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**SOVEREIGN CONFLICTS AND DIVIDED LOYALTIES:
NATIVE AMERICAN SURVIVANCE IN THE ERA OF
NUCLEAR MODERNITY**

**A STORY OF THE WESTERN SHOSHONE AND THEIR
RESPONSE TO THE YUCCA MOUNTAIN HIGH-LEVEL
RADIOACTIVE WASTE REPOSITORY**

BY

AMY SUE GOODIN

B.A., Geography & Political Science, University of New Mexico, 1993
M.A., Geography, University of New Mexico, 1997

DISSERTATION

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Requirements for the Degree of
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**SOVEREIGN CONFLICTS AND DIVIDED LOYALTIES:
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ABSTRACT

This is the story of the ways in which the Western Shoshone have articulated identities amidst the ever-changing structures of governance that have defined U.S.-Native intergovernmental relations since the early days of U.S. efforts to colonize the American continent. However, the story focuses on nuclear colonialism. At issue is the specific nature of tribal participation in nuclear waste policy under emergent conditions of possibility as defined by U.S.-Native intergovernmental interactions (or a lack thereof). Ultimately, then, it is a story of how the Western Shoshone have articulated adaptive identities to assure survivance both physically and culturally to combat U.S. efforts to “kill the Indian and save the man” by attempting to gain a voice as a sovereign nation in the nuclear waste policy process. To tell this story I propose to examine the factors that have *shaped* Native nations’ ability to exercise sovereignty in intergovernmental relations and nuclear waste policy negotiations. This means specifically considering the nature and outcome of such interactions for the Shoshone as they have been engaged by and in the nuclear waste policy debate. Thick description is used to answer these questions by examining the ways the Western Shoshone have been excluded and included in the nuclear waste policy process, by whose choice, when, and how. The goal is to try to devise a mechanism for assuring that contentious public policy issues are more culturally sensitive and conciliatory such that they effectively serve the interests of more rather than fewer stakeholders in a given context.

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CHAPTER ONE

INTRODUCTION

Introduction and Problem Definition

At the heart of this dissertation is a consideration of whether U.S. nuclear waste policy decisions sufficiently consider the diversity of worldviews held by different stakeholders potentially affected by such policies or whether the need to defend specific interests tends to guide policies in this domain. When the latter is the case and different worldviews are discounted, contested terrains of discourse often emerge wherein dissonance in perceptions on the nature and scope of policy can result in divided loyalties and sovereign conflicts. This situation is not beneficial for policymakers despite their best intentions if the end result is resistance to policy decisions and, hence, the failure of proposed solutions. This is the situation that seems to be confounding the decision making process surrounding the Yucca Mountain High-level radioactive waste Repository (Yucca Mountain) that was specifically intended to address burgeoning high-level radioactive waste (HLW) streams for more than 20 years.

While the reasons for this are numerous, I believe it is beneficial to consider one particular factor that played against achieving success with regard to Yucca Mountain as the proposed policy solution for HLW because it has detracted from developing any other policy solutions. Specifically, I am talking about solutions that might emerge if all stakeholders are equally embraced during the public information gathering phase of the policy process rather than perceiving some groups that should be involved as invisible due to historical patterns of relations and interactions. A benefit of this research, then, is that the information presented herein should be able to be used as a tool for assessing

issues that might equally confound other types of policy efforts in contentious policy domains where minority participation may not be deemed desirable by some if it could inhibit a particular set of policies from coming to fruition. Thus, I am taking up the task of exploring one specific parameter of the Yucca Mountain policy debate: the procedural justice issues surrounding government-to-government interactions between the U.S. and the Western Shoshone in Nevada over the Yucca Mountain nuclear waste storage decision. Aside from the need to develop effective strategies for resolving the issue of how to grapple with the seemingly intractable problem of burgeoning nuclear waste streams, examining procedural justice issues surrounding such decisions is also important. This is due to the fact that while policies may be intended to promote human health and safety and protect the environment—including cultural environments—they can also have the inverse effect. Hence, the imperative to understand the nature of policy formation in this domain and its failures to aid development of good methods for understanding diverse cultural interests to obviate the need for conflict resolution after policies are proposed and implemented.

To this end, I endeavor to examine the nature of government-to-government interactions between the Western Shoshone and the U.S. as already indicated. The reasons for focusing on the Western Shoshone stems from the fact that they have a history of contentious relations with the U.S. over issues affecting survivance as is true for many of the surviving Native American populations that have existed since the early days of U.S. colonization.¹ Further, despite the failure of Yucca Mountain due to intense conflict over the decision on several domains that lead to President Obama's decision to quash funding before it even officially opened—and despite the billions of dollars spent

to assess site feasibility and begin construction—this situation is not changing nor does it seem that it will cease any time soon. I say this because of the many policy decisions currently in the works or coming down the road in the future cannot please everyone so the weakest people (or least resourceful and powerful) are the ones typically left to become the biggest losers when amicable and culturally sensitive policy cannot be made. But this need not be the case.

Within the context of this study, the primary factors of concern to the Western Shoshone seem to be encroachment on traditional homelands and impingement on the right of self-determination that has continued to erode the tribe's ability to survive both culturally and physically in their homeland. In this light, it seems that nuclear colonialism has continued to further evolve—moving beyond the earlier forms when members of the Navajo nation were encouraged to work in the uranium extraction industry without full knowledge of—and sufficient protection from—the risks faced. In essence, then, nuclear colonialism is just another vestige of the history of colonialism (whether settler colonialism or otherwise) that has sought to “kill the Indian and [ironically] save the man.”² Basically, the uranium mining instance and Yucca Mountain have affected many Native nations' ability to preserve life and liberty on their own terms³ just as has been the case for many others over time.

While many scholars have characterized the general nature and impacts of colonialism on tribes affected by what many might consider to reflect environmental justice issues, I propose to examine this issue as pertains to nuclear waste facility siting policy at a greater level of specificity than has typically been the case. In particular, this study is based on a detailed examination of the primary documents reflecting Western

Shoshone attitudes and perceptions about nuclear waste policy generally and the Yucca Mountain decision-making process explicitly. The principle thesis of this study is that the Department of Energy failed to secure support for the Yucca Mountain High-level Waste Repository from the Western Shoshone tribes and bands of the Great Basin because precisely because of the nature of historical relations imbued by vestiges of colonialism. Consequently, the Western Shoshone appear to feel short-changed and left out when it comes to informing the policy process at an effective level—meaning in the same manner as other entities like cities, states, and other municipalities.

An emphasis on the Western Shoshone is an important consideration since this group provides key examples of how continued colonization promotes exclusion from the public policy process that, subsequently, has direct implications for survivance⁴ in a variety of contexts. On the other hand, an emphasis also enables the explication of how exclusion by virtue of colonization can backfire and promote the formation of adaptive identities whereby groups like the Western Shoshone adjust to the conditions of possibility before them to aid their endeavor to survive physically and culturally. It is in this sense that I believe this study is especially important. Basically, understanding these issues is the first step to helping decision makers not only understand policy failures but also illuminates the importance of working toward culturally sensitive and conciliatory policymaking practices that can reduce conflict in contentious policy domains by broadening the field of view within which information is obtained and decisions are made. As already indicated, I believe the study discussed herein provides just such an opportunity by revealing how the nuclear waste policy issue has affected the Western Shoshone as they have become engaged by—and in—the nuclear policy process and how

they have attempted to reconcile their colonial history within the context of historical and evolving nuclear realities.

Research Questions

The central theme of this research involves understanding the impact of intergovernmental interactions—or a lack thereof—over time on Western Shoshone identity as this Nevada tribe was—and continues to be—engaged by and in the nuclear waste policy debate. Understanding this issue requires pursuing *thick description*⁵ à la Geertz, which means starting with a general line of inquiry about the nature of Native-U.S. interactions and successively asking more refined questions as the opportunities to do so unfold. This requires considering historic relations and worldviews both before and after the nuclear waste policy process began to unfold, thereby facilitating understanding about how to develop a decision making process that is respectful of differences while at the same time striving to serve the interest of the greater common good. To this end, it is pertinent to ask:

- To what extent has U.S. law and/or administrative decision-making authority served the interests of the Western Shoshone if indeed they have done so in the Policy debate?
- How does or has the Department of Energy viewed the Western Shoshone within the context of the Yucca Mountain debate and vice versa?

Focused as they are on the nature and scope of interactions between the U.S. and the Shoshone in the nuclear waste policy debate, these questions prompt me to also consider another line of inquiry equally important for contextualizing the nuclear waste policy

process as it pertains to the Western Shoshone and how this process engaged the Western Shoshone as valid (and valued) members of the American public. Thus, I also ask:

- Is there any evidence to suggest the Western Shoshone are considered valid stakeholders in the policy debate? If so, did the Western Shoshone achieve this status early on in the process or later as the contentious and colonizing nature of the discourse unfolded?
- How have the actions and reactions of the Western Shoshone to the Yucca Mountain policy debate effectively forced the U.S. to consider—even reconsider—how it views and has viewed the Western Shoshone as a sovereign nation if indeed this has occurred?⁶

It is also important to consider the internal dynamics surrounding this issue *within* the Western Shoshone Nation—meaning across all of the regional Shoshone bands. Not doing so potentially jeopardizes the ability to make inferences about the shortcomings of the nuclear waste policy process as it has engaged the Western Shoshone in discourse—or not, which has already been posited as a potential shortcoming of the process. This path also provides the means for defining the futures not only of the Western Shoshone but the U.S. as well within the context of the nuclear policy domain and achieving success in this decision making arena. Consequently, another requirement is discerning whether there is a high degree of consonance or dissonance among the Western Shoshone bands in Nevada in terms of a position and response to the Yucca Mountain decision. I posit that finding a high degree of dissonance between culturally similar groups makes it virtually impossible to make inferences about a better way to address the contentious

nature of the nuclear waste policy process and how to surpass its shortcomings. Hence, it is imperative to also contemplate the following:

Are there differential perceptions about the Yucca Mountain decision amongst the different Western Shoshone bands in Nevada? If so, why and in what ways have—or could—the Western Shoshone work to overcome intertribal conflict and stand as a unified nation and counter nuclear colonialism and, ultimately the continued colonization of Native Americans?

Addressing these issues enhances the ability to make inferences about the efficacy of excluding versus including the Western Shoshone from participation in the nuclear waste policy process as a unified nation, which should, in turn, help illuminate the ways that policy might effectively engage other stakeholders with different perspectives to work toward a common goal no matter the policy domain. The benefit, then, of the proposed research is the potential to actually work toward developing better policymaking practices to assure that *public* policy does indeed consider the interests of a diverse array of stakeholders thereby reducing the nature of conflict especially during the policymaking phase. Which, perhaps more importantly, means considering the different ways of being and knowing of affected populations rather than assuming that a one-size fits all policy model will effectively serve the diverse interests of a multitude of stakeholders while also serving what policy makers perceive to be broader and more uniform U.S. interests. To reiterate, this is an important consideration, because while policy makers might believe that the nuclear waste policies set forth over the last several decades serve a broad array of interests, I believe that this study will show that nothing could be further from the truth as evinced by the high degree of contention emanating

from just one group in Nevada over nuclear waste storage decisions over the past three decades.⁷

Existing Research

While many scholarly works address various aspects of the issues articulated herein, the existing body of research does not touch on these issues to the extent that I believe is necessary to understand the contentious nature of nuclear waste storage policy and how to fix the problem of where to store waste if most—if not all—people do not want this type of waste in their backyards. This is true of the works by scholars examining environmental and social justice issues, colonialism, and even biopolitics at the most fundamental levels. This includes Michael Gerrard⁸, as well as James Lester⁹, David Allen¹⁰, and Kelly Hill¹¹. While these scholars have made a contribution to the field of knowledge as it pertains to environmental justice issues and the politics of siting hazardous facilities, their research has not moved the field beyond contextualizing the reality of different policy decisions and providing broad-based theorizing about policy in terms of notions of environmental and social justice. Nevertheless, Gerrard's examination of the problematic nature of policies surrounding the siting of hazardous and radioactive waste facilities throughout the U.S. is helpful in framing the issues considered herein. The work of Lester, Allen, and Hill is also enlightening in terms of defining the character of many issues confronted by the environmental justice movement over the years.

Further, although effectively foregrounding the issues surrounding nuclear colonialism and the role that biopolitics generally plays in terms of colonial discourse, scholars like Valerie Kuletz¹², Ward Churchill¹³, and Wynona LaDuke¹⁴ tend to focus on characterizing the Native voice on such issues in a general manner rather than examining them in depth utilizing a case study approach as proposed herein. Nevertheless, Kuletz's

exposition on *nuclearism*¹⁵ is a beneficial analytic lens apropos to my research as is Churchill's elucidation of a *worldview* among Native Americans positing that all sociocultural, sociopolitical, and socioenvironmental actions are intertwined such that they allow for the persistence of humankind. Equally important is LaDuke's call to understand how indigenous peoples have been debased over time in an attempt to identify the ways to successfully resist oppression and degradation, and possibly even become active contributors to an emergent system of knowledge required to assure that humankind generally has a means to reduce the level of conflict inherent in even the most contentious policy decisions.

Legal scholars like David Wilkins¹⁶ and K. Tsianina Lomawaima¹⁷, as well as Vine Deloria Jr.¹⁸ and Clifford Lytle¹⁹ also promote this process by providing a framework for articulating the emergence of adaptive identities that aid Native survivance despite oft-heinous colonizing tactics perpetrated on Native nations by the U.S. in pursuit of its so-called *manifest destiny* through legal and extra-legal means. As Wilkins and Lomawaima put it “[i]nconsistency, indeterminacy, and variability characterize the uneven ground of federal Indian policy,”²⁰ as well as defining the contest of wills between federal and tribal sovereigns since the United States became a sovereign in its own right on the American continent. Deloria and Lytle speak to a similar issue in their documentation of the trials and tribulations faced by Native Americans in their quest to preserve their way of life and heritage within the ever-changing colonial order imposed by the U.S. over time. However, Deloria and Lytle are not entirely pessimistic in their portrayal of the history of Native Americans in terms of *impending doom* since a change in the structure of relations between nations—especially the allowance of gaming by

tribes across the country—helped set the stage for a new era of self-determination that has helped some tribes undo some of the wrongs wrought against them since the early days of U.S. *discovery* and its *conquest* of America. This alludes to the development of new—or rearticulated—identities to combat colonialism thereby moving some tribes one step closer to assuring survivance.

I also find the work of Joseph Masco useful. Perhaps most salient is Masco’s examination of culture as it pertains to things nuclear. In particular, Masco addresses the issue of the mutability of “specific social and biological ecologies”²¹ that have begun to manifest since the initiation of the nuclear era that began with World War II and continued throughout the Cold War era and beyond to the present day. It is this discussion that particularly bespeaks of the potential for developing adaptive identities to counter detrimental policies that can make it difficult for some to survive the ravages of modernity.²² Another work by Doug Brugge, Timothy Benally, and Phil Harrison examines the toll the Cold War has taken on people, especially the Navajo.²³ There have been a great many lives harmed—and some even lost—as a result of this *war*, thus Brugge, Benally, and Harrison specifically ask “Was it worth it?” I am sure this question plagues many of those who have experienced the devastating effects of the era of nuclear proliferation, especially since it has spun off into energy production activities. However, I venture to guess that this issue sits closest to the hearts and souls of the Navajo from Arizona and New Mexico who worked in the uranium mines and others, such as the Western Shoshone, who have faced—and continue to face—similar realities. With the Western Shoshone facing Yucca Mountain in their backyard with seemingly little power or voice to stop it, it is easy to consider the siting decision set forth in the Nuclear Waste

Policy Act and the subsequent amendments as just another manifestation of the colonial legacy that has confounded the ability of Native peoples in many locales to survive. I say this because the Western Shoshone already face a great deal of uncertainty as a result of living within the shadow of the Nevada Test Site and extensive gold mining operations that contaminate the food and water supply in the area, as well as contaminating or even taking away the lands historically relied on for cultural and spiritual renewal.

As I hope I have made clear, while there are many useful works that inform my research, it is my contention that I can expand on the existing body of knowledge about U.S.-Native interactions in contentious policy domains. In particular, this analysis is intended to shed light on the evolution of discussions and how they shaped lives and identities with every change in decision as nuclear waste storage policy evolved, which hopefully will better equip scholars, policy makers, and the public alike to understand what the future may hold if culturally sensitive and conciliatory policy processes are not devised. An additional benefit of pursuing this line of inquiry is that it can provide the tools necessary to enable policy makers to effectively address other aspects of this policy debate in a similar manner. This includes those issues surrounding nuclear weapons rehabilitation, as well as research and development activities in light of threats to U.S. survival from abroad. Another confounding factor involves calls to increase uranium mining and production activities to facilitate expansion of the nuclear energy industry as concerns over a reliance on fossil fuels and its potential effects (such as global warming) continue to be grappled with.

Methodology and Plan

I will utilize existing research to frame my story, but will also move beyond it by *thickly describing* the reality of survivance for the Western Shoshone despite—or perhaps

even in spite of—their colonial legacy. I will begin by contextualizing the evolution of Native-U.S. relations and then turn to a discussion of how such relations play into and shape current interactions in terms of the actual policy debate surrounding Yucca Mountain. This includes examining the *cultural reality* and traditions that have shaped Western Shoshone identity since first contact with the U.S. and continue to do so under the current Yucca Mountain policy environment as it evolved as part of a larger multifaceted policy discourse. This tack requires analyzing primary documents (such as public meeting transcripts participant statements) to shed light on the public participation process to answer questions pertaining to the exclusion and inclusion of the Western Shoshone in the policy process, by whose choice, and when. Contextual analysis is a key tool for affording quantification of incidences of exclusion or inclusion of the Western Shoshone versus other stakeholders in the policy debate and enhances the potential to answer the research questions presented earlier.

While it would be beneficial to interview Western Shoshone tribal leaders and others engaged in the Yucca Mountain policy debate—particularly tribal elders, about their perceptions of the natural environment and their traditions, as well as about the Yucca Mountain controversy and their involvement in the debate—this is beyond the scope of this project and will be considered at a later date.²⁴ My emphasis at this juncture is exploring the degree to which a public policy debate cast aside one aspect of the need for public input by mischaracterizing some of the stakeholders, although this practice has implications for an array of public debates as already mentioned. Thus, this work is initially intended to be a starting point to actually develop guidelines about how to develop better intercultural interactions within the public policy decision making arena. It

is for this reason that my analyses will also include examination of tribal- and band-level interactions within the context of the Yucca Mountain policy process, although taking a more qualitative grounded theory approach for finding meaning in the public meeting accounts of the information process and group participation in decision making, as well as considering the same issues in government documents. This provides the framework for *thick description* (if you will) of the problems with the public input and information process of this facet of the nuclear waste storage policy debate as well as potentially helping elucidate why similar problems emerge in other public policy debates.

Hence, in this current effort, my interest is in understanding a specific Native people's perceptions of a policy process through the written accounts of interactions to see how the words and emotions of those involved are heard—or not—and are accepted and deemed valid and meaningful—or not—by those reporting or documenting them. In other words, I believe the data analyzed provides the structure for assessing areas of consonance and dissonance about the nuclear waste policy process and its differential affects on two stakeholders: the U.S. (as the protector of Americans in terms of both health and safety) and the Western Shoshone. Such information is valuable in terms of illustrating the context in which colonialism does or does not continue to affect Native Americans and the Western Shoshone specifically. This information is also useful because it enhances my ability to make inferences about the type of policy process that might better meet the needs of groups like the Western Shoshone who often lack the ability and resources to be big voices in public policy. This is a critical concern, since such groups often have ways of being and knowing that can be juxtaposed with the ways

of being and knowing of the stereotypical *American* that policy seems to be meted out for and public policy does indeed need to consider rather than ignore this reality.

Consequently, I believe this work will provide provocative information that will be useful for considering how the context in which other policies in similarly contentious policy domains might affect outcomes and have implications for those groups often-marginalized in a society that focuses on being American first and subcultures within America second. The point, then, is being able to provide a mechanism for understanding and identifying problems with decision making in public policy domains to reduce their oft-negative consequences before the damage done to those who stand to lose the most from contentious policy decisions is irreparable.

To this end, the following schema guides the balance of the dialogue in this project. Chapter Two frames the issue and context of Yucca Mountain and the nuclear waste policy debate while Chapter Three speaks about the physical and cultural history of Native nations in the vicinity of Yucca Mountain and how such shaped the relations between groups like the Western Shoshone and their colonizers. Then, Chapter Four provides a synopsis of the principal laws guiding decision making surrounding the designation of Yucca Mountain as the first—and only— geological high-level radioactive waste repository and how this set the stage for Western Shoshone participation in the policy process. Chapter Five focuses on the nature of Western Shoshone participation in the policy process to explicate the character of interactions in an attempt to understand if the Western Shoshone engaged in the debate from the standpoint of government-to-government relations or whether they were considered no different from normal citizens despite their status as members of federally recognized tribes. Finally, Chapter Six

concludes the discussion with an attempt to synthesize the issues considered throughout to illustrate the challenges for Native Americans still trying to navigate a diverse political and cultural terrain as both American citizens and as special peoples due to their unique status as domestic dependent nations, which is unlike that of normal American citizens. By doing so I hope to shed light on the how Native Americans in a variety of policy venues have to find creative ways to adapt to their changing circumstances within the context of different levels and types of interaction to maintain their cultural and physical integrity. In a sense, I hope to accomplish this by showing how the Western Shoshone have had to articulate and rearticulate their identity to define their future as changes occurred time and again in a complex political terrain, which is only an option if one can embrace the conditions of possibility before them. And, for more than 50 years, this has mean living under the shadow of nuclear colonialism.

