail Corridor a non-preferred alternative. However, the Tribe does not understand why the Mina Rail Corridor is in the SEIS if it is not a viable alternative. The DOE should have excluded the Mina Rail Corridor as an alternative and given decision makers and the public viable alternatives.]
- 18 [On Page 3-18 of the Draft Nevada Rail Corridor SEIS indicates Oasis Valley Option 1 and 3. The Oasis Valley Options include the Thirsty Canyon Wash area. The Thirsty Canyon is known to have significant cultural resources relating to water resources and the home of "water babies" a supernatural being that are known by the CGTO and has been the subject of intense study

through the Nellis Air Force Base American Indian Program. The Draft Nevada Rail Corridor SEIS does not consider these important attributes in its analysis.]

19 [On Page 4-12 (4.2.1.2.8 Timbisha Shoshone Trust Land) of the Draft Nevada Rail Corridor SEIS the text states that "the locations and nature of these future development opportunities are not known and are not considered to be reasonably foreseeable for purposes of this cumulative impact analysis." It should be noted that no discussions or requests from the DOE has occurred for information from the Timbisha Shoshone relating to planned or future activities within the Timbisha Shoshone Homelands. Further there is no analysis or consideration of those activities equal to what is stated and considered of the Walker River Paiute Tribe in the Mina Corridor analysis.]

## #2 Cultural Resources

20 [The proposed Caliente Rail Alignment will travel through areas disrupting many cultural resources. The documents state that the DOE will try to avoid disturbances to cultural sites; however, the transport of nuclear waste will disturb more than just sites on the land. It will disturb all things. The documents state that the construction of a railroad will have unavoidable impact to the interests of American Indian interests. The Tribe would like to emphasize that the construction of a railroad will cause unavoidable impacts to its traditional lands.

Prior to any ground disturbing activities of the Caliente Rail Alignment, the Tribe recommends that systematic ethnographic studies be completed to determine the cultural and ethnographic importance of the area followed by a traditional blessing ceremony and support of on-site Indian Monitors during all phases of evaluation and construction activities. The following areas are places that the Tribe has specific concerns Crater Flat, Tarantula Wash, Beatty Wash, Coffey's Ranch, Goldfield, Mud Lake, Warm Springs, Caliente, Quinn Canyon, Pete Ranch, Willow Witch Well, White River Narrows and Black Top.]

21 [On Page 4-27 (4.2.2.5 Cultural Resources) of the Draft Nevada Rail Corridor SEIS states that other federal agencies including the Nevada Test Site and the Nellis Air Force Base employ cultural resource specialist and involve tribal representatives, as appropriate. There is no provision, indication or intention that the YMP will replicate such a position with tribal involvement which is inconsistent with regulations promulgated under the provisions of government-to-government relations.]

22 [On Page 3-331 (3.2.13.5.3 Garden Valley Alternative Segments) of the Draft Nevada Rail Corridor SEIS there is mention or reference to the American Indian Resource Document and in some instances it is acknowledged that some areas or limited information was provided. The text should be further qualified by stating that the American Indian Writers Subgroup was only afforded 3 days to view pre-selected sites by the DOE and did not have an equal opportunity to examine and evaluate other portions of the rail corridor.]

## #3 Transportation Models

23 [The DOE is using data which identifies the least amount of expected transportation incidents to move spent nuclear waste from a generator facility to the repository. The Tribe would like to see the DOE utilize data showing worst case scenarios for transportation issues as well as best case

scenarios. This will allow a true estimation of transportation incidents which will help local emergency responders understand the preparation and needs required in the event of an incident.]

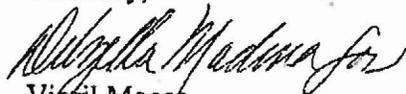
#4 Tribal Interaction

24 [On Page 1-17 (1.6.3 Tribal Update Meetings) of the Draft Rail Alignment it states that the "DOE is committed to continuing the consultation process throughout the development of this Rail Alignment EIS and plans to continue consultation with American Indians to ensure that tribal concerns and perspectives are considered." The CGTO questions the sincerity of this stated commitment since the DOE/YMP has failed to fulfill its previous commitments for Tribal Update Meetings including a recent statement by a DOE representative that indicated that tribal involvement would occur on an "activity driven" basis. Most recently, on December 6, 2007, the CGTO requested an additional special meeting with the DOE on January 8, 2008 at the Timbisha Shoshone Tribe for the purposes of providing additional comments relating to the Yucca Mountain Project Supplement and Rail EIS. The DOE belatedly responded to the meeting request on January 4, 2007, via an e-mail of one of DOE's consultants. Budget cuts to the DOE should not interfere with regularly scheduled government-to-government consultation meetings with affiliated tribes.]