Significance of Research

Specifically, the structure of this discussion is intended to allow me to speak directly to the importance of understanding why conflicts surrounding the issue as espoused herein emerge. I believe such an understanding aids theorizing about the ways to alleviate the level of contestation that often hinders effective policy making in various public policy domains where interests often differ among populations due to diversity in cultural realities that shape identities and this holds even in a place like America that was built on diversity. This issue is particularly important when considering policy that can impact one's ability to survive as a cultural, ethnic, racial, religious, or whatever other type of subgroup with unique interests specific to who belongs to these groups. In this sense, the ultimate goal is to develop a deep enough understanding of a specific contentious policy domain—nuclear waste storage policy—such that I can propose a

structure for assuring that policy makers can effectively work to assure that their decisions about contentious policy issues are more culturally sensitive and conciliatory and effectively serve the interests of more rather than fewer stakeholders in a given context. Thus, what better reason to attempt to understand the contexts in which the nuclear waste policy process has—or has not—been a *public* policy process informed by *all* potentially affected stakeholders in Nevada and how specific decisions have defined futures and the formation of identities amongst diverse cultural populations. Such an emphasis affords the ability to address procedural justice inefficiencies that need not arise in a society where all people are purportedly valued for *who* they are rather than being devalued for *what* they are.

CHAPTER TWO

THE RIGHT TO PRESERVE A CULTURE: LAND, SOVEREIGNTY, AND NUCLEAR WASTE POLICY

As discussed in Chapter 1, Native tribes in the U.S. have recurrently found themselves caught in a perpetual double-bind throughout history when it comes to tribal sovereignty and self-determination. Reviewing the terms of discourse employed by the federal government with respect to Native Americans, this occurs because the U.S. government has the right to preempt decisions not expressly granted to other structures of government to serve the interests of the state—specifically, the federalized state—at any given point in time. This situation is particularly relevant to decisions that affect federally recognized tribes by virtue of the domestic dependency status of such groups. What is interesting, however, is that while it seems that the U.S. government and its constituent parts refuse to fully recognize this situation, they acknowledge—if only tacitly—that problems do exist within the structures of governance. Nevertheless, the federal government is not necessarily willing to admit that the problem lies with Native and non-Native relations, *per se*. Thus, the responsibility has fallen upon tribes to invert the terms of discourse and at least gain token acknowledgement of their rights as *American* Indians if not as *Native* nations. In essence, they have taken it upon themselves to play by the rules of the game set forth for them under the structures of federal law as foregrounded within the construct of colonialism, although allowing their own cultural biases to show through.

Specifically, Native nations have actively sought to reclaim their stature as sovereign and self-determining nations, have actively worked individually and with

others domestically and within the international arena, and attempted to alter colonialist discourse that has historically sought to degrade Native cultures throughout the U.S.—if unable to erase them entirely due to some Native nations’ efforts to persist against often daunting odds. Such efforts have generally been directed toward assuring greater health and well-being for their people by working to improve opportunities for survivance, as well as seeking recourse in the courts to right the wrongs of involuntary exposure to environmentally harmful and socially unjust activities that have the potential to perpetrate great bodily harm both upon individuals and cultures. Of particular import within the context of this discussion, then, is a consideration of the mechanisms available for Native Americans to right some of the wrongs directed at them by forming advocacy groups and coalitions in different arenas at the local, national, and international levels. Such forums for working to redress issues that work against Native survivance include the National Environmental Coalition of Native Americans (NECONA), Shundahai Network, the Native American Rights Fund (NARF), the Indigenous Environmental Network, and Honor the Earth. In the international arena, indigenous peoples all over the world have banded together and sought the assistance of the United Nations to aid efforts to delineate specific rights that have been ignored with regard to such populations.

Excluding the United Nations, each of the organizations fights for Native sovereignty and the right to self-determination in some manner and they do so both on behalf of their own tribes and other Native nations—almost as pan-Indian movements—to better protect those within the boundaries of their homelands, as well as others who continue to be confronted by the effects of internal colonialism. This includes working to counter harmful *public* policies like the Nuclear Waste Policy Act that was intended to

facilitate the opening of the Yucca Mountain High-level radioactive waste repository on what some believe to be tribal lands where the burdens of the nuclear industrial complex are born by a few compared to the numbers who stand to benefit from the location. These organizations also work to educate Native nations and others about how to counter environmental and social justice issues, as well as efforts to enhance or develop programs to help tribes reduce the effects of adverse environmental conditions that are not of their making. This is done concomitantly with other actions intended to help Native nations overcome the adversity of past colonial activities by seeking recompense for harmful policy actions. In this sense, this has resulted in Native nations developing a hybrid identity that is modern in implementation while imbued by generations of traditions that foreground worldviews about living appropriately within and with the world but which is very similar to the model of identification that defines Americans.

Although advocacy organizations often find it difficult to develop strong affiliations that have access to resources to make their voices heard on different issues, this is beginning to change for Native American's involved in issue advocacy. Part of the reason for the growing success of Native organizations is the fact that prominent Native Americans who are not afraid to speak out on specific issues either start the groups or join a groups' cause to help it achieve its goals. Grace Thorpe (Sac and Fox), when President of the National Environmental Coalition of Native Americans (NECONA), actively worked to

educate Indians and Non-Indians about the health dangers of radioactivity and the transportation of nuclear waste on America's rails and roads; to network with Indian and Non-Indian environmentalists to develop grassroots counter-

movements to the well-funded efforts of the nuclear industry; and to declare Tribal NUCLEAR FREE ZONES across the nation.²⁵

There are several reasons for Thorpe's promotion of nuclear free zones. The first is that Thorpe had seen the devastation that nuclear weapons can wreak on both the environment and the human body as a member of the U.S. military forces who witnessed the testing of such weapons during World War II in the Islands of the South Pacific. Thorpe believed that such hardships had also effected many Native peoples throughout the U.S., but particularly in the southwest as tribes like the Western Shoshone and the Goshutes have been—and continue to be—subjected to various facets of nuclear weapons development, testing, and, potentially, the storage of HLW. The same can be said for the Navajo who have become all too familiar with the latent health affects that affect them and their families as a result of uranium mining activities conducted in support of the nuclear industrial complex.

Before her death in 2008, Thorpe was very active in nuclear activities and was very clear about the message she wanted to pass on to those that followed. Basically, Thorpe believed it was important to always try to remind people, whether Native or not, that everyone's time on earth is limited and that they need to take care to use the resources lent to them by the creator so they would still be available for those that come after us. It is for this reason that she was so adamant about the task before her, especially when speaking about nuclear waste, since, as she puts it, it is the “most lethal poison known to mankind”²⁶ and it stands to devastate numerous people even despite—maybe even in spite of—the end of the Cold War. It is in response to this sentiment that she asks

What kind of people are we Americans that permit the production of materials that cannot be safely disposed of? Is making money the only criteria for success, is our health and our safety and the future generations of our people against deformities to be ignored? The nuclear industry must be stopped from producing its toxic waste until a safe method of disposal has been found.

We, the Indian people, must set an example for the rest of the nation. We, the Indian people, must tell the polluters in no uncertain terms that we will not tolerate nuclear waste on our lands *no matter how much money the nuclear industry offers us. We, the Indian people, know that once nuclear waste is put in the ground that the land cannot be used again for one hundred thousand years or more* [her emphasis].²⁷

According to Thorpe, then, the nuclear waste issue is quite an intractable problem, about as intractable as the U.S. government has been when asked to consider the way it does business, especially in terms of being inflexible when asked to consider the self-interest of others with regard to hazardous issues, yet, on the other hand, finding it perfectly acceptable to be flexible when their own self-interest is at stake. Hence, it is no small wonder that Thorpe, as do many Native nations, believed that the

U.S. government targeted American Indians [to support the nuclear industrial complex] for several reasons: their lands are some of the most isolated in North America, they are some of the most impoverished and, consequently, most politically vulnerable and, perhaps most important, tribal sovereignty can be used to bypass state environmental laws. [Thorpe further states] how ironic that, after centuries attempting to destroy it, the U.S. government is suddenly interested in

promoting American Indian sovereignty – just so it can dump its lethal garbage!
All Indian treaties and agreements with the U.S. government have been broken.
Today’s Indians remember yesterday’s broken promises. Today’s political
situation in Washington, D.C., is an example of how volatile U.S. policy decisions
can be. The Indians cannot trust the federal government and certainly cannot trust
the nuclear industry whose driving force is monetary profit.²⁸

This sentiment is not unlike that shared by Corbin Harney in his work with the Shundahai Network as the spiritual leader of the Western Shoshone Nation. Before his death, Corbin Harney spoke very specifically about how the Western Shoshone are extremely traditional in their views about land and its importance in terms of providing not only for survival, but also with regard to how various aspects of land and the landscape provide everyday life lessons about how to live properly. Consequently, it is no surprise that he worked actively to make the Shoshone perspective visible to all that he could. He had especially strong views about the Yucca Mountain site and its impact on the tribe both physically and culturally. Physically, because tribal members lost access to land guaranteed to the Shoshone in the Treaty of Ruby Valley of 1863²⁹ when the lands were set aside by the U.S. government for the Nevada Test Site and Yucca Mountain. This occurred when the U.S. made a unilateral decision to officially abrogate the Treaty. While this action has not been officially acknowledged by the federal government, the abrogation issue has been used as a mechanism by the Western Shoshone to engage the U.S. government in a discussion about land rights and rights as a sovereign nation. Secondly, cultural impacts resulted with the restrictions on movement across these locales, which meant the Shoshone lost access to many places of significance to life ways

thereby promoting the continued loss of tribal culture that many believe could ultimately lead to erasure of the people known today as the Western Shoshone. It was for this reason that Harney spoke so directly about the importance of land and culture. One message captures the spirit of Harney's efforts with regard to the battle over Yucca Mountain. Harney stated over and over

It's in our backyard ... it's in our front yard. This nuclear contamination is shortening all life. We're going to have to unite as a people and say no more! We, the people, are going to have to put our thoughts together to save our planet here. We only have One Water...One Air...One Mother Earth.³⁰

While simple, this message has a power and authority over those who try to continue to be true to the ways of being and knowing taught by the grandfathers and grandmothers and the point he tried to make is clear in terms of always remembering the cultural significance imbued in the land as a giver and supporter of life. In this respect, Harney's message speaks to the *no holds barred* approach that many Native nations are willing to take to overcome internal colonialism and to protect their cultures for the next seven generations and the seven that will continue to follow time and time again. The fight transcends small battles emanating from the grassroots levels through the formation of coalitions with others who have similar concerns. This has enabled tribes to help the mainstream environmental movement understand the needs and concerns of Native nations, although not wholly dissuading these groups to vanquish the notion of the *ecological Indian*. Specifically, Native nations following traditional cultural practices are helping the rest of the world understand they, just as others, rely on land for survival thus it needs to be protected in a variety of ways. The only difference is their relationship with

the land and generally being more respectful and ecological in terms of deploying what they consider to be sustainable resource management practices—when feasible—than are being used today across the globe. It has been a hard fought battle, however, to get environmentalists to understand the efforts of Native peoples to reassert tribal sovereignty and to regain the right to self-determination through whatever methods tribes deem appropriate in terms of using and protecting tribal lands.

Where else is this war against internal colonialism being waged? It is being waged in the courts dating back to the 1950s when the fight over Native American land claims escalated and became formalized with the establishment of the Indian Claims Commission (ICC). While the cases are too lengthy and numerous to address here, it is important to note that the battle over land rights was not an easy one for tribes. Further, even when there was success in proving title to land that required federal remuneration, there was also a concomitant loss for tribes. The losses were both monetary and cultural. Because claims were often settled based on the time when official and active tribal activities ceased to occur on specific lands in question, payment was based on the value of a claim at that time rather than reflecting the current value of the land at the date a claim was adjudicated. While monetary losses are easy to see, cultural losses are not. Such losses are really only visible to those who have had to experience them as manifest through the effects these losses have on traditional lifeways, as has been the case with Native nations throughout the U.S. Of particular import to the Western Shoshone are losses in terms of places of significance since the teachings of elders and the stories passed on over time often refer to the places that can no longer be shared in the same manner. While some laws have been enacted to reduce such impacts, they are not always

successful in preserving what many would like to see protected. Further, such laws often offer too little too late.

In other types of cases, specifically those brought by the Western Shoshone to contest repeated threats to perceived sovereign rights—including the threat posed by the designation of Yucca Mountain as the site for a nuclear waste repository—politics and judicial interpretation hold sway. In my opinion, this is no different than in the early days of the United States when jurisdictional issues arose over federal, state, local, and tribal powers concerning both land and people. Here I am referring to the many clashes between Native Americans and their American counterparts during the days of manifest destiny, westward expansion, and even up to the present. Chief Raymond Yowell of the Western Shoshone National Council initiated several legal proceedings against the U.S. government to stop the repeated *taking* of tribal lands as well as to stop the Yucca Mountain project. However, while fitting within the context of a discussion about illegal loss of land, Chief Yowell prefers to speak of this issue differently because he believes Shoshone lands were never “taken” per se. On the contrary, as Steven Newell points out in a 2002 *Indian Country Today* article, the notion of the land being taken stems from an Indian Claims Commission (ICC) hearing involving Shoshone land. Specifically, Newell states that the ICC “accepted an attorney-stipulated ‘finding’ that the Western Shoshone homeland had been ‘taken’ by gradual encroachment.”³¹ It is with this construal of the issues surrounding the Treaty of Ruby Valley of 1863 and land claims that Chief Yowell vehemently disagrees.

Chief Yowell has repeatedly made his position clear by reiterating his point in several interviews and appellant briefs over the years that such an interpretation by the

ICC fails to consider the language and meaning of the Treaty proper. It is for this reason that Newell believes the “ICC was never able to explain, nor could it, how the Western Shoshone homeland could be protected by a solemn treaty duly ratified by the United States Senate as the supreme law of the land, and at the same time ‘taken’ by ‘gradual encroachment.’”³² Newell goes further, explaining that the notion of protection in treaties is clearly spelled out in both the 1787 Northwest Ordinance and in the official act that established the Territory of Nevada. Specifically, Newell indicates that, according to the Northwest Ordinance, “Indians’ lands and property shall never be taken from them without their consent. Thus, the Nevada territorial act states that until the consent of the Indians is obtained, no Indian land, such as the Western Shoshone homeland, ‘is to be included within the territorial limits or jurisdiction of any State or Territory.’”³³ Thus, the intent to protect Native land rights in the “organic law of the United States”³⁴ is very clear, particularly in terms of the notion that “free consent is the only way for the Western Shoshone Nation to part with its land. [Hence,] a ‘gradual taking’ by non-Western Shoshone is not legally permissible. Therefore, there is no valid foundation for S. 958”³⁵ as claimed by Chief Yowell and it is why he expressly opposes any attempt to accept payment for their homeland as a result of the ICC ruling.

Even though a full legal analysis is beyond the scope of this project, the bottom line is that some see the unilateral abrogation of the treaty as damning evidence that the U.S. is in direct violation of the rules at the heart of its own legal foundation. The reason I say this rests on one fundamental point: nowhere in the proceedings that I have examined is there a clear judgment rendered about the abrogation of the Treaty of Ruby Valley of 1863—not in any reply briefs, appellant requests for rulings in specific cases to

be vacated, or other scholarly works and newspapers articles. Additionally, what is especially problematic about the contradictions in juridical interpretation, is that the U.S. does not overtly recognize or often own up to errors in judgment when they occur, particularly if an overriding need for a specific decision can be expressly defined. The case of the land decision involving the Western Shoshone homeland is thus one more example of how colonialism and colonizing tactics have shaped the future for the Western Shoshone. On the other hand, this reality does not assure their erasure as a culture although making it more likely if changes do not occur in the nature and level of interactions between the Western Shoshone and the U.S. I say this because the Western Shoshone have shown they are willing to stop at nothing to survive, and this includes embracing the challenges placed before them and seeing them as opportunities to develop new strategies that will, hopefully, help them overcome bad policy decisions that promote erasure.

I believe the same can be said for many Native American groups in the U.S. and other indigenous peoples from abroad who have experienced colonialism yet who have survived and continue to pass on the stories of their ancestors. This point notwithstanding, this does not mean that land cases fought in the courts will generally be easily won battles since decisions effecting tribes tend to rest in the hands of those who make laws and this is especially true with the Yucca Mountain case where nuclear policy was based on the premise that a larger issue was at stake than the need to protect a tribe of few people. Hence the need to explore the Yucca Mountain siting issue in terms of colonialism and erasure and Native Americans' efforts to fight back. In this case, policy decisions emanate from the U.S. rather than tribal governments.

It was precisely because of the difficulties faced by tribes in the courts when questioning the legalities of specific decisions that could lead to their further demise that the Western Shoshone developed what I connote to be adaptive identities that could be emphasized when trying to inform others of their plight trying to survive in the hope that doing so could enable them to invert the terms of discourse to their benefit. In other words, the Western Shoshone Tribal leadership actively sought to at least counter or minimize colonizing tactics promoting their erasure by fighting back against nuclearism—as a form of colonialism. One such effort involved approaching the United Nations (U.N.) to gain support for their call to redress centuries of colonialism and U.S. attempts to “kill the Indian and save the man”³⁶ via efforts to civilize Native Americans through assimilation and acculturation. The Western Shoshone took this approach because they believed there was merit in the argument that the tribe had standing as a sovereign nation not unlike other states throughout the world due to the treaty issue surrounding their land dispute. Raymond Yowell, as Chief of the Western Shoshone National Council, said in 2006 that “[w]e see no way we can continue internally in the United States, so we’re taking our argument across the water to the United Nations, and the United Nations is listening.” This point was clear to Brenda Norrell, who stated in an *Indian Country Today* article, because of being “[w]ithout voice or resolution in the United States, the Western Shoshone appealed to the United Nations demanding reform of U.S. laws that allow for the theft and destruction of indigenous lands.”³⁷ In his request to the United Nations, Yowell also asked them to pressure the U.S. to show what proof there is that the Western Shoshone ever gave up their land as well as showing what law

grants the U.S. the right to take tribal lands since “[t]he encroachment on Western Shoshone territory by the United States is not a lawful way to take land.”³⁸

While many tribal members have spoken out against the actions of the U.S. with regard to the discharge of its so-called duties as trustee for Native populations, two prominent tribal members are very active in overcoming colonialism. Joe Kennedy is one such tribal member who relies on traditional teachings in how he looks at the world, which has prompted him to elucidate that “[o]ur traditional laws tell us we were placed here as caretakers of the land ... As part of the Western Shoshone Nation we will not stand idly by and allow the U.S. federal government to cement its hold on our ancestral land base.”³⁹ Chief Yowell was even more specific about this when he stated in 2006 that his people never deviated from the terms of the Treaty, although the same cannot be said of the U.S. Further, he stated that “Yucca Mountain is not in the treaty. Mining is not in the treaty”⁴⁰ and he called both a “violation of Mother Earth ... That’s not allowable. It’s against our religious beliefs.”⁴¹ Another tribal member and elder, Carrie Dann, is not a newcomer in terms of dealing with the U.S. over land rights. Consequently, Dann is always willing to make her voice heard and even went so far as to state “[w]e’ve got a fight on our hands”⁴² and implored the United Nations to aid the Western Shoshone in their battle against the U.S. over indigenous rights. And, acerbically, Dann also had the following to say: “What is democracy? Is democracy destroying the rights of the indigenous people? We don’t see any democracy where indigenous people are concerned.”⁴³ The fact that such cases are being pursued in the courts both in the U.S. and in the international arena shows how committed the Western Shoshone are in

promoting indigenous rights and undoing centuries of colonialism that has taken its toll on many tribal peoples.

As the Western Shoshone pursued their claims other advocacy groups have worked to promote Native rights while also trying to uphold claims to tribal sovereignty and self-determination. Two such groups have provided important support in this regard. These include the Native American Rights Fund (NARF) and Honor the Earth. NARF works on a range of issues confronting tribes, including tribal preservation; retaining rights to natural resources on tribal lands; human rights issues; holding the U.S. government accountable for its actions *against* Native Americans; as well as developing Indian law and educating the public about Indian rights, laws, and issues.⁴⁴ However, perhaps one of the most significant contributions in terms of carrying forth the message about the importance of land to tribes is the Honor the Earth program directed by Winona La Duke (Ojibwe). Their mission is to

create awareness and support for Native environmental issues and to develop needed financial and political resources for the survival of sustainable Native communities. Honor the Earth develops these resources by using music, the arts, the media, and Indigenous wisdom to ask people to recognize our joint dependency on the Earth and be a voice for those not heard.⁴⁵

In this role, although not unlike the other advocacy groups addressed herein, Honor the Earth effectively functions to promote a decolonizing discourse by providing the means through which once silenced Native voices can be heard. On the other hand, this is not a perfect arena for action because of differences in the voices encouraged to speak on behalf of “those not heard.”⁴⁶ Conspicuously absent from many discussions are the

dissenting voices within and across tribes that are willing to take on such complex issues as nuclear waste storage and fights for sovereignty and self-determination whereby tribes can rightfully make the decisions affecting them.

The point is this: just as excluding opponents of policies is a problem, it is equally important not to exclude those who might not know about an issue or may not have known they have the right to speak out and this matters regardless of the position of those voices because all stakeholders have valid views that need to be considered when evaluating policies. Hence, it is critical to assure that all stakeholders have a clear picture of why policies were developed, what they are intended to accomplish, as well as enhancing understanding of the risks and benefits posed by specific policies. Conversely, including the views of all stakeholders aids policymakers by helping them comprehend what knowledge stakeholders have of policies, how they perceive the risks and benefits from them, as well as informing policymakers about what aspects of policies are tolerable or intolerable to assure that policies can better meet the needs of *all* potentially impacted groups. This is not to say that complete consensus will be achieved on all public policies because this is an unreasonable expectation. However, it is not unreasonable to assure that policies are as informed by as diverse publics as possible to promote at least workable solutions to resolve issues and enhance the health and wellbeing of *all* publics. Also, policies informed by open and transparent dialogue that embraces the views of diverse publics increase the likelihood that policies will not serve only those with deep-seated vested interests while promoting the erasure of others under the guise of serving a greater public interest.

For instance, consider the issue of developing a transuranic waste storage facility such as the Waste Isolation Pilot Plant in southeastern New Mexico. The facility currently entombs contact- and remote-handled transuranic wastes—basically irradiated garbage—to isolate the wastes and reduce the potential for exposing the public to such wastes. While this may not seem like a problematic issue when an isolated site with low population density is chosen for the site, the issue is really more complex than it would appear on the surface. First, because such a facility is government run and can have risks with its development, there is a need to evaluate the risks of such a facility and to consider the impacts on proximate populations. It is also important to consider whether such a facility can be developed with the consent and support of all affected groups or whether conflict will arise with siting when the idea of this type of facility is broached. The federal policy process requires considering such issues and gathering public input about such developments. Issues include defining the need for the facility, attending to its impacts, as well as considering how to protect the wellbeing of the public by minimizing the hazards affiliated with facilities, especially those designed to store dangerous materials like transuranic and high-level radioactive waste.

Then, if there is some sort of compensation to be awarded to host communities it is important to consider whether coercion is involved in gaining public acceptance because this is not a valid reason to locate a facility if the risks of such a facility in a specific locale cannot be minimized but a locale accepts a facility. Now, take this process one step further and consider why a group may choose to accept the risks of these types of facilities even if the compensation is not such that it would guarantee protection. This is a problem if the population does not have the ability to survive in the absence of the

facility because it is the sole source of economic development for whatever reason. It is this type of situation that often exists with the siting of permanent nuclear waste storage facilities. This is what could be connoted as PIMBY (“Put it in my backyard”) rather than NIMBY (“Not in my backyard”) and both of these notions are equally as problematic when the policymaking process fails to consider the affects of facilities or actions at a variety of levels and what compels people to accept burdens and why they are unwilling to do so. Another example is that of Yucca Mountain repository.

In this situation, few of the stakeholders in the State of Nevada and the surrounding area were allowed to fully participate in the information gathering process at an effective level. Consequently, there is broad dissension when considering the siting of what was to be the nation’s first permanent, high-level radioactive waste repository. This is not to say that there would have been support if the process had been more sensitive and respectful of the reasons why so many stakeholders were against the facility. That is, even if the level of discourse had delved more intensely into the issues of risk perceptions among the public and attitudes about the equality of hosting both the Nevada Test Site and Yucca Mountain, it is still unlikely there would have been general consensus about accepting the facility despite the location being selected based on what was considered by many to reflect the best scientific principles.

An issue similar to Yucca Mountain takes center stage at this juncture of the discussion due to its applicability for discussing the public policy process surrounding federal hazardous waste facility siting issues. Thus, it is to this consideration that I now turn with a focus on the decision-making and policy process as pertains to Native nations. Before doing so, however, it needs to be remembered that any decision made by a Native

nation should be deemed as valid as any decision made by a sovereign entity because *sovereign* rights are sacrosanct and should be respected and protected. In other words, such rights should hold despite the issue at hand because they are supposed to be meaningful as a result of being defined within the context of state-to-state or nation-to-nation negotiated and commonly accepted relations. This means even discussions about nuclear waste storage should consider such rights based on sovereign relations regardless of the reason for a facility and especially if there is no consensus. At least this is what some believe, although there are those who do not accept this broad-reaching discussion of sovereign rights when the parties are the United States versus Native nations—or rather domestic dependent nations. So here we can glimpse what could be considered a logical fallacy, of sorts, that troublingly seems to be an inherent aspect of policy-making due to views held at times by policy makers about whose voice might be deemed valid as stakeholders versus others. This point brings me back to whence I started with a brief discussion about another nuclear waste facility siting issue affecting a Native nation that more or less occurred concurrently with Yucca Mountain that should help elucidate the logical fallacy of policy making and the defining of stakeholders that I have been talking about.

Consider the issue that confronted the Skull Valley Band of Goshutes in Utah and Nevada who are just as sovereign as other native nations with federal tribal recognition. In this situation, tribal leadership was interested in hosting a monitored retrieval storage facility that would have temporarily housed wastes eventually bound for permanent storage at Yucca. However, many of the more traditional tribal members took issue with this decision and wanted to stop these kinds of hazardous incursions from occurring on

tribal lands because they believed they had already experienced enough denigration since they first began interacting with colonial settlers that has made their land even less useful and unproductive while also affecting safe access to cultural sites thereby impacting tribal survival in the more traditional sense. What is problematic in this situation is not that the tribe, or a portion of the tribe, has made this decision. On the contrary, the decision of tribal leadership to host such a site was not an easy one, but it was deemed acceptable precisely because they had relatively few options for economic development activities that would allow their people to stay on the reservation. This is due to the high levels of contamination in the area from other types of hazardous practices occurring in the past that rendered their land basically useless for anything but hosting waste and this is despite the fact that doing so stands in stark contradiction to their worldviews that promote respecting, protecting, and nurturing mother earth rather than poisoning her [sic].

This is perhaps the sorriest state of affairs that exists from my perspective. Yet, on the other hand, the position of the Goshute tribal leadership is illuminating in that their recognition of the need to survive forced them to look for the conditions of possibility that empower and enable an *other thinking* that will, if not now, but in the future, potentially allow the tribe to act truly in their self-interest such that they can return to their traditional lifeways imbued by a different form of being and knowing. In this sense, it seems fruitful to be optimistic about the reality that some tribal decision makers are trying to be more modern thinking in terms of at least making some headway toward being more self-determining with their sights set on a specific end rather than just having been co-opted as traditional oppositional elements serving a specific master. Yet, those with more traditional views should not be excluded from the policy process either, which

is what some of the traditional members believed was happening in the monitored retrieval storage case because the traditionalists can be equally forward thinking and perhaps even more realistic about the potential for a specific policy to fail thereby allowing a harmful situation to limit opportunities for survival. While I am not trying to pass judgment on the Goshute leadership's effort, I do want to point out that unless policy processes provide access and actively seek input from multiple voices from both internal as well as external groups in an attempt to understand the basis of different attitudes, it is unlikely that decisions will result in highly efficacious policy outcomes where there are few, if any, losers.

This point notwithstanding, it would seem that the U.S. would want the site to open due to protracted disagreements over the efficacy of Yucca Mountain and the need to store the growing waste streams overrunning nuclear power plant sites awaiting disposal. However, in this case, this was not the outcome. Despite the desire of tribal leaders to site the facility and indications that the traditional members of the tribes had no standing, the Bureau of Indian Affairs (BIA) ultimately intervened in the internal dispute as the tribe's trustee and ruled against the facility due to the potential for significant impacts to the tribe. Hence, the oppositional voices that *listen to the stories of the past and apply them in the present* won the battle when they gained what seemed it was an unlikely ally in light of past interactions with the federal government as a ward of the government due to domestic dependent nation status regardless of being deemed sovereign. Thus, the Goshutes were not subjected to additional facets of nuclear colonialism in this situation, although some could say that the tribe had already been colonized so much by this point in their history that it is the reason they had to consider

this a worthy option for achieving self-determination and assuring cultural survival—such as it might be—regardless of the potential for harm. And while this is also a valid argument, I do not wish to delve into this context of the issue because settling this issue is not in my purview but rather in the purview of tribal members and tribal members alone.

However, it is important to address the fact that since the BIA did seem to rule in favor of the oppositional faction of the Goshute Tribe and did not approve the facility, it did reflect some semblance of respect to the views of traditional Native peoples and whether this was the actual intent or not will never be known. Nevertheless, the situation does reflect the double-bind in which Native nations are often finding themselves caught because the federal government did intervene and *disallow a tribal decision*. This can then be conceived of as nothing more than a blatant violation of tribal sovereignty and is illustrative of the colonial rhetoric that made tribes domestic dependent nations in the first place since they were deemed incapable of caring for themselves. Further, the BIA ruling is also indicative of the fact that such intervention is inconsistent with nuclear waste policy if the intent is to really care for waste stockpiles thereby protecting public health and safety regardless of the groups that could be harmed even if not physically per se. For example, consider that in the Goshute case the BIA appears to help protect tribal members from harm that could result from a continued assault on Mother Earth and their health and well-being, yet in the case of the Yucca Mountain decision the BIA did not even appear to try to intervene on behalf of the Western Shoshone. In my opinion, the fact that they are wards of the U.S. by virtue of their status as domestic dependent nations, the BIA should have intervened in the debate on behalf of the tribe because that

is their duty as trustee and regardless of the position of the U.S. with respect to the land claim which has yet to be satisfactorily resolved.

On the other hand, the response to the two situations could be due to differential perceptions about the actual circumstances affecting the tribes. In one case, the Goshutes were trying to make a way for themselves by taking on the monitored retrieval storage facility because their land no longer was viable in terms of supporting traditional lifeways. In contrast, the Western Shoshone were fighting against a similar type of facility as they sought to try to regain control of their homeland and maintain their lifeways that were being lost because of what they considered an ill-conceived administrative decision resulting in a taking of their land. Taken together, however, both decisions are an affront to the tribes despite the fact that this type of inconsistent decision-making has been affecting tribes since colonial rule became the modus operandi of the U.S. government with respect to Native nations. Consequently, I perceive there is a problem with how things have played out up to this point, especially with regard to the Western Shoshone. It is to this issue that I turn in Chapter 3.

CHAPTER THREE

THE WESTERN SHOSHONE PEOPLE OF THE GREAT BASIN AND LINKAGES TO LAND

Up to this point the discussion has focused on U.S. and Native relations and how they have had a troubled past, especially pertaining to the Western Shoshone and their attempt to maintain their identity and persist as a distinct people with traditions rooted in the land. This is despite several hundred years of colonizing tactics that have attempted to erase Native cultures that dates back to the earliest days of conquest on this continent when Columbus set out to discover the New World. With the arrival of Columbus the stage was set for a new era of conquest and discovery that primarily had two purposes: to expand land holdings and Christianize the new world. But this quest was not without its challenges as many settlers and colonizers on the American continent were to find out. As is well known, many of the Native peoples on this continent had the desire and strength to persist despite the difficulties before them. How such groups like the Western Shoshone are able to do so stems from their deep connection to the land and this issue is the focus of this Chapter.

The Chapter begins with a brief discussion of the mindset that seems to have guided many in their desire to colonize those that are at once similar yet strange and then turning to a discussion of the factors that help shape the culture and traditions of Native peoples like the Western Shoshone. The goal is to explicate how their strong desire to remain the traditional and spiritual people their ancestors taught them to be has helped Native peoples wage their war to continue to persist despite the effort of the U.S. to

continue to colonize these people and perhaps Americanize them once and for all through the development of public policy that might seem to some to not be very public at all.

Colonizing the Americas in the Name of Discovery and Conquest

Dating back to the earliest days of Christian conquest on the North American continent—as discussed in a Papal Bull issued in 1455 by Nicholas V—there are signs of what is to become of the indigenous inhabitants of the Americas as Nicholas speaks of

bestow[ing] suitable favors and special graces on those Catholic kings and princes, ... athletes and intrepid champions of the Christian faith...to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and...to reduce their persons to perpetual slavery, and to apply and appropriate...possessions, and goods, and to convert them to ...their use and profit...⁴⁷

If this rhetoric sounds somewhat familiar it should since young and old alike have been taught similar notions in grade school and beyond beginning with the arrival of Columbus in the new world who reported upon his return home about the savages he chanced to meet. It was the news of these peoples that prompted Pope Alexander VI to issue what is known as the Inter Caetera Bull of 1493 that truly ushered in an era of “Christian discovery and conquest”⁴⁸ stating

Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and Christian religion be exalted everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to faith itself....⁴⁹

Just such beliefs continued to define interactions on the American continent with the arrival of scores of European settlers even though in the beginning these early colonists worked with the so-called heathens as the colonists sought to secure their presence while educating these lost souls during the creation of a new economy and social order. Thus, settler colonialism had emerged in the Americas and set the stage for further colonization as populations surged thereby requiring westward expansion. It was this expansion westward that ultimately led to the colonization of Native peoples in the Great Basin and continues to this day with the persistent nuclearization of the Western Shoshone in their traditional homeland.

To frame this aspect of the discussion it is fruitful to begin by characterizing the region in which the Western Shoshone live. Doing so provides a basis for not only understanding the importance of land to these people, but also their desire to be heard both as valid stakeholders in the Yucca Mountain policy debate and as a sovereign nation that has a status distinct from that of others in the debate albeit a status not always recognized for what it is. Perhaps this is why the Western Shoshone believe they are being subjected to the same type of colonialism they have faced for roughly two centuries, yet desiring and requiring nothing less than the level of respect granted other non-threatening nations.

Physiography and Cultural Geography of the Great Basin

The traditional homeland of the Western Shoshone Nation is the vast area of land known as the Great Basin. This area was accorded this label because the many bodies of water in the region are trapped and, thus, have no outlet to make the long journey to the sea like many of the rivers and streams that exist in the surrounding physiographic regions. While this closed basin lies predominantly within the confines of Nevada,

portions of the region reach into southeastern Oregon, southern Idaho, southeastern California, and western Utah. It is the mountains and deserts in these surrounding states that confine the waters of the region, ranging from the Sierra Nevada in the west to the Mojave Desert in the south, the Rocky Mountains to the east, and the Columbia Plateau to the north (Figure 1).

Figure 1: Map of the Great Basin Region



What also sets the Great Basin apart from other regions is the array of flora and fauna that exist within this region. However, researchers working on the National Biological Information Infrastructure Great Basin Information Project (GBIP) believe that the “unique biodiversity found in the Great Basin and Columbia Plateau faces potential devastating and irreversible change as a result of land uses and growth of human populations in these regions.”⁵⁰ Nevertheless, plant life in this region is highly complex and diverse due to multiple bioregions in the area. In the higher elevations of the mountainous areas alpine vegetation can be found, with the environment shifting to

montane vegetation, a pinyon–juniper environment, then western juniper, sagebrush–grass, shadscale, the Mojavean zone, and, eventually, absolute desert or water regions depending upon whether one moves from north to south or west to east. It is the diverse vegetative environment that supports the existence of fauna that enhance opportunities for the many human inhabitants that have lived throughout the area.⁵¹ The four largest vegetative zones include sagebrush-grass (38.7%), Mojavean (18.4%), shadscale (17.1%), and pinyon-juniper (11.4%).⁵²

In the sagebrush-grass, the two top flora are, of course, sagebrush and grasses—although livestock grazing and human intrusion have altered this environment—which has resulted in an invasion of non-indigenous species of plants and a concomitant increase in sagebrush over grasses. This has increased the stress on the environment and, ultimately, affects the ability of the bioregion to support different types of faunal life. In contrast, the Mojavean environment is an area with limited moisture and groundwater and prompts the growth of a variety of scrub bushes and other types of drought tolerant flora. Interestingly, Nevada’s largest city and a frequented tourist destination—the city of Las Vegas—is located within this bioregion. Due to the limited groundwater in this area, the region has undergone intense changes as people have populated this popular and depleted many of the already limited resources necessary for meeting subsistence requirements. This has had a negative impact on native flora and fauna as the areas human inhabitants became engaged in conflicts arose over access to the scarce resources. The situation has only become worse as the area has continued to grow amidst increasingly devastating cyclical patterns of a poor economy and climate change that can wreak havoc on even the best situated populations. The shadscale bioregion is also

marked by an array of scrub that provides the habitat for indigenous fauna, although this area has also been impacted by overgrazing as those who rely on the land try to survive with limited natural and economic resources. The last major bioregion is the pinyon-juniper environment, which is low-elevation woodland with trees that provide some canopy cover and compete with grasses. This area has also begun to change over the last several hundred years, although much of the change has been spawned by overgrazing as in other bioregions as grasses lose out and opportunistic junipers take over the changing landscape.

Yet, the diversity of the flora in the region, whether indigenous or non-indigenous, provides significant habitat diversity for an array of other life forms.⁵³ As already mentioned cattle are abundant in Nevada and have been for quite some time—albeit the changes in the landscape would indicate that the number of cattle in the state may well have exceeded the carrying capacity of the land and it has caused many problems for the survival of some of the regions flora and other faunal species. Human occupation did not help this situation either, hence the number of rare and endangered species found throughout the Great Basin despite the diversity of other less perturbed living populations. Beetles abound in this region, as do ants, butterflies, mosquitoes, and a host of aquatic organisms, although fish and amphibians have been declining as the amount of available water continues to decline with climate change and overuse. Birds and reptiles, while abundant, are also being threatened by encroachment and the destruction of their habitats; reptiles are also threatened by domestication since turtles and lizards have become popular pets. In addition to cattle, other mammals such as several types of mice, voles, squirrels and chipmunks, gophers, bats, sheep, antelope,

deer, fox, lynx, and wolverines inhabit the area. However, continued changes to the land—both naturally-occurring and anthropogenically-induced—will undoubtedly limit the long-term survival of many more living things.

In light of such diversity, how can anyone consider the land the Western Shoshone have historically inhabited as nothing more than a vast wasteland despite the fractured landscape characterized by diversity of life and sites of significance to so many? It is for this reason that it is important to consider that perceptions of usefulness and beauty (or the lack thereof) as pertains to specific locales compared to others lies in the eye of the beholder and this is certainly the case among many of the Western Shoshone that remain in this area today as is also the case for other tribes and bands like the Paiute and Ute. Many continue to see great beauty and value in the places they inhabit throughout the Great Basin and this stems from deep-seated beliefs and practices that have been passed down from the elders over generations via oral histories. Many such beliefs begin with origin stories that speak of a specific way of living life thereby setting the stage for all manners of interaction—including interacting with all forms of life, land, wind, water, the heavens, and beyond. Hence, the origin stories had a profound influence on personal interactions at a variety of levels for the Shoshone people including their interactions with those that cohabitated with them throughout the region over time.

Consequently, the Western Shoshone—or Newe as they refer to themselves—call their homeland in the Great Basin Pia Sokopia, which, literally translated, means Earth Mother.⁵⁴ The Newe believe that the Earth Mother has provided for the Newe to participate in the circle of life throughout their homeland and it is why they firmly believe that they should not be deprived of the rights granted to them to inhabit these

lands that hold so much meaning for them as the primary giver of life. According to one version of an origin story passed down through the generations,

the Newe were placed in their homeland by the Creator (Uteen Taikwahni), whose complexion was the same color as that of the natives. Once placed on the land, two native women instructed the coyote to carry a large, pitched water-basket with him on his journey into the Basin area. Coyote was specifically told not to open the lid. Moved by irrepressible curiosity, he periodically opened the basket during his trip. The beings concealed inside jumped out here and there. The Newe believe this explains why they live over a large area.⁵⁵

This story explains why there are so many Western Shoshone bands spread throughout the region who had to learn how to survive using the various resources available to them in a given locale while trying not to overburden the land such that it stopped giving. Basically, this meant the different groups had varying requirements based on the diverse geography of the region that often limited the availability of water, plants, and animal life necessary for meeting even the most basic subsistence needs of the Western Shoshone. This is an important concept and one that, even today, shapes how many of the current inhabitants of the region live. Generally, however, the Western Shoshone desire to live a peaceful and negotiated existence with all (and everything) around them and this mindset stems from the origin stories that prompted the Newe to view the Earth Mother as “a living conscious being”⁵⁶ crucial to the circle of life. This notion is heavily intertwined into the everyday beliefs and practices of many of the Western Shoshone who are trying to maintain tribal sovereignty and cultural integrity just as is true for the more than 500 federally-recognized tribal nations throughout the U.S.

Further, it is a notion that the Western Shoshone have tried to share with all whom they came into contact as a peaceful nation and this includes the U.S. government even though the latter changed the terms of interaction time and time again by altering the structure of agreements and treaties as the growing Nation's needs changed over time. Yet, because of their strong sense of place and connectedness to the natural environment, the Western Shoshone did not wander very far from their centers even up to this day with people returning home to rear their children and help them understand their culture and history.

On the other hand, it is notable that—because of the natural environment and the awareness of the carrying capacity of the land—the Western Shoshone peoples were spread out across their homeland in small bands or families which made a central governing body unfeasible. However, the clans and bands did share a central oral tradition that defines their culture as one of the many Numic speaking peoples throughout the region. The Western Shoshone were also deeply religious, in a way, as a result of their intense interconnectedness to the land—to the Earth Mother—which translated into a deep spirituality and reverence about the importance of their surroundings for preserving balance in their lives. It was this commonality that kept the Western Shoshone in contact, occasionally having large social gatherings or special group hunts to share knowledge or the resources available to them during times of bounty and it is why many have tried so hard to maintain their strong oral tradition.⁵⁷ It is a tradition that seeks to impart knowledge and offer life lessons in an attempt to prevent forgetting about acting in ways that would keep their world in balance to preserve the circle of life. It should be noted, however, that such information was often the province of spiritual leaders and other elders in families, bands, and clans so it is no surprise that the Western Shoshone

rely so heavily on spiritual leaders and elders for healing. It is these individuals that have a keen awareness about traditions, culture, and the versatility of the plants and animals in the region.