25 [On Page 2-108 (2.2.5 Railroad Abandonment) of the Draft Rail Alignment indicates provisions for the abandonment that could occur following the completion of shipments to the repository. The text states that the DOE would relinquish its regulatory right-of-way to BLM and consult with the same agency and other land-management entities, as appropriate. Currently there is no provision to consult with the CGTO or other Indian Tribes that may be inadvertently impacted by railroad abandonment.]

Thank you for the opportunity to submit these comments on the documents listed above. [The 26 Tribe is against building a repository at Yucca Mountain because of the dangers which it poses. The Tribe is also against the transport of nuclear waste through its traditional lands. It is the Tribe's position that the DOE should work towards reducing and ultimately eliminating the United States' dependence on nuclear power so that Yucca Mountain and other proposed nuclear waste repositories will not be necessary. Safe storage of this poison will never be possible because radioactive waste is inherently dangerous to the Earth and all living things. In the meantime, dry cask storage should be used at nuclear facilities until the safest alternative for dealing with nuclear waste can be developed.]

Sincerely,



Virgil Moose

Tribal Chairperson

Big Pine Paiute Tribe of the Owens Valley

**ATTACHMENT 1**



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY  
Big Pine Indian Reservation

August 17, 2006

Dr. Jane Summerson  
EA Document Manager  
U.S. Department of Energy  
Office of Repository Development  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321

RE: Comments on the Draft Environmental Assessment for the Proposed Infrastructure Improvements for the Yucca Mountain Project, Nevada: DOE/EA 1566 (June-July 2006)

Dear Ms. Summerson:

Thank you for extending the time period for comments on the *Draft Environmental Assessment for the Proposed Infrastructure Improvements for the Yucca Mountain Project, Nevada* until August 31, 2006. The Big Pine Paiute Tribe of the Owens Valley strongly recommends the "No-Action Alternative" for the proposed project. Our observations included in comments on the *draft Programmatic Agreement between the Department of Energy, the Advisory Council on Historic Preservation, and the Nevada State Office of Historic Preservation regarding compliances with Section 106 of the National Historic Preservation Act for the Yucca Mountain Project (10-26-04)* are still relevant for this Environmental Assessment (EA): "In the meantime, undertakings for infrastructure development (such as road and power facilities) are premature because there is no guarantee that a license to operate the Yucca Mountain facility will be approved by the Nuclear Regulatory Commission" (pp. 2-3).

... 15  
Continued

The No-Action Alternative includes actions which will maintain the current infrastructure. Although safety concerns seem to be the stated motivation for the proposed project (p.4), the EA does not state that maintaining the current infrastructure is a threat to the health and safety of those people who work at or visit the Yucca Mountain Site. Under the proposed action, archaeological sites may be impacted by ground-disturbing activities (p. 46). Although it is also stated that artifacts would be collected at archaeological sites which could not be avoided by ground-disturbing activities, the best method of cultural resource preservation is avoidance. There is absolutely no need to disturb any cultural site with a new road which has no purpose at the present time, and which may not ever have a purpose.

Lastly, there has been no government-to-government consultation regarding this project. Since cultural resources may be affected by the project, Section 106 consultation should have been initiated. Actions which trigger the National Environmental Policy Act (NEPA) and the National Historic Preservation Act should be coordinated so that Native American tribes can be consulted in a timely manner. In addition to the Tribal Chairperson, please cc: all federal register notices, NEPA documents, and Section 106 correspondence to Bill Helmer, Tribal Historic Preservation Officer, and Jason Warren, Environmental Director.]

Sincerely,

Genevieve Jones  
Tribal Chairperson

cc: Richard Arnold, Spokesperson, Consolidated Group of Tribes and Organizations  
Robert Holden, National Congress of American Indians  
Committee on Indian Affairs, United States Senate  
Energy and Natural Resources Committee Office

**BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY**

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**FAX COVER SHEET**

<b>To:</b> Jane Summerson & Lee Bishop	<b>From:</b> Bill Helmer/Alan Baiock Big Pine Tribal Office Phone: (760) 938-2003 Fax: (760) 938-2942
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**Date:** 1/10/08  
**Time:** 9:30 a.m.  
**No. Of Pages (Including cover):** 11

**FAX:** ( ) 1-800-967-0739

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**Per Our Conversation**       **Hard Copy to Follow By Mail**  **Yes**    **No**