Life changed for the Western Shoshone, however, as was the case with many Native American groups when colonizers explore new territories to expand their land base and develop resources. The biggest changes occurred first with the trappers who rapidly depleted many of the animals that the Native peoples of the area depended on and then, when the settlers moved in, their livestock began to overgraze the areas that provided the end of season grass seeds and other plants that once provided vital winter food resources. While this was problematic for the Western Shoshone, early settlers appear to have felt little sympathy for them since they reflect “the lowest form of humanity...as nothing more than lowly and simple gatherers”⁵⁸ considered to not be doing anything productive with the land and resources at their disposal. While this stereotype is not new to Native Americans (since it is a recurrent theme throughout history), what was new was the nature of the interactions that would come about as the Western Shoshone were forced to adapt to the conditions of their new reality. This meant a change in the nature of traditional survival as they were introduced to domesticated farm stock and horses and had to change their normal gathering practices as a result of resource colonization. Further changes occurred as the styles of governance changed for the region over the years. Specifically, the influx of settlers led to escalating tensions that required protecting Native peoples and settlers alike and this meant isolating groups on reservations.

A secondary component of this policy, however, was forcing acculturation that would hopefully—according to some—lead to the eventual erasure of the facets of Native culture that seemed to stand in the way of continued progress in the development of the Great Basin. This goal was not achieved, however, and the continuing changes just prompted a new era of resourcefulness and resilience (to the extent that this was possible), although this became increasingly more difficult as the settler population surged. This ushered in the era of paternalism that set the stage for the developing dependency of Native peoples with an eventual move to a policy of assimilation; reorganization; termination and relocation; and finally the era of self-determination. All of these policy changes came about due to the ability of Native peoples to adapt to the changes around them in their efforts to continue to maintain their cultures and values despite the hurdles before them and this was no different for the Western Shoshone. This leads me to consider one specific area of evolution in the relationship between the Western Shoshone and the U.S. that I believe plays a role in defining the continued colonization of these people.

The Treaty of Ruby Valley of 1863: a Thorn in U.S.-Western Shoshone Relations?

According to the Treaty of Ruby Valley of 1863, the Western Shoshone Bands and the U.S. had forged a relationship based on “peace and friendship.”⁵⁹ While the Treaty was entered into by the U.S. with the “Chiefs and Principal Men and Warriors”⁶⁰ of the Western Bands of the Shoshone Nation of Indians on October 1, 1863, it was not ratified until June 26, 1866 and there was no official proclamation until October 21, 1869. However, even the verbiage of the Treaty speaks directly about the issue of peace and friendship at the beginning of line one in the first paragraph, what is interesting to note is that the language specifically addressing interactions throughout the Treaty calls

for the Western Shoshone to stop hostilities against anyone from the U.S. that might cross Tribal lands. Specifically, the stipulation in Article 1 was that the Bands “agree that hostilities and all depredation upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the U.S. within their county, shall cease.”⁶¹ Nevertheless, despite the clear tone of colonial discourse throughout the Treaty—so noted because only the Shoshone were being asked to stop hostilities—it is clear that peace and friendship was to be the modus operandi for interactions defined in the Treaty that was duly signed and accepted by signatories of the U.S. and the Western Shoshone Bands. Hence, it would appear that the Treaty was a legally binding document that should stand until the end of time as the supreme law of the land until such a time that it was mutually abrogated or relations severed due to the outright conquering of a people.

Regardless of being based on the rule of law as the supreme law of the land, the Articles throughout the document probably should have provided a clue to the Western Shoshone that the Treaty may not stand up to the promises offered regarding peace and friendship even though that was the call in the first paragraph of the document. It is unlikely that the framing of the document would have spiked such curiosity, though, since the Shoshone—not unlike most tribes at the time—were not well-versed in the English language and tended to be oral and ideographic cultures. Consequently, it was unlikely they would have caught the gist of what was being spelled out in the document versus being told to them. To make this case, consider that after addressing Western Shoshone hostilities in Article 1, Articles 2 through 5 expressly refer to the routes used by “white men, shall be forever free and unobstructed” for use by all parties linked to or in the service of the U.S. and there is also the stipulation that if any “bad men” shall

commit “depredations” against the U.S. the men shall be “delivered up to the proper officers of the United States.”⁶² Article 2 provides for military posts and station houses throughout the territory, which made it appear as if the Western Shoshone were expected to act as the heathens many Anglo-Americans thought Indians were. This point notwithstanding, it is possible that the U.S. didn’t trust others to respect peace, but either way the U.S. decided there was some need to be proactive about keeping police powers. Article 3 addressed the infrastructure required with the opening up of new territory for settlement and stated that any construction activities should take place without hindrance from the tribal peoples.

Perhaps the most interesting Articles were 4, 5, 6, and 7. Article 4 focused on the need for the Western Shoshone to allow mining, farming, and other agricultural uses without any detail being provided for the resources that might be extracted or for the decimation of flora and fauna, although Article 7 did mention that the U.S. would at least compensate the Western Shoshone for the “inconvenience” of having their land made available to the U.S. Remuneration was to total \$5,000 per year for 20 years in such articles that the President of the U.S. deemed suitable for their wants and condition, but this also meant the Western Shoshone had to concur that such payments in kind were “full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.”⁶³ The boundaries of Western Shoshone territory are described in Article 5 and indicate that the land was to extend

On the north by Wong-goga-da Mountains and Shoshone River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-

co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.⁶⁴

The one real issue, however, about how the land was defined is the fact that Article 6 stipulated that the lands specified in the treaty shall only support Western Shoshone lifeways until the nomadic life led by the Shoshone *no longer served the needs of the U.S.* [my emphasis]. Article 6 specifically stated that

The said bands agree that whenever the President of the United states shall deem it expedient for them to abandon the roaming life, which, they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.⁶⁵

Finally, Article 8 reflects the acknowledgement that the Treaty was agreed upon by the 12 Western Shoshone Bands' representatives and two U.S. officials and that the acknowledgement of the Treaty also served as acceptance of the compensation received in the form of presents met the terms of the Treaty as specified and that no other payment beyond the annual payments would occur.

What strikes me the most about the language used in this Treaty was how demeaning and pejorative the tone was toward the Western Shoshone in the sense of stipulating the need to control the behavior and actions of the these people rather than serving to constrain American settlers who initiated the era of gradual encroachment on Shoshone land that would promote an enduring battle over land rights and just recourse.

Thus, the treaty was imbued by colonial rhetoric that helped the U.S. further extend its reach to gain access to the Pacific Ocean and civilize the entire area that defines the continental U.S. To recap, I believe the language speaks volumes about the intent of the Treaty in terms of laying the foundation for continuing the colonization of the Western Shoshone and the U.S. made no effort to hide this reality. Why would they have to since the Western Shoshone were only newly exposed to the written language of the White man; it makes sense that they would take the written word as truth and the U.S. signed the Treaty to be therefore known as the supreme law of the land? Where did things progress from here?

Over time the Western Shoshone homeland continued to shrink, leaving the members of its many bands and clans to pursue jobs among the many cities and towns that emerged in Nevada, but rarely was this successful for many of the people because they often lacked the specialized knowledge and skills for good jobs. This meant they were relegated to seeking low-wage menial labor positions that rarely enabled families to meet even their most basic subsistence needs thereby further encouraging reliance on the generosity of their benefactor the U.S. government. Perhaps it is this continuing struggle that best reveals why the Western Shoshone engaged in a long-running quest via the courts in both the domestic and international arenas to retain the tribal homeland that they believe is still rightfully theirs although contrary to what the U.S. government believes.

As a point of fact, the federal government says the land in question no longer belongs to the Western Shoshone because the Indian Claims Commission (ICC) ruled that they had lost their land by *gradual encroachment*. Further, because they were compensated for the loss—even though the Bureau of Indian Affairs (BIA) accepted the

money on behalf of the Western Shoshone who did not want it—they had no recourse to continue to pursue the claim. This occurred despite the fact that nowhere in the organic laws of the U.S. does it state that gradual encroachment is a valid means by which a treaty can be abrogated. If it was a valid argument then it should be the case that anyone could make a similar claim at any time against the U.S. or any other nation for that matter by virtue of moving in and camping out on someone’s land. In some circles this would be called squatting⁶⁶ and it is not generally recognized as a legal means for acquiring land. Yet, the federal government appears to have not thought this reality through when Congress approved the Western Shoshone Distribution Act to disperse funds for *reparations* for the so-called taking.⁶⁷ However, since gradual encroachment can easily be considered a form of squatting, it seems there is some room to reconsider the case because the U.S. had essentially taken possession of the Western Shoshone homeland by extralegal means. The validity of this claim is entirely self-evident according to Peter d’Errico who has stated that “[a]lthough Western Shoshone land title has never been proven to have been ceded or lost, the Supreme Court has ruled that they are precluded from litigating their title. [Hence,] Western Shoshone people who oppose the destruction of their lands as violations of their title are depicted as outlaws.”⁶⁸

What is contestable about how this claim was handled is that it was at first condoned by the U.S., but then when circumstances necessitated it, the Federal government unilaterally provided monetary compensation in what they considered an effort to effectively resolve the issue for the Western Shoshone when the tribes and bands persisted in pursuing the claim to maintain their aboriginal homelands. In this sense I have to agree with the Western Shoshone that this act and the subsequent ruling were

indeed improper and that monetary compensation is not a valid resolution if the claimants do not desire this type of outcome. On the other hand, the action does reflect the *modus operandi* of the U.S. in terms of many of its actions with regard to governing tribal peoples in its attempt to secure its future on the North American continent. The action further serves as a reminder of what it means to *colonize* territory or a people, which means to take control and institute rules that effectively subjugate and marginalize. This speaks to the fact that the act was overt rather than being accidental despite the *gradual* nature of the event, therefore, I see it as reprehensible since it reflects just one more instance of the use of colonizing tactics to serve one's own interest to the detriment of another who poses little threat.

It is equally reprehensible that the U.S. sought to cloak its actions by offering monetary compensation to the Western Shoshone Nation without due consultation with the tribe about whether the terms of the agreement were acceptable—although it was known that they were not—and then asking what would be acceptable. It seems to me the real injustice here is that this same action would not necessarily be defensible in the American system of jurisprudence when other types of cases emerge because claimants typically get to ask about their desires for restitution and then a judgment and subsequent award tend to be granted to compensate for acts of intrusion or trespass. Perhaps this is why Ward Churchill reports that the “Western Shoshone National Council has called the nuclear testing facility [and hence the Yucca Mountain Facility] ‘an absolute violation of the Treaty of Ruby Valley and the laws of the United States’ ... Peace activists are instructed that if they are confronted or arrested by U.S. government officials while on Shoshone land, they should show their Shoshone permits and demand to continue their

activities. Furthermore, in the case of trial, the defendants should include in their defense that they had legal right to be on the lands, as granted by the landowners.”⁶⁹ While problematic, this type of action is not unbeknownst to the Western Shoshone who hold annual festivals to rekindle their beliefs about their rights to the place known as Pia Sokopia despite the potential for arrests as a result of trespassing on their own taken land that now hosts the Nevada Test Site and Yucca Mountain facilities.

The Nature of Being Native and Western Shoshone

Acts of resistance—and resilience—are an illustration that the Western Shoshone will continue their battle no matter the outcome while also showing that they will continue to refuse to relinquish rights to the land they call home despite the severe degradation to the flora and fauna once relied upon by the tribe for its spiritual and cultural significance. This is due to their belief that by doing so they would be responsible for the end of their culture because land—their land—defines much of what is important about them and who they are as cultural entity. This is true for most, if not all Native nations. As Kuletz sees it, “many Indians in the region speak from a sense of their people having been in one place from time immemorial. In contrast, the Euro-American historical experience of this land is...a relatively recent encounter with a foreign and alien landscape that was never perceived as a land of sustenance. The difference between these two historical frameworks greatly affects each culture’s ecological perceptions.”⁷⁰ Consequently, the Yucca Mountain case just confirms the problematic nature of intergovernmental relations endured by Native nations in this area, although the situation is easily transferable to other aspects of Native and U.S. relations over time.

It is the recognition of these types of contradictory subject positionalities that seems paradoxical to me in terms of the U.S. government's claims about protecting the rights and freedoms of *all* its citizens when it seemingly only pretends to do so for some, although often depending on the context of a situation. The rationale often put forth in an attempt to obfuscate reality is that while the *intent* is to preserve and protect the rights of *all*, sometimes this is not possible and the needs of a few need to be sacrificed to assure the protection of the masses. Thus, nothing speaks louder to me about the specialized nature of the form of governmentality deployed to perpetuate the continued colonization of Native nations than the nuclear waste issue because it is the one arena where the U.S. has the power to make decisions and change the rule of law to fit its needs as required as different conditions of possibility present themselves. More precisely, nuclear waste policy appears to be an effective way to promote the continued erasure of Native nations since no-one would conceivably know the true threat until it is too late since radiation poisoning, except in very high doses, produces latent effects that are not easily attributable to a particular source, especially if affected people are mobile. Albeit, the most important point that needs to emerge from this discussion when considering the claims and legal merits of the Goshute and Western Shoshone cases is that the tribes had little input, if any, in the final decisions that have set the terms for their survival since the federal government acted on their behalf in the absence of wholly informed knowledge about needs and requirements.

This point notwithstanding, the reality of the situation about the taking of Western Shoshone land and how the U.S. responded to the claim behooves me to readdress one aspect of an earlier discussion about differences in *modern* versus *traditional* views about

life and how these views prompt different types of responses to both intra- and intergovernmental reactions. In particular, I would like to revisit the concept of *traditional* tribal thinkers who take a modernist approach to life to try to regain control over their destinies. One such group is the Council of Energy Resource tribes (CERT). From my perspective, the CERT has used the teachings of their ancestors and applied them to modern life in a way to allow them to develop resources on tribal lands to reclaim sovereignty and the right to self-determination. While there may be some Native peoples who disagree with this approach, others consider it to be a fundamental requirement to continue to survive as Native nations and tribal cultures in an attempt to get out from under the cloud of U.S. dependency and exploitative practices. About 60 tribes belong to the CERT and they say their mission is to actively work to negotiate resource rights in a way that can benefit tribes so that they can

enter and thrive in the twenty-first century on their own terms. As sovereign nations, their vision of true self-determination has remained constant since CERT was founded and long before CERT's Tribal leadership has adopted a dynamic three-pronged approach to achieve this goal.⁷¹

What does this approach entail? According to CERT, it first requires enabling and empowering tribes to govern their own lands so they can help govern America. Further, tribes are given the "tools of modern technology to protect their cultural heritage. And third, tribes must cultivate strong diversified economies while balancing environmental and cultural concerns with economic growth."⁷² As is probably evident, especially considering the history of Native and non-Native relations, this is a daunting task, but it is not impossible. The real problem is reconciling how to work with *the enemy* and this is

not easily done precisely because of the hypocrisy in how the U.S. has acted historically with regard to tribes when addressing policy on a variety of topics, not the least of which involves the management of the nation's nuclear waste. Thus, it is no small wonder that some believe those tribes who court nuclear waste into their own backyards have been co-opted and are not interested in self-preservation nor true self-determination. Whether this is the case or not must be left to those integrally involved to work out amongst themselves because to be truly self-determining and sovereign one needs to be afforded the opportunity to make one's own decisions, right or wrong, regardless of what external actors perceive.

Therefore, what it really all comes down to is granting tolerance to forms of an *other thinking* that is foregrounded by ideological differences and cultural biases that are sometimes individually-based and at others community-based. From this perspective, consider the reality that despite the treaty violation issue surrounding the battle between the Western Shoshone and the U.S. government over Yucca Mountain, there are those among the tribe who are questioning whether they should just try to move on and worry about the day-to-day reality of survival in the absence of a means for assuring economic—and, hence, physical and cultural—viability just as is true for some Goshutes. In this instance, who can really fault those who decide it is time to quit being a martyr in this battle despite the merits of the quest for sovereignty because what will it matter if, in the end, the conflict is so protracted that no one has the means to survive? This speaks to the issue of finding ways to be proactive about how one addresses shifting terrains of discourse and problem solving, although taking risks to get to the point where one wants

to be can be a bitter pill to swallow if you do not have a good feeling about where you will really end up in life.

Joseph Geronimo, the great grandson of Apache Chief Geronimo, expresses this sentiment when speaking about the risks posed if the Mescalero Apache had actually opened an monitored retrieval storage facility well before the Goshutes even considered doing so. He says “[o]ur children would be stuck with it [the nuclear waste]. And what would they get for it? Nothing.”⁷³ Yet, on the other hand, while this is true in a way, it can also be read as a paradoxical statement if one considers the context of what it means when he says “[o]ur people have made the choice that their tradition and culture is the most important thing in the world.”⁷⁴ In this case, I am forced to consider whether not taking what one can get when they can get it, even under the *wrong* conditions, might be better than cutting one’s nose off to spite their face. Centuries of degradation and colonizing tactics are the crux of the issue, which forces one to consider the degree to which the nuclear industrial complex has resulted in the transformation of Native nations, modern natures, and, concomitantly, has forced the development of hybrid identities. Specifically, it seems that Native nations are forced, as many people the world over are, to consider the conditions of possibility for survivance based on ever more complex exigencies due to higher-level interactions and ever-diversifying worldviews within a global environment. Further, it appears that cultural identities are becoming more apparent rather than less so amidst somewhat greater levels of intolerance about so many different worldviews.

Speaking of Land...A quest for Liberty and Justice

Having touched on some of the present-day issues that affect tribes in their quest for sovereignty and self-determination in the realm of nuclearism, the point I feel most

compelled to emphasize in this regard is how centuries of degradation and colonizing tactics have come to reflect the importance of land to tribal efforts to continue to persist as nations and cultural bodies. Further, as mentioned early on, the importance of rights to land and to live within a culturally-bound context has salience beyond just preserving the viability of populations in the Americas and elsewhere. It is within this context that I draw upon the words of Mayor Anderson from his State of the City address given in Salt Lake City, Utah in 2005. Anderson states “[o]ur governance is only as good as our impact on those who came after us.”⁷⁵ Consequently, I address this issue in the remainder of this chapter by considering different Native American perspectives on the importance of sovereignty and the salience of land for assuring the integrity of life on the planet now and in the future, especially in the sense that life must be both physically and ideologically fulfilling.

Winona LaDuke (Ojibwe) contextualizes the importance of land to tribes by characterizing it as a basis for forming traditional knowledge that aids efforts to define futures just as it does for Americans in the U.S. and others elsewhere. She further states that “exploitation of Indian resources has been the most consistent theme marking Indian-white relations since European contact. The acquisition of Indian land by colonial and U.S. governments”⁷⁶ has typically been deployed as a strategy to enhance one’s self-interest to the detriment of the *other*—in this case, Native nations. However, the one mistake some make when contemplating this reality is regarding the notion of what exploitation of land resources really means. In a sense, some take this to mean that Natives purportedly are the stewards of land and should not use it, but this is far from the truth, especially if self-determination and sovereignty enter into the domain of defining

truth. The *truth* is that Native nations rely on land for many purposes both in terms of cultural and physical survival and without land Native nations have no future just as others—like the U.S.—do not.

It is within this framework that LaDuke says that when speaking of Native nations' views of nature and the land, especially land under development, one should consider Native American's beliefs that the systems utilized to make land productive should be "decentralized, self-reliant, and very close to the carrying capacity of that ecosystem"⁷⁷ while reflecting the needs of those reliant upon the land. This is a primary position undertaken by the Western Shoshone. However, such a decision is hard to make precisely because colonialism has altered how Native peoples need to interact with those around them whether considered sovereign nations in their own right or just Native citizens subsumed by the notion of Americanness, all the while having to consider how to balance conflicting worldviews to assure survival. Hence, it is not difficult to understand both the reticence and willingness of different Native nations to accept storing nuclear waste or to allow exploration and development of natural resources on their lands because both positions have implications for those trying to assure their most basic needs for survival are met. Yet, the question, then, is how does one best survive in a modernizing and progressive world if one cannot compete at an effective level by finding ways to use land based on what it offers physically within specific structures of governance?

Framed in this manner, it is easy to see that it could be cultural suicide for Native nations not to learn to interact effectively with their colonizers and others, even if it means making the choice to take in nuclear waste, although I understand the need for

Native responses to be on their own terms rather than the terms of the U.S. Therefore, if a choice is made to take in nuclear wastes and Native nations can undertake stewardship in a way that is somewhat consistent with their beliefs, there should be no questions about tribes not living up to preconceived notions about the *ecological Indian* or any other non-Native conception of Indianness. Of course, this would mean that those who colonize the other would have to let go of their stereotypical notions about Indians. But, if history has proven anything, this is a very difficult task and may become even more so as new challenges force decision-makers' hands to make ever more drastic decisions that have impacts they are not prepared to address.⁷⁸ This is especially true for Native nations since the nature of the relations between people—and people and the land—changed when colonialism took hold of what would become the U.S.

Basically, under colonialism, relations are foregrounded by “a set of ‘center-periphery relations’ in which the center”⁷⁹ (meaning the colonizers) expanded their territory by instigating a process of depopulation that focused on those cultures that seemed to stand in the way of civilized progress. Generally, the process of expansion involved: “(1) the cultural practice spreading Christianity [as already mentioned] and, later, Western science and other forms of Western thought; (2) the socioeconomic practice of capitalism; and (3) the military-political practice of colonialism.”⁸⁰ Thus, the simple fact is that—since the initiation of the so-called phase of *civilized development* that led to colonialism—Native nations have been perceived by Native scholars and activists like La Duke and Corbin Harney (among others) as plagued by a severely degraded status wherein they are hard-pressed to even meet daily subsistence needs that has further empowered the dependency status created by the U.S. government.

What does this mean in terms of positive relations for Native peoples and their ability to persist? It means things continue to change and not always for the better for Native peoples unless they find a means to exert power over their colonizers. This is difficult, however, due to the disruptions that have occurred—and continue to occur—on reservations where traditional structures and lifeways are often contested by younger generations who have embraced many of the lifeways of colonial capitalist society. Further, continued encroachments into the lives of Native peoples prevent following traditional practices as historically prescribed because land and sites of significance have vanished or access to them has been restricted. In essence, colonialism affected the “economic and land tenure systems, the material basis for relating to the ecosystem, [so] most indigenous communities are a *mélange* of colonial and traditional structures and systems.”⁸¹ The most important manifestation of this process was the development of adaptive (or hybrid) identities as stated previously that enabled many Native nations to persevere, although not without drastic reductions in population while concomitantly affecting the ability of many tribal peoples to remain true to wholly traditional cultural practices.

This is not to say that traditional practices have not been utilized as a means to promote development and engage in a free-market economy. On the contrary, some tribes do so when they have the capacity, although they do not do so to the extent as others participating in a high-tech economy where profits from endeavors tend to be much higher. This is another factor that explains why some tribes opted to participate in hosting monitored retrieval storage facilities. As already indicated, tribes like the Goshutes initially believed that this might be a good way to progress and achieve self-

determination while also enabling them to decide what practices of their colonizers could be controlled to reduce the impact to their lands and people. In other words, they actively sought a way to assure their economic and, hence, cultural viability as a quasi-traditional tribe rather than individuals that would finally be assimilated and acculturated into American society. Perhaps Goshute tribal leader Leon Bear says it best. He says

For a long time the tribe has been pretty much distressed over revenues that they don't have, lack of infrastructure of the tribal government. And we were looking for economic benefits or development for the tribe out there that would provide revenue for us.

And we feel we really believe that this is one economic project that would benefit us greatly. It will allow our tribal government to provide social programs for our tribal members, housing needs, health needs. The fact is that these things are not provided to the Skull Valley Band through the federal agency, the BIA, the State of Utah, or any other government. And it looks like we're going to have to provide these things on our own.⁸²

What this shows is that differences in lifeways and in thinking, generally, set up a contested terrain between two forms of knowledge that affect tribes' abilities to compete and be self-determining—even if granted full sovereignty rather than remaining as domestic dependent nations. The contest is between a capitalist-based industrial or even modernist mindset and indigenous ways of knowing and being in the world emphasizing the traditions passed down from the ancestors. The most tangible consequence is how such divergent ways of thinking have forced tribes to engage new ways of knowing in order for them to survive. This requires learning how to control access to the resources on

their lands and to control land itself all the while they are fighting to do so as sovereign nations with a right to be self-determining. Perhaps Ivan Illich said it best when considering how development practices of modern society have amounted to “a war on subsistence”⁸³ for many indigenous peoples throughout the world.

This *war* is played out in a number of ways, not the least of which is efforts to inform the practices of others in a manner that enlightens non-Natives about Native peoples. This is not always an easy task. As a case in point, LaDuke speaks of how the mainstream environmental movement, while seemingly a good affiliate for Native Americans, is sometimes a worse enemy in the game of survival than federal policy-makers. While I touched on this issue briefly earlier on, it is beneficial to return to this issue and elaborate, since it provides insight into another contested terrain that affects Native Americans in their quest for survival. The point is that the environmental movement seems intent to corrupt the meaning of what is truly denoted by the phrase *ecological Indian* in terms of meeting the need to survive in a sustainable manner versus the desire to preserve nature for its own sake. It is for this reason that, to Native nations, environmentalists do not promote “sustainable thinking.”⁸⁴

Environmentalists are perceived as promoting what LaDuke considers environmental racism since *environmentalist thinking* ultimately impinges on the ability of marginalized communities to survive by limiting the resources available to them—whether it is land or water, money, or even power—in contrast to their counterparts who often have greater access to such resources to help them achieve their goals. LaDuke states that this mentality is seen in “the inability of mainstream organizations to recognize, for instance, the relationship between ecologically destructive development

projects ... and cultural and physical devastation and genocide,”⁸⁵ generally. This environmentalist way of thinking, then, sets up a contest between differential cultural worldviews that tends to advance one way of knowing over another if a means to reconcile differences cannot be found such that diversity exists and persists rather than a stale and myopic view of a *monocultural* world order. LaDuke says “[t]he challenge that I believe faces the North American environmental movement is to form a meaningful partnership with indigenous communities and peoples. Only then can we address the common issues of environmental degradation and the clear need for a new operating system or, more appropriately, a way of managing our relations with the land.”⁸⁶

Consequently, the only truly sustainable means to develop a long-term strategy for assuring the preservation of peoples and their land base—and this extends to all peoples of the world—is to resolve contested views about the importance of land and how it can be used without necessarily promoting the demise of one culture in order to sustain another. However, according to LaDuke, this means seeing the ways that cultural biodiversity coexists with biological diversity. In essence, then, this is a call to *decolonize* the politics of people and the environment such that a new paradigm of cooperation replaces the stale and problematic rhetoric of colonialism and allows even the most traditional tribes to be included in present day reality within forcing them to embrace modernity.

This means not relegating Native nations to the past by forcing them to subscribe to practices that may no longer be practicable in the present nor as they move toward new futures. But this does not mean they should give up the old ways if they are still feasible and if they are part of their belief systems. In this sense, there needs to be some flexibility

to allow Native nations to be who they want to be as cultures worthy of existence as any other, including the U.S. policy apparatus and those they most often represent. It is in this way that Native nations can be the sovereign and self-determining nations they once were and should be allowed to be now and in the future. However, this will only happen if the tensions between Native nations and their colonizers can be reduced so Native nations can be allowed to engage their *modern natures* albeit imbued by the traditions of the ancestors as the Western Shoshone desire to do in relation to Yucca Mountain.

This type of change offers hope about how to address many of the ills of modernity that are effectively erasing both people and the life-bearing natural environment upon which we all depend. To this end, there needs to be a way to assure all voices are equal in policymaking—meaning affected stakeholders have not only the means to understand an issue but that they also have a say in the outcome of policy such that their past can remain meaningful in the present. Thus, the focus of Chapter 4 is a discussion of the legal framework that guides environmental decision making with regard to federal actions surrounding nuclear waste policy and Chapter 5 provides a detailed analysis of the comments and responses that emerged during the Yucca Mountain facility siting EIS process. It is my hope that these last two Chapters will finally bring this treatise full circle and allow me to end with a discussion about what has been right and wrong about the interactions between the Western Shoshone and the U.S. government as a result of colonialism. Basically, I hope to pontificate on the virtues of being open and willing to embrace differences in an effort to facilitate positive dialogue about important issues like nuclear waste policy that effects everyone whether one wants to recognize this reality or not.

CHAPTER FOUR
DUELING IDENTITIES—
NATIVE AMERICANS AND AMERICAN CITIZENS:
STAKEHOLDERS IN THE YUCCA MOUNTAIN POLICY DEBATE

The Western Shoshone are a group of Native peoples not unlike other Native American groups that have tried to preserve their cultural heritage since the days of colonial conquest on the American continent as has already been discussed. A key aspect of such groups striving to persevere is adaption to the changing conditions of the world around them. For the Western Shoshone, this has meant struggling to overcome various aspects of both environmental and political change. The focus of this chapter is to elucidate both who the Western Shoshone are as Native peoples and part of the more than 500 recognized tribal groups in the United States. This chapter is also intended to provide a glimpse into the efforts of the Western Shoshone to navigate the ever changing conditions of possibility before them as they have tried to survive the often variable conditions of the Great Basin while also traversing the often harsh political terrain of Native-U.S. intergovernmental relations. It is a terrain hostile to many aspects of Native American lifeways because these Native peoples reflect that which is different and strange and that did not sit well with early settlers in the emerging U.S. who were intent on developing its own culture rather than in facilitating the continued stability of Native cultures and Western Shoshone culture specifically.

Thus, while the Chapter 3 framed the discourse of broken promises and reactions of Native peoples at the general level, this Chapter examines the state of relations between the Western Shoshone and the U.S. at a greater level of specificity by delving into the legal discourse surrounding environmental policy generally and nuclear waste

policy in particular. Hopefully this will serve to elucidate how history is affecting modern-day interactions and shaping the battle being waged over sovereignty and cultural survival between the Western Shoshone and the U.S. To this end, the National Environmental Protection Act of 1969 (National Environmental Policy Act) and the Nuclear Waste Policy Act of 1982 and its 1987 amendment will be examined to explicate the scope of the requirements for local input and consultation pertaining to the siting of a high-level radioactive waste repository. The Nuclear Waste Policy Act and its amendments will also be examined. Of specific interest is the way in which the U.S. government changed the rules of the game by changing the law over time when success seemed out of reach by amending the Nuclear Waste Policy Act. In all, the Nuclear Waste Policy Act as amended seems to have been nothing more than an attempt to manufacture a legal means to more quickly achieve its desired outcome of permanently sequestering the seemingly intractable problem of nuclear waste that presented its own set of problems that went beyond the contentious siting debate.⁸⁷

Regulatory Framework: National Environmental Policy Act, the Nuclear Waste Policy Act & the 1987 Amendment

National Environmental Policy Act⁸⁸ is a federal statute intended to allow for the proactive management of federal lands in the public domain through “all practicable means and measures...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”⁸⁹ To this end, National Environmental Policy Act required that all federal agencies

Include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.⁹⁰

As stated, this was a mandate for all federal agencies and it meant they had to codify their own policies to assure compliance with National Environmental Policy Act. Thus, decisions had to be evaluated in terms of their potential for impacting the quality of the human environment. If such a decision was rendered, Section 102 of National Environmental Policy Act required development of what has become known as an environmental impact statement (EIS), which can be costly monetarily and in terms of time and effort. Ultimately, the EIS process can delay policy implementation since each EIS must define all potential impacts from a proposed action, alternatives to mitigate such impacts, as well as defining any “irretrievable commitments of resources.”⁹¹ On the other hand, there is a way around the EIS process, but it is only if an initial environmental assessment statement (EAS) determines that a review of a major proposed action shows there will be no significant impact. National Environmental Policy Act also set forth a requirement to develop the Council on Environmental Quality (CEQ); the CEQ is

responsible for assuring all federal agencies comply with National Environmental Policy Act.

Among other requirements in this regard, several Executive Orders were issued after National Environmental Policy Act that deal specifically with environmental justice issues. Executive Order 12898⁹² was issued by President Clinton in 1994 and required addressing impacts to minority and low-income populations. President Clinton also issued Executive Order 13175⁹³ in 2000, which carried the environmental justice process one step further by requiring special processes for establishing effective consultation and coordination with Indian Tribal governments. Both of these orders had ramifications for the development of Yucca Mountain in terms of the siting process and the need to develop an EIS even though one was already required under National Environmental Policy Act.

Interestingly, since there is little guidance about what specifically constitutes significant adverse environmental impacts or a significant effect on the quality of the human environment, the courts have made recommendations on this issue in several rulings. One such ruling apropos to this discussion came about in *Hanly v. Kleindienst*,⁹⁴ which considered the lack of Congressional or executive guidance pertaining to the definition of the term “significant.” Thus, the court ruled that in the absence of a clear definition,

The agency in charge, although vested with broad discretion, should normally be required to review the proposed action in the light of at least two relevant factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, and (2) the

absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.⁹⁵

Interpreted liberally, this would seem to require that, in a situation such as Yucca Mountain, one of the threshold criteria would have been to determine the impacts of the siting on Native nations in the area even beyond the site proper since the Nevada Test Site had already withdrawn much of the land in question by the Western Shoshone. On the other hand, since the long-term feasibility of storing and protecting HLW for 10,000 years or more in the absence of knowing—realistically—if this can even be done let alone safely seems like enough of a reason to warrant extreme scrutiny of the siting process. However, this issue seems to have been dealt with enough to allow continued development of the site in the quest for licensure despite the fact that there were so many unresolved issues from the perspective of tribes in the area. The issues pertain to tribal rights and concerns about sovereignty; their status as affected tribes who have different rights, requirements, and interests compared to ordinary citizens; as well as different worldviews.

For instance, consider the statement made by Chief Yowell, Chairman of the Western Shoshone National Council, during the Yucca Mountain project evaluation process. He stated, “we don’t really say we ‘own’ the land, because we have always been taught to respect Mother Earth as a living thing”⁹⁶ and this site would just hurt the land and her, Mother Earth, and those that depend on the land for survival. Corbin Harney, a Western Shoshone spiritual leader expressed a similar sentiment when he said the site and transporting HLW to Yucca Mountain would put “people in contact with the most

toxic poison.”⁹⁷ Ian Zabarte, another tribal official, stated that cancer rates and other illnesses have emerged as a result of testing at the Nevada Test Site so the Yucca Mountain issue should be entirely revisited. Basically, Zabarte indicated in an interview that he feels “the federal government put the cart before the horse. The real problem is letting the country’s nuclear reactors stay in operation. ‘When my toilet overflows, I turn off the water first before I try to clean up the mess.’”⁹⁸ In other words, Zabarte believes the federal government should not allow creation of more wastes without a plan to deal with them now.

These are just a few of the types of comments that can be found throughout the EIS, and they reflect a common sentiment among the Western Shoshone and show a clear concern about significant effects from Yucca Mountain and how the issue was being dealt with.⁹⁹ Thus, in the context of the court ruling in the *Hanly v. Kleindienst* case, even though an EIS was developed, it seems that the impacts from the perspective of the Western Shoshone should have been given more consideration than they appear to have received. The reason for this is even more compelling if one considers that the Western Shoshone are not just ordinary citizens since they are one of more than 500 federally tribes that have a special relationship with the U.S. based on that recognition.

That said, it is worth considering whether, overall, the Department of Energy did not entirely contradict the National Environmental Policy Act if decision-makers had different perceptions and beliefs about how the Yucca Mountain facility was situated within the context of Native-U.S. history. If one makes an allowance for the fact that policymakers lacked sufficient knowledge about the importance of the land and traditional practices at sites on or proximate to the facility their decisions were not

completely inappropriate since they at least had some degree of scientific and technical rationality validating them. On the other hand, this does not excuse the DOE if considering the two executive orders that prescribe sufficient consideration of the impacts of actions on minority and low-income populations as well as the need to incorporate realistic tribal consultation plans. In my mind, the latter would require working with the tribes and bands in the region to determine what these plans would look like rather than the DOE making all of the decisions about who should be allowed to officially speak on behalf of the tribes and bands. On the other hand, the Guidance documents as defined within the context of the executive orders and the National Environmental Policy Act specifically allow a great deal of leeway in terms of subjective decision-making. This is problematic for public policy, especially in the sense that the Yucca Mountain facility present risks to local populations if indeed the science informing decisions was faulty as some of the commenters indicated in the public participation phase of the EIS process. It is thus this issue that is taken up forthwith in an attempt to examine the merits of the claim about the federal laws surrounding the Yucca Mountain facility continuing the process of colonialism.

The National Environmental Policy Act process, as is clear in terms of the few tribal statements provided, leaves a lot of room for subjective determinations relative to how claims about significant impacts are evaluated even if the courts have sought to clarify the need to look at impacts beyond current uses and evaluate harm in that context. Thus, if one does not consider the uses of land from a tribal perspective nor their beliefs as relevant and subject to harm, one certainly is not going to consider such issues within

the sense of warranting changing what is essentially considered a scientifically and technologically sound policy at least as considered practicable.

But, can the case be made that the Nuclear Waste Policy Act and the overall trajectory of the policy process—especially considering NEPA—has contributed to the continuation of colonialism? What if we complicate the process by stating that the change in the Nuclear Waste Policy Act occurred precisely because officials had increasing concerns about burgeoning stockpiles of waste that were going to cost taxpayers even more money if the government did not meet its mandate to acquire the waste from nuclear power plant operators by a specific date?¹⁰⁰ I think the case can be made and to illustrate my point I would now like to turn to a discussion of implementation of the Nuclear Waste Policy Act and the 1987 amendment, even though the concerns of impacts were aired and discussed during the public consultation process mandated under National Environmental Policy Act for the Department of Energy EIS. Before doing so, though, it is worth noting that my concern is not with the Nuclear Waste Policy Act, per se, but with the subsequent amendment that substantially changed when public participation and consultation would occur during the policy process. Understanding this issue and the twists and turns taken by nuclear waste policy over the years is of critical import for addressing whether the laws promulgated with regard to nuclear waste effectively offered equal protection to all or only those with the most political power and cultural knowledge to interact at the same level as the politicians. If not, this has implications for tribes—and other interested publics as well—although greatest for the tribes involved both due to their special status and historic relations under colonialism.

Basically, under the terms of the Nuclear Waste Policy Act of 1982, the U.S. was to embark on a process to identify a state willing to *voluntarily* host a permanent high-level waste storage facility or even monitored retrieval storage facilities until a permanent facility for the nation's nuclear wastes could be sited and built. However, this was not to come to fruition easily since the public often lacks the scientific knowledge to make informed evaluations of the risks affiliated with nuclear wastes and, as a result, fear often makes people risk averse such that they reject siting waste facilities in their midst.

Another facet of the siting dilemma is the issue of equity: communities who did not rely on nuclear energy or who feel like they already bear a disproportionate burden due to their proximity to the nation's nuclear industrial complex question why they should be asked to do more. Since it seemed that there was not going to be a voluntary resolution to this crisis, Congress amended the Nuclear Waste Policy Act in 1987. The amendment altered the siting process to include a provision that would allow Congress to mandate where a permanent facility would be located, although the process to site monitored retrieval storage facilities was to remain voluntary. The caveat, however, was that the amendment stipulated that no monitored retrieval storage facility could be built until a permanent facility was licensed—Yucca Mountain in Nevada was the site designated by Congressional fiat for the permanent facility.

With the amendment in place, the federal government was certain that the provision for the voluntary siting of temporary monitored retrieval storage facilities would not be problematic since any community who hosted a site would receive a variety of benefits and there was also a belief that hosts for an monitored retrieval storage facility surely would not be considered for a permanent site since Yucca Mountain was already

designated. The nature of these benefits was to be determined by the host communities.

According to Rajeev Gowda and Doug Easterling,

[t]he voluntary approach was thus expected to satisfy the criterion of economic efficiency. It was also expected to address the main non-economic obstacles to the siting of noxious facilities: adverse perceptions of the risks involved (sometimes heightened due to perceived lack of control), lack of community participation, lack of trust in the managers of the facilities, and concerns over the fairness of both the procedures used to choose sites and the eventual outcomes.¹⁰¹

The process for identifying temporary sites was to be headed up by the Office of the Nuclear Waste Negotiator and was to satisfy the following conditions: “(1) the process must be truly voluntary, (2) requests for information and preliminary discussion would not be viewed as a commitment to proceed further, and (3) all dialogues were terminable at the will of the prospective hosts.”¹⁰² An additional constraint was that potential host states had to invite the negotiator to the table rather than the other way around, with the governor of host states endorsing negotiations regardless of being the initiating party. In terms of Native nations who were interested in the process, the negotiator would only consent to discuss a monitored retrieval storage facility if an elected tribal representative made the request. This alone seems questionable in light of the fact that not all members of tribes respected the mandate of the Indian Reorganization Act that tribes would set up councils, develop constitutions, and then have the BIA approve so-called tribal decisions. Yet, it was such councils that could make decisions about a potentially harmful activity without full consent of the tribes and this was not the traditional way of doing business for the tribes. This is exactly the situation that has

plagued many of the tribes who originally invited the negotiator to entertain tribal requests for consideration to host a monitored retrieval storage facility. In addition to the benefits offered to host sites, the negotiator offered research and development funds for potential host sites so they could obtain the necessary scientific information to make an informed decision about such facilities, as well as affording potential hosts the right to say no even after entering into negotiations up until the time that the terms of an agreement were submitted to Congress.

While it seemed that the terms of the process would encourage different locales to compete for the right to host a site, this was not the case. The result was that the “political, environmental, and ideological connotations of hosting a nuclear waste storage facility overshadowed any possible economic benefits under the negotiators program.”¹⁰³ As a result, of the handful of counties that entertained the idea of hosting a facility, all were blocked in the initial solicitation phase or during the Phase I study phase either by their governors or staunch opposition from the public in the respective states, which hastened the governor’s withdrawal of consent. The implication of this failure to find any serious takers was severe since the government had an obligation to take possession of the wastes from the nation’s nuclear power plants whose on-site storage facilities were rapidly filling up by 1998, and here it was nearing the end of the 1990s and neither a permanent site was licensed nor a monitored retrieval storage site chosen and built.

What options were left? Native Americans seemed to be the only remaining viable alternative for hosting sites since they “enjoyed a level of sovereignty that precluded interference from state-level officials”¹⁰⁴ who were the primary inhibiting factors to date in terms of effectively siting nuclear waste facilities. Thus, in 1991 the

negotiator violated his policy and actively *invited* Native nations to indicate what it would take for them to host an monitored retrieval storage facility. It is here where the issue of sovereignty truly becomes blurred and actually begins to take on the appearance of constituting what might be considered environmental justice or social equity issues. At the root of the problem is the fact that the terms of the deal would include money and other types of benefits that would be very enticing to Native nations who have been plagued by centuries of devastating *legal* infringements on sovereignty and efforts toward self-determination that jeopardized cultural viability and the health, safety, and overall well-being of many tribal nations. This includes both in terms of lost land and royalties from resources on remaining lands to no real funding for programs to assure the health, safety, and welfare of Native peoples. And indeed this proved to be the case according to Gowda and Easterling who state “the Negotiator’s Office spent much of its time responding to the interest that various tribal councils showed in *acquiring economic benefits* [my emphasis] in return for hosting the facility.”¹⁰⁵

Overall, the negotiator received applications for Phase I study grants from 20 tribes compared to only four counties whose governors eventually precluded them from proceeding with negotiations. Of the 20 tribal applicants, 12 potential hosts received Phase I study grants and five tribes went on to request Phase II study grants; four additional tribes joined the process during Phase II.¹⁰⁶ Despite appearances, however, not all was going well. The states where tribes were offering to host monitored retrieval storage facilities sought to abridge the rights of tribes to negotiate in this process despite their sovereign authority to do so as nations. What is most interesting about this issue is the fact that the federal government intervened in this process reminding the states that

this authority was not in their purview.

This is hypocritical in the sense that the U.S. does not historically rule favorably on tribes' behalf on issues relating to sovereignty thereby begging the question of how much the federal government saw tribal interest in this domain as serving the larger self-interest of the U.S. and protecting a specific class of citizens that were not part of Native nations. This point notwithstanding, this situation thus became a contest over state versus tribal rights and what played in tribes' favor was a constitutional constraint on states in terms of their relations with tribes as expressed by the reserved rights doctrine.¹⁰⁷ David Wilkins and K. Lomawaima state that

reserved rights are those rights that a tribe never expressly surrendered or gave up. Importantly, *all rights* are reserved except those specifically given up in a treaty or similar agreement. Tribes do not exercise rights because Congress granted them rights. Tribes exercise rights based on their original and indigenous sovereignty ... Congressional and state claims to the contrary, tribal sovereignty and tribal rights do not arise from Congressional action [except when, I might add, that interpretations of the U.S. interest require it].¹⁰⁸

The tribes who remained involved in the process for the most extended period of time include: the Mescalero Apache (New Mexico), the Prairie Island Indian Community (Minnesota), the Skull Valley Band of Goshutes (Utah), the Eastern Shawnee Tribe (Oklahoma), the Fort McDermitt Paiute Shoshone Tribe (Nevada and Oregon), the Miami Tribe (Oklahoma), the Ute Mountain Ute Tribe (Colorado), the Tonkawa Tribe (Oklahoma), and the Northern Arapahoe Tribe (Wyoming).¹⁰⁹ Only the Skull Valley Band of Goshutes, the Fort McDermitt, and Tonkawa tribes remained involved after

another change in policy was enacted in 1993 at the request of the potentially affected states—this change obliterated the study grant funding program.¹¹⁰ One of the instigators was Senator Bingaman of New Mexico who worked to draft legislation that would remove the incentive structure for drawing groups into the facility siting process. Hence, most of the tribes did not remain active participants in the federal process after this point in time because the state and federal policy processes were not favorable to the choices tribes were making and would not assure economic viability, nor were the decisions consonant with many of the tribal members not in leadership positions.

Nonetheless, this did not stop two tribes—both the Mescalero Apache and the Skull Valley Band of Goshutes (who are Shoshone although recognized as a separate entity)—who entered into private negotiations with a consortium of energy producers in an attempt to exert their sovereign authority and to provide the means for self-determination after their withdrawal from the federal siting process. This decision was not without its own problems, however, with opposition to the plans of the tribal councils coming from two sides: from the states in which the tribes reside and from more traditional factions within the tribes themselves. Another issue is the bottom-line for why both the Mescalero and the Goshutes opted to participate in this process and remained involved as long as they did. It is my contention that the participation of both tribes bespeaks the nature of non-Native and Native relations as imbued by a history of internal colonialism that, in this case, addresses the issue of nuclearism as put forth by Kuletz, as well as being environmental and social justice issues specifically. I take these issues up forthwith beginning with the assertion that Mescalero involvement in the monitored retrieval storage siting process was an effort to affirm their sovereign right to engage in

economic self-determination, as is also the case for the Goshutes. On the other hand, while the reasons that both tribes participated had similar beginnings due to the conditions of possibility in terms of intergovernmental relations, I contend that the Goshutes stayed involved because of something even more heinous: they had no other choice due to the nature of internal colonialism that they faced and the toll it took over time and the fact that the option of courting tourism and gambling were not viable options for them as they were for the Mescalero.

Just what are the issues? A review of the literature shows that while the Mescalero appeared sincere in their quest to bolster their economy, their interest may have been part of a larger ploy. The Mescalero seemed mostly interested in engaging the U.S. government in a battle of wills over the right to participate in political and economic activities as fully sovereign and self-determining nations to assure their cultural survival. I say this because, in reality, the tribe has a vast array of opportunities and resources at their disposal already to ensure their economic viability and, thus, did not really need a monitored retrieval storage facility. Specifically, they have a large resort that caters to tourists and thereby provides support for the tribe. Yet, on the other hand, if one considers the process in which decisions were made in terms of the monitored retrieval storage siting issue, it also seems that a part of the tribe—the tribal leadership—had essentially been co-opted into embracing the framework set up by those who had once colonized them by joining the fray of capitalistic entrepreneurialism. Further, despite seemingly acting on their own behalf, tribes were under the watchful gaze of the BIA who was charged with interpreting the rules of the game as a representative of the U.S. to protect the nation's self-interest, which should also, ostensibly, protect tribes' interests as

wards of the federal government. In this context I must ask: to what extent did the Mescalero tribe really act as a sovereign if the designee of the U.S. government—the BIA—had a right to define and approve the terms of discourse on this issue? This same question holds for the Goshutes, and others, as well.

This is not the only issue, however. There is more to this story as I alluded to earlier. While the Mescalero tribal council believed or at least indicated that they were acting in the interest of their people, others within the tribe believe this is not the case since the tribal members not closely affiliated with the council rarely, if ever, were made privy to either the federal monitored retrieval storage negotiations nor the private negotiations that followed after the tribe withdrew from the federal siting process. Thus, what emerged was not just a contested terrain of discourse that involved the terms in which non-Natives and Natives interact in this policy domain, but we also see a level of intratribal contestation whereby some members of the tribe, as often articulated by Rufina Laws, did not want to continue to be colonized by the U.S. Laws indicates it “was not just clan against clan or families against families, it was within the family units themselves. Older generations against younger generations. Everybody had made a decision as to which side of the issue they stood on and it caused a lot of friction.”¹¹¹

In light of this and the fact that many tribal members did not know about siting negotiations until decisions had been made, there was no reason to doubt continued nuclear colonization, especially since Congress annulled the funding that could have supported efforts to assure the monitored retrieval storage facilities were safe, but would also help increase tribal knowledge and awareness about the issue before them. Nevertheless, without the funding, tribal members felt ill-prepared to deal with such a

potentially hazardous activity as storing some of the wastes produced by the nuclear industrial complex. Further, there was a great deal of uncertainty about whether the federal government would provide any real support once this process was a done deal, especially if there was an accident. This is a very realistic concern since it was not as if the tribe—or any tribe for that matter—had had completely positive relations in terms of assurances that the health and well-being of their peoples would be taken care of after assimilation and efforts to terminate tribal status, nor in the era of self-determination. But support was what was needed by tribes facing erasure in a world that was not entirely of their making.

This latter issue also emerged in the Goshute siting controversy, although the circumstances were slightly different since the Goshute's future was not as certain compared to that of the Mescalero and remains equally uncertain to this day. The Goshute's have been enmeshed in a complex web of environmental, political, and social injustices that have limited their conditions of possibility for assuring cultural survival into perpetuity. The lands upon which the Goshutes reside have been contaminated by years of use by various groups in support of military weapons development and testing activities, and the concomitant storage and disposal of the hazardous wastes used in these activities such that the land is not useful for traditional agricultural practices. Additionally, since tribal lands lie within the confines of the State of Utah, the Goshutes have little hope of engaging in gaming activities because the state leadership tends to be Mormon and does not support such activities. Consequently, the Goshutes feel they have little recourse but to take on activities of this sort as a result of having few options

available to them to assure economic viability and cultural survivance within their homelands.

However, this issue is difficult to reconcile with the fact that traditional teachings of the Goshutes, as well as many other Native nations, view aspects of things nuclear—manmade things particularly—as “a violation of nature, [and] an monitored retrieval storage facility would likely carry this same sense of impropriety.”¹¹² Native nations hold that land is sacred and must be protected—land represents a fundamental aspect of Native cultures. But what is perhaps most critical to recognize from this respect is that when Native peoples lose their land they feel a loss in the sense of their identity that cannot be passed on to future generations. It is this aspect of *remembering* that Alfred speaks of in terms of being Native and passing on the spirit and worldviews that support the traditions making Native peoples who they are.

To take up the second issue surrounding nuclear waste, I want to take a moment to briefly consider the debate about the designation of Yucca Mountain as the *only* permanent HLW repository to be considered after the 1987 amendments to the Nuclear Waste Policy Act. While no one really had a say in this issue other than the federal government, including the State of Nevada who, to this day, is still fighting against the siting of this facility in its midst, there is a particular feature of this siting decision that plays decisively in perceptions of the U.S. government’s willingness and ability to abide by its own prescriptions both in terms of treaties and laws. As already discussed, Yucca Mountain is known as Snake Mountain and is part of the Western Shoshone nation in addition to being a place of great spiritual significance for both the Shoshone and Paiute tribes. But perhaps more important than the cultural import of Yucca Mountain to the

Shoshone and Paiute is the fact that the Shoshone do believe they have a right to the land upon which the federal government has sought to locate the repository against the wishes of the Shoshone and, hence, without their permission despite judicial interpretation and the fact that it is difficult to uproot Euro-American settlements *ex post facto* as the courts concurred.

In this context, then, there is *prima facie* evidence that the U.S. government is acting in contradiction of their own tenets when it comes to dealing with nations with whom they have a treaty and in terms of the laws promulgated. This is nothing new since tribes have typically had tenuous relations at best with the U.S. since the U.S. government has often changed the terms of engagement with Native nations when it is in their self-interest to do so as evidenced throughout U.S. history throughout the periods of alliances, warfare, and treaties; to the era of removal; reservations; assimilation; reorganization; termination and relocation; and finally the era of self-determination. But, as will be shown in the next section, these tendencies are not just relegated to specific periods in history. On the contrary, changes have also occurred within specific public policies as already broached with the Nuclear Waste Policy Act and the course Congress took to change this from a public and voluntary siting process to one that mandated a site in the amendments to the Nuclear Waste Policy Act. While the Western Shoshone and their close kin—the Paiutes—were not the only ones affected by this change, they were the ones least able to participate effectively in what was left of the so-called public side of the discussion about how to address the growing reality of Yucca Mountain during the EIS process and it is this issue that I now focus on in Chapter Five.

CHAPTER FIVE
DEFINING IDENTITIES:
PUBLIC PARTICIPATION & SHARED INFORMATION—
STAKEHOLDERS IN THE YUCCA MOUNTAIN POLICY DEBATE

By delving into individuals' comments and the responses of Department of Energy officials responsible for developing the Environmental Impact Statement (EIS), I hope to show that much of the interaction that occurred between the Western Shoshone and the Department of Energy does not reflect a respect for government-to-government relations but rather casts the Western Shoshone as regular citizens no different from anyone else residing in Nevada. Despite their status as federally recognized tribes, the Native peoples interacting with the Department of Energy have to fight for recognition just as in past relations. This is not what the law states, however, and the Department of Energy must comply by considering the input of Native peoples. But the question is what those relations really looked like in the Yucca Mountain debate. Specifically, was there a real dialogue or were the tribes treated like any other individual or group who are expected to attend public hearings to voice concerns? As shall be shown, I believe the latter is predominantly the case based on common claims throughout the Comment-Response document discussed in this chapter. I believe this happened for one of two reasons.

The first is based on the fact that the Department of Energy did not believe the Western Shoshone had a valid claim to title of the land to be used for the repository and, therefore, did not require such treatment during much of the EIS process unless directly impacted thereby having been granted or having requested "affected tribe" status. The second consideration involves the issue of whether this was a fairly new aspect of

interaction for some of the bureaucrats in charge of the Department of Energy EIS process since minority populations do not tend to get the same treatment as government entities and this is essentially the status of the tribes. While the latter may be the case, this is disconcerting since the Department of Energy should know all of the laws applicable to their work or should have people that keep check to assure processes are implemented correctly in an attempt to try to assure that decisions are beyond reproach. However, I do not believe this is the case. Rather, I believe the Department of Energy just did not see the tribes, officially, as requiring special treatment since they were not “affected Indian tribes.”¹¹³

What I gleaned from my readings of the Comment-Response document is that the nature of relations between the Department of Energy and the tribes was very troubled, with the tribes believing they were left out of the process compared to other government entities like cities, counties, and states. This is also validated by Western Shoshone comments about the Department of Energy relying on what might be considered ‘straw man’ organizations to speak on their behalf, despite the organizations being composed of members of different tribes so specific viewpoints were not emphasized. These organizations include the American Indian Writer’s Subgroup (AIWS) that is part of the Consolidated Group of Tribes and Organizations (CGTO). On the other hand, the Comment-Response documents do show some semblance of deference granted tribes when addressing some issues, but this appears to be a rare occurrence and totally related to the circumstances and issues considered at a given point in time.

Generally, though, there is very little indication of how or when government-to-government relations took place over the Yucca Mountain issue other than at public

meetings since several tribal chairs spoke about this treatment throughout their comments. Thus, it appears that whatever time the Western Shoshone received at public meetings served to reflect the attempt of the Department of Energy to allow the tribes to participate in the decision-making process such that some considered the agency to be in compliance with the letter of the law if not the principles of well-intended consultation. I argue that the relations should have been no different than for other governmental interactions, however, since the lands in question for the repository were still sacred to the Western Shoshone regardless of the argument over title. On the other hand, the Western Shoshone—as well as other tribes—were consulted about some of the resources on the Yucca reservation that might need protection under several specific federal laws such as the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resources and Protection Act (ARPA).

At some level, the Department of Energy must have recognized the status of the tribes or did they? If so, was it recognition of relics from the past rather than of modern living cultures? Considering the nature of these laws and what they are protecting, one can easily interpret the act of having tribes identify areas and resources requiring preservation and protection as just one more colonizing tactic that effectively served to erase the living culture of the Western Shoshone by specifically relegating all that is significant to the past. What do the Western Shoshone tribes have to say on the different issues that affect them as a result of Yucca Mountain? How do Department of Energy official's responses reflect their attitudes about the validity of issues raised and how do the responses portray the Western Shoshone as people under the protection and control of

legally recognized self-governing entities separate from local, state, or the federal government?

These issues are considered herein through the lens of the Comment-Response document developed during the Yucca Mountain EIS process, with Western Shoshone comments tending to reflect a Western Shoshone identity, if you will, with a focus on the land and human health and safety at the heart of how they interpreted the issues that impact them. Through this identity, the individual tribes responded to the Department of Energy and stated their case about the problematic nature of the Yucca Mountain repository, the affiliated decision-making process, and the continued colonization of their peoples. Interestingly, this notion does get some airing when the Department of Energy stated in the subsection titled “Areas of Controversy” in the Final EIS that “[d]isagreement exists about the nature of the repository as it might impact elements of the natural and cultural environment that are of concern to Native American tribes.”¹¹⁴ Despite this, the Department of Energy claims to have left no issues unresolved with the completion of the final EIS and went on to request a decision about site designation after having deemed that the Yucca Mountain site was suitable for the purposes intended. The Department of Energy did this because they apparently believed they had

appropriately considered Native American viewpoints by incorporating in the EIS the Native Americans’ own identification of potential impacts to historic and other cultural resources important to sustaining and preserving their cultures. During the preparation of the EIS, the Department of Energy supported the American Indian Writers Subgroup of the Consolidated Group of Tribes and Organizations in its preparation of a separate report, the results of which are

included in the EIS. Based on the results of the report, Department of Energy acknowledges in the EIS that people from many Native American tribes have used the area proposed for the repository as well as nearby lands; that the lands around the site contain cultural, animal, and plant resources important to those tribes; and that the implementation of the Proposed Action would continue restrictions on free access to the area around the repository site. Furthermore, the presence of a repository would represent an intrusion into what Native Americans consider an important cultural and spiritual area. These concerns notwithstanding, Department of Energy and the Consolidated Group of tribes and Organizations recognize that restrictions on public access to the area have been generally beneficial and protective of cultural resources, sacred sites, and traditional cultural properties.¹¹⁵

This is interesting in that it reflects the sentiment that the Department of Energy made a concerted attempt to assemble a group representative of all tribes' beliefs to try to demonstrate that they asked about and listened to concerns despite the fact that tribal opinions on the issues raised were unlikely to make a difference about a decision for site approval. What is problematic, however, is that none of the decisions were based on group-specific information nor consensus at the tribal level thereby negating the province of tribal authority and rights of self-governance. In essence, the Department of Energy chose to treat the tribes as members of a unitary group, which is not their status.

Another issue raised during the EIS process that was specific to the Western Shoshone involved the treaty issue. However, the Department of Energy chose to ignore any issues raised about tribal title to the land based on the Supreme Court ruling that title

had been extinguished because payment had been made for the taking even though the Western Shoshone denied the settlement and had not claimed the money on its own behalf. Basically, they had not agreed to the decision or settlement and the Bureau of Indian Affairs ended up accepting the money on their behalf based on legislation pushed by Senator Harry Reid (NV) to try to put the issue to rest. Thus, the land issue was not truly settled despite the fact that the U.S.—and hence, the Department of Energy—believed they had dispensed with the matter.¹¹⁶ Regardless of the settlement pertaining to title to the land, land is still important for how it was used by the Western Shoshone both traditionally and in modern times, and that makes land integral to their culture and lifeways.

Consequently, considering the cultural facets of the land and the role played in Western Shoshone life, the Department of Energy said they would do their best to avoid such areas to the extent possible. But, in the event they would be disturbed, they would conduct a data recovery program in cooperation with tribal representatives and other appropriate officials and would document the findings. Artifacts and knowledge from the site would be preserved. Improved access to the area could lead to indirect impacts, which could include unauthorized excavation or collection of artifacts. Training, which is ongoing during site characterization activities, would continue to be provided to workers on the laws and regulations related to the protection of cultural resources.¹¹⁷

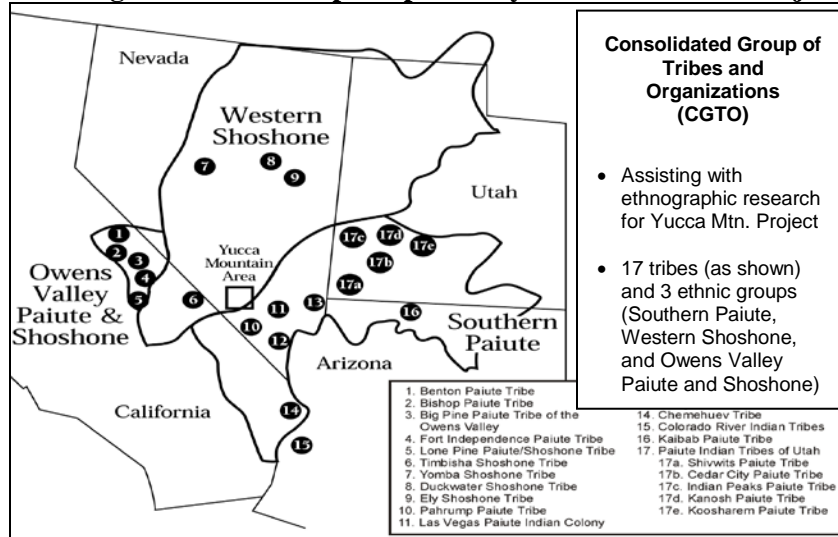
Despite the fact that the Department of Energy indicated that the knowledge and artifacts would be preserved for posterity, they did not address the ramifications of their actions from the perspective of the tribes to whom the artifacts and history mattered and why it

was important to them to have them left where they belonged and to have access. It is also interesting that such actions are inconsistent with laws about preserving cultural sites of significance to Native Americans and despite the recognition by Department of Energy officials that these groups¹¹⁸

value the cultural resources in the area, viewing them in a holistic manner...Because of the general level of importance attributed to the land by these Native Americans, and because they regard the land as part of an equally important integrated cultural landscape, these Native Americans consider the intrusive nature of the repository to be an adverse impact to all elements of the natural and physical environment. The establishment of the land withdrawal boundary and construction of the repository would continue to restrict their free access to these areas.¹¹⁹

Not only would access be restricted resulting in a loss of functional sites of cultural significance, the tribes also feared the construction of the repository would “result in an irreversible impact to traditional lands.”¹²⁰ The fact that the Department of Energy seems unwilling to consider the importance of maintaining access and the actual physical integrity of all of the sites of significance is a personal affront to many Western Shoshone especially considering the size of the area they consider to be their homeland (see Figure 2).¹²¹

**Figure 2: Map of Traditional Native American Lands
Showing tribes and Groups Impacted by Yucca Mountain Project**



(From www.ocrwm.doe.gov; "Update on Tribal Activities," January 31, 2007))

Public Participation in the EIS Process

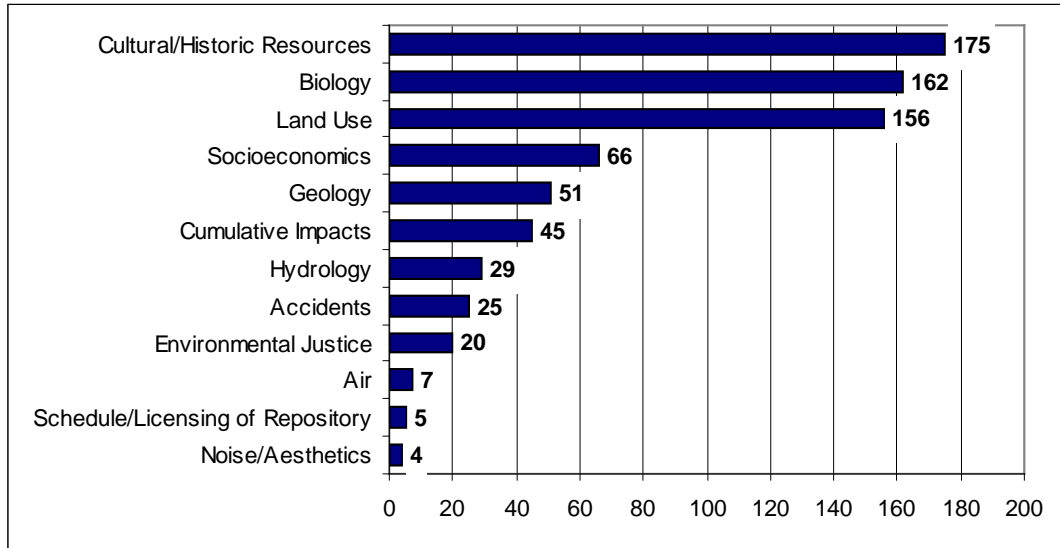
As stated in the review of the National Environmental Policy Act and the Nuclear Waste Policy Act and its amendments, public participation is a cornerstone for assuring that the costs and benefits of a policy do not disproportionately affect different populations of stakeholders while also enabling public concerns and information about policy to be aired. Such issues are especially important when considering impacts to the quality of the human environment and how they affect minority and low-income populations, which is the crux of the environmental and social justice movements. Leaders of both movements actively strive to keep minority and low-income populations from being subjected to the burdens of hazardous and toxic facility siting policies that pose risks to these populations while providing commensurate benefits to wealthier populations. However, while the actions of such groups are laudable, there are several issues that make these efforts problematic when they occur on behalf of Native nations.

Because they have been perpetually colonized and, therefore, their lives have been continually under scrutiny and controlled by others, having someone take up their battles without truly understanding who they are as people and nations does not often sit well with Tribal peoples. This notion has been mentioned by numerous Native peoples and was evident throughout the Yucca Mountain EIS comments. While assistance expressing issues of concern on the behalf of others is often deemed acceptable by many groups, Native peoples can find this troubling since it tends to perpetuate old stereotypes about not being capable of managing their own affairs. Nevertheless, the Department of Energy did try to develop a strategy for consultation with Native peoples that led to groups of individuals—not necessarily in the vanguard of tribes—speaking on behalf of tribes while at other times some tribes were not represented in the groups at all and some individuals felt they had to step up and speak on their own behalf. This is not the same as not being represented at all, however, and this is a positive finding about how the EIS process was implemented. In other words, some official interaction is better than none if that is all that you are offered.

The topics emerging from the public scoping meetings were varied and ranged from the very broad to being more specific, with the top ten of the 21 categories emphasizing transportation, National Environmental Policy Act, site performance assessments, health and safety, proposed actions and alternatives, general policy issues, mitigation assistance, program and project costs, and cultural and historic resources. Figure 3 shows the ranked ordering of the issue categories by number of comments received from all sources during the scoping process.¹²² Fifteen public scoping meetings

were held from August through October, 1995 with a total attendance across meetings of 785 people that accounted for 242 verbal comments.

Figure 3: Top Ten Public Scoping Meeting Issue Categories—Repository EIS¹²³



What is most interesting about the categories is not the issues themselves, but the structure in which they were categorized from the perspective of utility. For instance, the single biggest category is for “general policy issues” with a count of 1,257 comments; two other large (but very generic) categories are for the “National Environmental Policy Act Process” (801) and “Policy” (323). The first of these generic categories includes 16 sub-issues that cross categories with other topics like “National Environmental Policy Act Policy,” “Policy,” “Proposed Actions/Alternatives,” “Environmental Justice,” “Land Use,” “Transportation,” and “Program/Project Costs.” A similar trend was seen when perusing the issues covered under the National Environmental Policy Act and General subtopics, thus the concern is the extent to which any of these three categories should be relied upon for their substantive merit when the other categories might better reflect the character of the public comments. On a positive note, it was encouraging to see so many

other topics of a substantive nature emerge from the scoping meetings, not the least of which are topics of concern to Native nations and others facing having the proposed repository in proximity to their homes and workplaces.

Several other issues also emerged during the scoping meetings that are of particular importance to the Western Shoshone. These include the need for regular consultation and require developing effective government-to-government relations, addressing land use concerns, environmental justice issues, transportation impacts, threats to public health and safety, protecting Native American cultural and historic resources, and minimizing socioeconomic impacts.¹²⁴ On the other hand, it was off-putting to see that many of the concerns that specifically related to Native Americans were dismissed as not being salient issues within the context of the Yucca Mountain policy debate. I am unwilling to concede this point, however, because all of the issues relate to preserving one's way of life and Yucca Mountain would certainly have impacts within this context. This occurs by virtue of limiting access to places of significance, cultural artifacts, plants used for medicines and sustenance, and animals for both food and traditional clothing—which are, historically, characteristics of colonizing tactics deployed against Native nations.

Western Shoshone Participation in the EIS Process

The coding rubrics used for summarizing the roughly 11,000 comments received during the EIS process were consistent with the system devised during the scoping process, although some topics were grouped into thematic areas for ease of reporting in the final Comment-Response document. The Final EIS was broken down into four volumes that can be found online, in print form at various locations—like libraries and

reading rooms—or as compact discs (CD) that can be obtained from the Department of Energy. The document has the following structure:

- Readers Guide and Summary
- Volume I – Impact Analyses, Chapters 1 through 15
 - Chapter 1 – Purpose and Need for Agency Action
 - Chapter 2 – Proposed Action and No-Action Alternative
 - Chapter 3 – Affected Environment
 - Chapter 4 – Environmental Consequences of Repository Construction, Operation and Monitoring, and Closure
 - Chapter 5 – Environmental Consequences of Long-Term Repository Performance
 - Chapter 6 – Environmental Impacts of Transportation
 - Chapter 7 – Environmental Impacts of the No-Action Alternative
 - Chapter 8 – Cumulative Impacts
 - Chapter 9 – Management Actions to Mitigate Potential Adverse Environmental Impacts
 - Chapter 10 – Unavoidable Adverse Impacts; Short-Term Uses and Long-Term Productivity; Irreversible and Irrecoverable Commitment of Resources
 - Chapter 11 – Statutory and Other Applicable Requirements
 - Chapter 12 – References
 - Chapter 13 – List of Preparers, Contributors, and Reviewers
 - Chapter 14 – Glossary
 - Chapter 15 – Index.
- Volume II – Appendixes A through O (technical and supporting information)
- Volume III – Comment-Response Document
- Volume IV – Miscellaneous Information (available upon written request).

Considering the context of this dissertation, my focus is on the information contained within *Volume III – Comment Response Document*. However, to assure my analysis of the topics of interest was complete, I requested a copy of the Final EIS on CD because the CDs contain images of the certified statements obtained by the Department of Energy throughout the EIS process and, generally, each had multiple coded comments within the text that were eventually coded to correspond to the final Comment-Response document. This was beneficial since the original transcripts and letters reflect the emotion of a tenacious people bent on continuing their quest for what they believe is right: the preservation of a living culture. The CDs were also a necessity for validating the coding and categorization of the comments contained within each of the given correspondence

documents due to the subjective nature of interpretation when utilizing data reduction and summarization techniques. In terms of the physical structure of Volume III, it is similar in nature to the main volumes of the Final EIS although there was some variation in how themes were organized.

Nevertheless, it is easy to understand the logic behind the broad categories that define the chapters in the Comment-Response document despite the fact that common subtexts inherent to each category traversed other chapters so the information was somewhat redundant at times. It was perhaps this aspect of the final document that made it appear confusing to some, especially if topics were mentioned in the Comment-Response document that referenced a different thematic chapter in the main document.

The thirteen chapters in the Comment-Response volume are as shown:

- Chapter 1 – Proposed Action
- Chapter 2 – Nuclear Waste Policy Act
- Chapter 3 – National Environmental Policy Act
- Chapter 4 – Other Legal, Regulatory, & Policy Issues
- Chapter 5 – Alternatives
- Chapter 6 – Spent Nuclear Fuel and High-Level Radioactive Waste
- Chapter 7 – Repository Design, Performance, & Affected Environment
- Chapter 8 – Transportation Modes, Routes, Affected Environment, & Impacts
- Chapter 9 – No-Action Alternative
- Chapter 10 – Cumulative Impacts
- Chapter 11 – Impact Mitigation and Compensation
- Chapter 12 – Department of Energy Credibility
- Chapter 13 – Comments Outside the Scope of this EIS

Turning to the comments themselves, as mentioned, the Department of Energy received more than 11,000 comments during the EIS process; the certified comments are provided in the final electronic document as well as summarized and responded to in Volume III of the main document.¹²⁵ Correspondence was reviewed from 10 tribal or Western Shoshone-based organizations and one composite Native-based organization

(which included representatives from Western Shoshone tribes). These include the following: the Battle Mountain Band of Te-Moak Western Shoshone, the Duckwater Shoshone, the Ely Shoshone, the Shoshone-Bannock, the Timbisha Shoshone, the Western Shoshone, and the Yomba Shoshone. In contrast, the broader Western Shoshone-based groups include the Western Shoshone National Council, the Shundahai Network, and the Western Shoshone Defense Project, while the composite Native-based organization—the Consolidated Group of tribes and Organizations (CGTO)—includes members from 17 tribes or groups within the Great Basin.¹²⁶

Overall, the documents reflect 17 individuals making comments on behalf of these 11 tribes and groups with a total of 41 letters or statements having been submitted that were broken into 227 coded themes.¹²⁷ It should be noted that two of the individuals have dual affiliations as representatives of two different groups. Corbin Harney provided correspondence on behalf of the Shundahai Network and the Western Shoshone people in his role as a Western Shoshone spiritual leader and activist. In contrast, Carrie Dann represented the Western Shoshone Defense Project and the Western Shoshone people as a trusted elder and a principal litigant in several court cases having to do with the Treaty of Ruby Valley case and other types of violations impacting the Western Shoshone as a result of promises broken with the unilateral abrogation of the treaty by the U.S. The distribution of the coded comments—based on the respective chapters in the comment-response document—is shown in Figure 4. As is evident in the Figure, issues falling in the domains of Chapters 3, 7, and 8 received the greatest mention, although all chapters had at least one comment from among the Western Shoshone tribes and groups responding during the EIS process.

Figure 4: Distribution of Coded Comments by Chapter in Rank Order

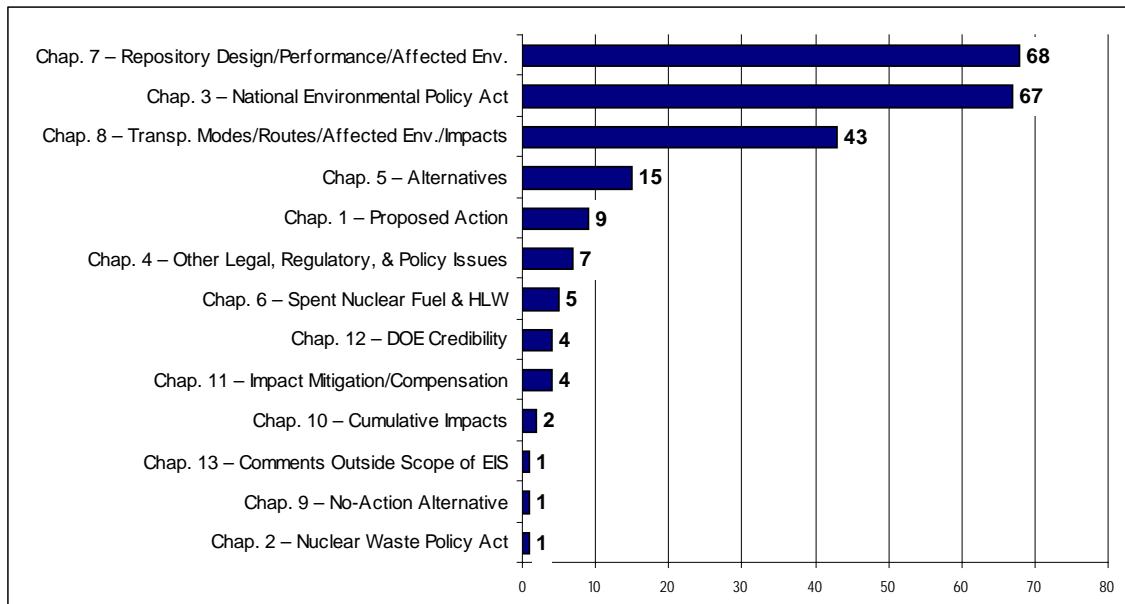


Table 1 shows the number of coded comments for each chapter of the Comment-Response response document broken out by tribe. Overall, the data indicate that the Timbisha and Ely Shoshone tribes had the largest number of comments followed distantly by the Shoshone-Bannock Tribe. The Timbisha Shoshone comments primarily focused on implementation of National Environmental Policy Act (28 comments); issues surrounding repository design, performance, and the affected environment were a close second (21 comments). Among the Ely Shoshone, emphasis was on transportation modes, routes, the affected environment, and transportation-related impacts; repository design, performance, and its impacts were second; and National Environmental Policy Act was a close third.

**Table 1: Number Of Coded Comments
by Chapter and Tribe**

	BM-TMk	DW	Ely	S-B	Timbisha	WS	Yomba
Chap. 1 – Proposed Action	0	0	2	0	3	0	0
Chap. 2 – Nuclear Waste Policy Act	0	0	1	0	0	0	0
Chap. 3 – National Environmental Policy Act	0	1	8	4	28	3	1
Chap. 4 – Other Legal, Regulatory, & Policy Issues	0	0	1	4	2	0	0
Chap. 5 – Alternatives	1	0	2	0	3	0	0
Chap. 6 – Spent Nuclear Fuel & HLW	0	0	2	2	0	0	0
Chap. 7 – Repository Design/Performance/Affected Env.	1	0	11	4	21	1	0
Chap. 8 – Transp. Modes/Routes/Affected Env./Impacts	0	0	21	1	4	1	0
Chap. 9 – No-Action Alternative	0	0	0	1	0	0	0
Chap. 10 – Cumulative Impacts	0	0	0	0	1	0	0
Chap. 11 – Impact Mitigation/Compensation	0	0	2	0	0	0	0
Chap. 12 – Department of Energy Credibility	0	0	0	0	0	0	0
Chap. 13 – Comments Outside Scope of EIS	0	0	0	0	0	0	0
Total	2	1	50	16	62	5	1

The second table (Table 2) offers another perspective, although at the group level.

It is worth noting that three of the four organizations shown are interrelated entities representing a narrower Western Shoshone viewpoint compared to the Consolidated Group of Tribes and Organizations who represents 17 tribes and groups from within the Great Basin. Specifically, the Shundahai Network and the Western Shoshone Defense Project were formed around the time of the Western Shoshone National Council to counter a variety of issues working to erase the Western Shoshone people—via the continuing process of trying to separate Native peoples from their lands and culture—although each of the groups utilized different methods in their advocacy efforts.

**Table 2: Number Of Coded Comments
by Chapter and Organization**

	WSNC	Shundahai Network	WSDP	CGTO
Chap. 1 – Proposed Action	0	2	2	0
Chap. 2 – Nuclear Waste Policy Act	0	0	0	0
Chap. 3 – National Environmental Policy Act	5	2	7	8
Chap. 4 – Other Legal, Regulatory, & Policy Issues	0	0	0	0
Chap. 5 – Alternatives	0	6	2	1
Chap. 6 – Spent Nuclear Fuel & HLW	0	1	0	0
Chap. 7 – Repository Design/Performance/Affected Env.	5	10	8	7
Chap. 8 – Transp. Modes/Routes/Affected Env./Impacts	0	4	2	10
Chap. 9 – No-Action Alternative	0	0	0	0
Chap. 10 – Cumulative Impacts	1	0	0	0
Chap. 11 – Impact Mitigation/Compensation	0	0	0	2
Chap. 12 – Department of Energy Credibility	0	4	0	0
Chap. 13 – Comments Outside Scope of EIS	0	0	1	0
Total	11	29	22	28

Generally, the Western Shoshone National Council might effectively be considered the main governing body for the Western Shoshone Nation in its quest to preserve its land and protect the cultural integrity of the Western Shoshone people through domestic and international courts and organizations. The major concerns for the Western Shoshone National Council were National Environmental Policy Act issues and the subsection examining repository design, performance, and environmental impacts. In contrast, the Shundahai Network is a Western Shoshone activist organization that was run by Corbin Harney, a well-respected spiritual leader, who spent his time promoting environmental (and nuclear) justice issues by making sure indigenous voices were not ignored; he did this with the assistance of Native and non-Native disarmament activists until his death in 2007. The Shundahai Network commented predominantly on repository design, performance, and environmental impact issues. The Western Shoshone Defense Project is a similar type of organization run by Carrie Dann, a well-respected Western Shoshone elder, that has tried to use non-violent civil disobedience and legal action to gain a voice in discourse and to protect Western Shoshone land rights because fair and

equal treatment have not typically been perceived to be the standards guiding U.S.-Native interactions as specified under the trust doctrine. While the Western Shoshone Defense Project comments were organized across several topics, the two biggest issues were repository design, performance, and environmental impacts and National Environmental Policy Act. Considered in aggregate, through the three broad-based Western Shoshone organizations, the Western Shoshone voice was virtually as prolific in responding to the EIS as the Ely and Timbisha Shoshone tribes. Finally, the Consolidated Group of Tribes and Organizations originally began under the Native American Interaction Program (NAIP) at Nellis Air Force Base, but the organization was continued and was asked to assist with research intended to locate and understand the character of the various cultural resources found throughout the area so that they may be preserved and protected despite the fact that the Consolidated Group of Tribes and Organizations stood in opposition to the Yucca Mountain project.

Native Voices in Context and the Bureaucratic Response

The Comment-Response phase of the EIS process is an interesting exercise in a complex policy process, let alone in one like for Yucca Mountain where emotions and historical events seem to play a major role in defining the character of reactions and interactions. This is especially true in the comments provided by the Native peoples involved in the process. On the other hand, this is not unexpected considering the history of U.S.-Native interactions. This section focuses on this side of the process by elaborating on the nature of the comments provided by Western Shoshone participants at both the tribal and extra-tribal levels and how they compare to the composite responses provided by the Department of Energy. By utilizing this tack, I hope to better understand the differences in response, if any in this situation, compared to historical interactions as the

degradation of Native peoples, and lack of respect for the trust doctrine and what is entailed of the U.S. government with regard to tribes as their trustee, continue to affect the Western Shoshone and other Native nations even in the 21st Century. To this end, the balance of this chapter focuses on pronouncements from both sides of the process—public versus U.S. government—with most of the discussion and theorizing about what all of this means occurring in Chapter 6 to conclude this discourse.

This said, I do have one thought that needs to be articulated here rather than in Chapter 6 before shifting to consideration of the comments and responses. Basically, the U.S. government—via the Department of Energy—should show greater deference to the feelings and opinions as expressed by the Western Shoshone in their comments if indeed the U.S. was actively trying to resolve the conditions that degrade tribes while at the same time trying to overcome the troubled past of colonialism. However, if the responses appear to reflect defensive posturing and a recitation of stock answers about the need to comply with U.S. laws and regulations regardless of the comments, then it would appear that beliefs about the arrogance of the U.S. government with regard to tribes would be vindicated while also reflecting a continuation of colonialist rhetoric. This would, consequently, be an indication that there is little hope for resolving the level of contention surrounding policy that affects tribes to the degree that the Yucca Mountain issue does without a major change in the nature of how U.S.-Native interactions occur. Such a change would likely require changing the law, I suspect, to transform the terms of discourse and interaction by leveling the playing field so all are on equal terrain.

Comments and Responses: Chapter 1 – Proposed Action

Beginning with the first block of comments and responses, Chapter 1 of the comment-response (Comment-Response) document discusses the “Proposed Action.”¹²⁸

In all, seven comments were received relating to section 1-1—which emphasized the “Purpose and Need for Agency Action”¹²⁹—and two addressed section 1-2 that deals with “Decisions on the Proposed Action.”¹³⁰ In the first group of comments, two emanated from the Timbisha Shoshone, one from Ely, and four were from the two Western Shoshone activist groups (the Western Shoshone Defense Project and Shundahai Network); the second set of comments pertaining to decisions about the action were from the Ely and Timbisha Shoshone. The comments apropos to these two sections reflect the perception among the Western Shoshone that no care was taken in choosing the Yucca Mountain site and that the decision to do so was political since no one else wants the waste near them. The Ely Shoshone Tribal Chairman specifically commented that the reality is that the tribes have to step up to ensure the protection of “public health, safety, and property because U.S. law provides too little protection for the WS people.”¹³¹ He then went on to state that under those circumstances, the Western Shoshone must act on their own authority and that they have an “express reservation of power in freedom of action”¹³² limited only by that which was relinquished to the U.S. government under the terms of the Treaty of Ruby Valley.

This same sentiment was expressed by Corbin Harney from the Shundahai Network when he indicated that the Yucca Mountain repository is poisonous and will not allow people to survive. Perhaps more succinctly, he said

Remember, somewhere we have to think about ourself and then the younger generation that is going to be behind us. If we don't, where are we going? I don't think a rocket ship will ever take us up there to a cleaner, cleaner earth somewhere else. I don't think there's such a thing...Like my people, survive on

this Mother Earth, the nature, for thousands and thousands of years. Today we running out of those things. Someday our mother is not going to give us food at all.¹³³

Harney also commented that the risks, even at 10,000 years, were far more than they should be, especially for Native peoples who would still be in the area long after others were gone and they have a history of radiological exposure due to the Nevada Test Site.¹³⁴

Likewise, Carrie Dann of the Western Shoshone Defense Project had a similar reaction about what she considers the faulty logic used to select the current site and she specifically indicated that it appeared the Department of Energy was “subverting”¹³⁵ the true requirement of a *public* policy process which should, of necessity, attempt to understand impacts of decisions and do something about them. In this vein, she states

With ever increasing skepticism directed towards our Congress and political system, the need for truly open and honest democratic discourse cannot be debated. The DEIS needs to assure the reader that the purpose and need for the project are well reasoned and accurately reflect the reality of the situation.¹³⁶

Pauline Esteves, Tribal Chair of the Timbisha Shoshone tribe also cited fairness issues in terms of the decision that has

ignored or intentionally obscured the real dangers of the project. Environmental justice and risk assessments for the Native peoples in the area either minimally addressed or disregarded and this should not occur. Public hearings do not constitute government-to-government relations and regular consultations need to occur with the Western Shoshone people.¹³⁷

So how did the Department of Energy respond to these claims that expressly speak of equity, fairness, and public policy that is democratic in process while respecting and protecting human health and safety? Basically, the responses were succinct statements indicating that the decision to site Yucca Mountain is based on the “will of Congress” because of its fiduciary responsibility to take possession of the HLW wastes precisely to protect human health and the environment. Further, the Department of Energy also stated that maintaining the status quo by leaving wastes in situ was becoming an untenable solution. Then, in what might be considered a defensive posture, the respondent stated that every decision that has been made about the proposed action took into consideration all available scientific and technical information available and the methods of evaluation met the most stringent of requirements. The Department of Energy even went so far as to make sure it was known that the methods of analysis—in terms of finding ways to effectively isolate HLW wastes to prevent harm—are consistent with accepted standards set forth by the National Academy of Sciences. This point notwithstanding, the Department of Energy then went on to state that they were aware of the need to assure Native peoples that their concerns were being acknowledged and that they were aware of the perceived equity issues due to historical treatment as well as the fact that Nevada already hosts the Nevada Test Site. Yet, the Department of Energy was also quick to point out that Nevadans weren’t above others elsewhere since they use electricity produced from nuclear power plants thereby receiving benefits. Thus, they should not, essentially, cast stones about fairness and hosting a waste facility.

Comments and Responses: Chapter 2 – Nuclear Waste Policy Act

Only one comment addressing multiple issues fell under this topic. The first focused on the potential risks from mismanagement of the facility being too great to risk

future generations, and were considered even more so when throwing transportation throughout the country into the equation. Another concern was that the duration of monitoring the facility after closure was insufficient if 100 years was really the benchmark since the material would be highly radioactive well beyond this time frame. Hence, Jerry Charles expressed his opposition to the facility and that of the Ely Shoshone Tribe as well. The Department of Energy responded that there currently was no set time period for post-closure monitoring of the facility, but that all decisions would be compliant with the regulations promulgated under the Energy Policy Act of 1992. Furthermore, the Department of Energy indicated that regardless of the overall period for monitoring, the “EIS assumed active institutional controls for at least 50 years and possibly more than 300 years under both the Proposed Action and Scenario 2 of the No-Action Alternative” and this was considered sufficient since the impacts during active monitoring were believed to be greater than for the passive phase.

Comments and Responses: Chapter 3 – National Environmental Policy Act

Sixty-seven Western Shoshone comments pertaining to the subcategory of National Environmental Policy Act were processed in the Comment-Response document. The majority were from the Timbisha Shoshone with 28 comments overall; the Ely Shoshone had eight, as did the Consolidated Group of Tribes and Organizations, while the Western Shoshone Defense Project had the next largest array of comments with seven. The Western Shoshone National Council had five, the Shoshone-Bannock had four, the Western Shoshone had three, the Shundahai Network had two, and both the Yomba and Duckwater Shoshone had one. The Battle Mountain Band of Te-Moak Shoshone registered no comments in this area. Generally, the comments all focused on

various aspects of National Environmental Policy Act, including presentation of the Draft EIS, its adequacy, public involvement, received risk and stigma.

Within the broad coding rubrics, the simplest comments ranged from non-compliance with National Environmental Policy Act because the document was unintelligible, confusing, not relying on plain language, being too long, and not having an easy way to compare the summary documents to the larger EIS volume. There were also some concerns about the terminology used, like the labels for tribes; several commenters indicated tribes are not “groups” so they should not be written into the documents as such. More specific concerns that were perceived to have greater impacts than document presentation and organizational issues emphasized a lack of sound guidelines for making determinations about what impacts were considered significant enough to merit evaluation. Within this domain, comments questioned evaluations of ecological impacts based on seemingly unrealistic timeframes (ranging from 100, 1000, or 10,000 years). Other comments focused on the types of impacts that constitute disqualifying events for the Yucca Mountain site. In reference to this issue, Pauline Esteves of the Timbisha Shoshone quoted the Department of Energy’s own work about water at the facility, which states

“About 13 percent of the samples (31 samples) had high enough [chlorine]-36-to-total-chlorine ratios to indicate the water originated from precipitation occurring in the past 50 years (that is, nuclear age precipitation)” (DEIS, p. 3-47). This means that in some places, surface water has rapidly reached the unsaturated zone level where the nuclear waste would be placed.

This in itself is a disqualifying condition according to the current Department of Energy General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories, 10 CFR Part 960: “Disqualifying Condition: A site shall be disqualified if the pre-waste-emplacment groundwater travel time from the disturbed zone to the accessible [environment] is expected to be less than 1,000 years along any pathway of likely and significant radionuclide travel” [10 CFR 960 Sec. 960.4-2-1(d)].¹³⁸

Another concern for the Western Shoshone was the lack of recognition of “affected Indian tribe”¹³⁹ status or how to even make it through the evaluation process to be considered *affected*. Overall, the perception was that this concept is a very subjective determination since all Western Shoshone feel impacted by the process despite the fact that they are already impacted by the Nevada Test Site, yet the government fails to grant official “affected Indian tribe” status in most cases. Along the same lines, since they were not deemed “affected,” the Western Shoshone perceived that the Department of Energy was unwilling to fully consult with them as individual tribes rather than utilizing groups like the Consolidated Group of Tribes and Organizations or those affiliated with the Las Vegas Indian Center. These entities were considered by some Western Shoshone to be groups of convenience established by the Department of Energy to push the Yucca Mountain project forward.¹⁴⁰ One commenter stated that the Las Vegas Indian Center served only about 3% of tribal members and the director was a paid consultant for the Department of Energy, thus, this seemed highly biased and was an improper representation of tribal consultation.¹⁴¹

It was also stated that all federally recognized tribes are independent sovereign governments and entitled to individual consultation on a government-to-government basis.¹⁴² Having failed to do this, the Department of Energy left the various tribes feeling disenfranchised by a process that is supposed to be informed by various publics to ascertain if a proposed action will truly protect the health and well-being of all the people.¹⁴³ This, then, led to the issue of who the project was really intended to benefit. The bottom line in this context is that, as already discussed, the tribes felt left out of the decision-making process because they were considered irrelevant in the grand scheme of things. But, despite each tribe being linked by a similar history and heritage, there are specific aspects of the project that may have differential impacts for each of them so all want to be consulted to voice their positions on the various topics of concern. The mechanisms for providing notice about meetings (in the National Register, postings at libraries, etc.) were also questioned, as well as the process for evaluating stigma and perceived risks throughout the population at home and abroad.

So how did the Department of Energy respond to such a plethora of issues? They did so just as they had done heretofore. In a circumspect manner, they responded that they have done what they could to address the potential for confusion by providing various tables, glossaries and cross-referenced material. They stated that they have also tried to assure that any qualitative or quantitative assessments had sufficient background information to assure that the information was as accurate and reliable as possible. The Department of Energy also made sure that the labels they used were accurate and complied with requests to not call Native peoples groups, but rather tribes. When it came to issues like trying to obscure the reality of impacts—like issues pertaining to

penetration and seepage of groundwater—the Department of Energy stated this situation was not shown to be too problematic in models since it was expected to not be enough to have a “noticeable”¹⁴⁴ impact on the environment or surroundings despite perceptions about the subjective nature of such an assessment. As for the criticism about affected tribes—especially with the issue of transportation incidents—the Department of Energy responded that National Environmental Policy Act did not require full studies of transportation at this time although scoping could consider different routes. The outcome is the same when asked about considering other options to the proposed action since this is not a requirement under the Nuclear Waste Policy Act as amended, thus the Department of Energy stated they were in full compliance with National Environmental Policy Act.

When considering the risks of seepage, just as with many other conclusions reached by the Department of Energy about the site and transportation impacts, the Department of Energy stated the models were deemed valid and reliable while also indicating that nothing would be approved if it did not pass muster with the “Nuclear Waste Technical Review Board as an independent organization in the Executive Branch.”¹⁴⁵ This brought about the response that everything that occurs at Yucca Mountain is based on sound and supported scientific theories and principles and all findings receive independent review by the proper regulatory entities and respected scientists while also complying with all requirements as codified in law. In addition to the Nuclear Waste Technical Review Board, decisions are influenced by respected members of the “National Academy of Sciences, the Environmental Protection Agency, and the

Nuclear Regulatory Commission, [and all of these entities] also recognize the difficulty of understanding the behavior of complex systems over long time periods.”¹⁴⁶

With regard to comments about assessments of perceived risks and associated stigma impacts, the Department of Energy indicated it did not take such comments lightly. Consequently, they said they reviewed a variety of scientific and social scientific studies conducted to date that focused on the Yucca Mountain project or other closely related federal activities and citations for these studies were included as part of the final document. It was also noted that the Department of Energy “reevaluated the independent reviews by the Nuclear Waste Technical Review Board and the State of Nevada, among others, and identified and assessed relevant studies published since the Department of Energy published the Draft EIS.”¹⁴⁷ Perceived risks and the stigmatization of communities were the focus of these studies and the results of the review became part of the official record in the Final EIS. However, the Department of Energy came to the conclusion that stigmatization was difficult to assess quantitatively after conducting qualitative studies surrounding this issue. This led them to concur with social scientists that a quantitative assessment is impossible at this time and probably unlikely even after extensive additional research. The implication is not that impacts would probably be large, but simply difficult to quantify. Social scientists do not know enough to identify what would be the level of concern during the operation of a repository. Similarly, the specific links between attitudes and individual decisions that would have socioeconomic impacts cannot be defined.¹⁴⁸

Comments and Responses: Chapter 4 – Other Legal, Regulatory, and Policy Issues

In aggregate, only six Western Shoshone comments were received that fell into this category. These comments were both technical and regulatory in nature emphasizing issues ranging from how the 10,000 year requirement was determined to when retrieval operations could potentially begin to the storage of wastes from Idaho Engineering and Environmental Laboratory (INEEL). This latter issue was the most salient for the Shoshone-Bannock who are at the greatest risk if HLW is not removed from INEEL and thus they stated that failure to do so would be a violation of the trust relationship because “[a] tribe is ‘entitled’ to rely on the U.S., its guardian, for needed protection of its interests.”¹⁴⁹ And, as is common knowledge as a result of the discussion throughout this treatise, this means reminding the Department of Energy about the importance to Native peoples of preserving and securing a usable tribal homeland for future generations. It was for this reason that the Shoshone-Bannock expressed concern about the impact of the no-action alternative since it might mean that INEEL wastes would remain in their current location. The Department of Energy indicated that they were aware of the issues and their concerns, but stated regardless of what happened with Yucca Mountain they were bound to address other laws and stipulations regarding HLW so the INEEL waste would have to be dealt with somehow.

Comments and Responses: Chapter 5 – Alternatives

In contrast to Chapter 4 of the Comment-Response, Chapter 5 reflected 15 topical concerns in two issue areas. These comments were received from the Ely and Timbisha Shoshone, the Battle Mountain Band of Te-Moak Shoshone, the Shundahai Network, the Western Shoshone Defense Project, and the Consolidated Group of Tribes and Organizations and all of the comments emphasized opposition for the proposed action

and support for the no-action alternative. This is in stark juxtaposition to the comments received by the Shoshone-Bannock tribe who is adamant that the no-action alternative not be accepted because of the implications such a decision would have in terms of HLW remaining near their home at INEEL as already mentioned. Overall, the concerns emphasized that moving wastes throughout the nation posed greater risks than leaving them at the sites of production, while also jeopardizing the safety of Nevadans and others proximate to the state due to volcanism and faulting at Yucca Mountain that could cause a containment breach and contamination of ground- and surface waters.

Another issue brought up was more of an observation that if Yucca Mountain was abandoned then the monies could be used to evaluate other options like emergent technologies that can address growing waste streams and stockpiles better than burying the wastes where they can harm people and the environment. Finally, another comment came from Corbin Harney. Harney presented the resolution developed by the Western Shoshone National Council that stated the requirements for recognition of the Western Shoshone Nation as a “Nuclear Free Zone.”¹⁵⁰ This resolution basically indicates that enough harm has been done to people and the environment from nuclear activities that no more can—nor should—occur in the region; that harm to others throughout the U.S. also should not be tolerated should an accident occur during the transportation of wastes; that other nations throughout the world have joined them in their charge to be nuclear free zones; and that anyone knowingly violating this proclamation on Western Shoshone lands will be fined for their actions.

The Department of Energy thanked everyone for their comments and stated that while they acknowledge the concerns expressed, Congress has mandated that the wastes

be managed by the Department of Energy. Further, they stated that monies could not be legally redirected to other activities despite the desire to do so without congressional intervention via the drafting of new legislation. However, the Department of Energy did acknowledge as well that new options for managing and reducing the footprint of wastes were being examined through other programs that might provide more acceptable solutions to those in opposition to current policy. The final point made by the Department of Energy was that the waste would actually be safer at Yucca Mountain than remaining at production sites because the security and monitoring of such wastes is more easily addressed at Yucca Mountain where the technologies are known and have been deemed the best practicable by notable scientists, including those at the National Academy of Sciences. Lack of space at production sites was also an issue, as was the proximity of many such sites to large population centers contrary to commenter's beliefs.

Comments and Responses: Chapter 6 – Spent Nuclear Fuel and High-Level Radioactive Waste

The comments in this section are fairly benign, with commenters generally questioning the type and amounts of spent nuclear fuel or HLW that will truly move to the repository should it have been approved and licensed. A recurrent theme—both here and in other sections—is whether more than the amount stated would have actually ended up in Yucca Mountain or if the Department of Energy would remain in compliance with the law. This comment was referencing the fact that the site was to only receive 70,000 metric tons of heavy metal (MTH) despite the fact that the current stockpile far exceeds this limit due to failure to find a final resting place for the wastes when first proposed. Another issue is whether the facility would have also taken in “younger” waste—rather than older spent fuel (about 25 years old) that is not quite as toxic—because of the

concern that such waste would have greater impact in an accident both on the road and at the facility.

The Department of Energy was quick to make the point that the 70,000 MTH limit was legislated so any change would, yet again, require a change in the law or another facility would have to be built to assure the amount of space needed was available. In terms of the younger waste, the Department of Energy said younger fuels require different casking and smaller loads that would, therefore, not increase the risk in the event of a transportation accident and a concomitant release of radioactivity. Furthermore, the amount in the inventory is limited. On the other hand, the Department of Energy wanted people to understand that the measurements in the EIS considered “representative” fuel since the two types would be mixed once at the repository. This effectively would help minimize the impact of the younger fuel compared to unmixed loads that are in smaller quantities but remain highly dangerous. The Department of Energy also reiterated that any deviation from the prescriptions in the Nuclear Waste Policy Act, Energy Policy Act, or any other such legislation binding the Department of Energy on the spent fuel and HLW issue would require additional assessments and public comment once such legislation allowing the change was approved. Five comments were received from the Western Shoshone on these issues, including comments from the Shundahai Network, the Ely Shoshone, and the Shoshone-Bannock.

Comments and Responses: Chapter 7 – Repository Design, Performance, and Affected Environment

This section focuses on site-related factors and comments were received for all topics addressed therein. However, 62 of the 68 comments emphasized issues related to the subsection dealing with the affected environment and impacts. Topics in this

subsection include land uses, air quality and climate, hydrological and geological issues, human health and safety, cultural resources, and environmental justice issues as pertain to Native Americans. Since these two latter issues received the bulk of the comments they will receive the most attention. Generally, the six comments related to the first several subsections expressed concerns about the effects of thermal loads at the site, survivability of cask cladding, faulting and volcanoes in the area.

All of these issues were perceived as dangerous and, therefore, should make the Department of Energy reconsider their plans to store wastes at the site. The belief was that the Department of Energy could not control the release of radionuclides if there was some sort of catastrophic event nor could they accurately predict the outcome of large-scale events caused by technical or human errors or from naturally occurring events like earthquakes and a volcanic eruption. Thus, the perception was that proximate populations were at risk—as were populations farther away from the site—if radiation got into the atmosphere or the water supply was contaminated. The Department of Energy responded that this should not be too much of a concern since they had robotic technology available to remotely remediate sites and return them to their prior states. It was this reality that prompted the response from Corbin Harney stating “[l]et’s all think about. What are we going to do if accident ever happens?”¹⁵¹ This comment was prompted by the thought that if the wastes were not that dangerous why did they need to be handled by remote equipment?

Additional comments expressed concern about using models to predict the future with certainty since the Department of Energy indicated there was no way to even model worst case scenarios because there would always be something worse.¹⁵² Another issue

was the extent to which the cladding on casks would disintegrate and release radiation into the water supply, with subsurface water increasing the rate of corrosion—especially if the rate of inflow increased at any time in the future. Commenters also found it difficult to fathom that the casks could even remain intact for thousands of years. This made the thought of a hot repository being the lesser of the evils if a facility had to be built because a hot repository would at least cause the moisture in the tunnels to boil away instead of corroding casks and causing a release.

The growing opinion, then, was very similar for a lot of Western Shoshone arguing against the facility and this includes Carrie Dann of the Western Shoshone Defense Project who suggested “there was a political consideration in the siting process that overruled what would have been an obviously bad choice to an engineer.”¹⁵³ Regardless of what might cause a release of radionuclides, however, the opinion was that “[d]irect impacts [would] include increased risk to residents and visitors...Indirect impacts include enhanced public perception of risk and related area stigmatization” and this was harmful to the Western Shoshone economically, culturally, socially, emotionally, and physically. Hence, Corbin Harney spoke his mind again about “[m]ixed signals...is it good or bad? They speak about ‘beautiful things’ that it is safe but then they say the stuff is dangerous and it has to be taken care of”¹⁵⁴ and now others are exposed rather than those where it already exists.

Turning to the balance of the subsection involving environmental and, hence, human impacts, the issues are not new. All of the Western Shoshone commenters used whatever time they had at hearings and sent letters stating their positions. The size of the area for land withdrawal was a major concern since it would further restrict access to

lands with cultural and historical significance. This also brought up ownership of the land since the Western Shoshone do not believe the ICC settlement is legal nor that they officially ceded title to the U.S. by virtue of the decisions by the ICC or courts. The Consolidated Group of Tribes and Organizations had a concern over any “ground-disturbing activities”¹⁵⁵ that could harm areas of significance, and Corbin Harney again brought up water being in the valley that moves—more than the geologists admit—so how do the models protect people if they are wrong? What happens if the water moves more in a year and what does this mean in terms of the contamination and external effects? It was also noted that knowledge about water in the mountain is durable having been linked to traditional stories handed down over the generations. Harney elaborated stating

People that roam that part of the country drink from that mountain. The snake moves—its got a movement to it. It’s going to get worser and worser [sic]. I know I have been told by my people long ago, when you are thirsty going through that part of the country, you could suck water from it.

And today the Nuclear Energy Department should realize there is water coming in. They don’t know where it is coming from. But they are saying the rain is the reason why it’s going through the mountain site, but it’s not. It’s a snake that lays there, carries water for the people. But it’s hard for you people to understand.¹⁵⁶

Not only would water cause problems for the site, if contaminated, it would be a major concern to the Western Shoshone as well as others. This prompted a call for an extensive natural resources study to look at all of the areas of importance that could be

harm not only by site construction, but with development of transportation corridors as well. It was presumed the study could easily be done alongside a detailed cultural resources study to support the original American Indian Writers Subgroup study that only sampled sites of potential concern. Additional comments indicated that such studies needed to include not only artifacts and sites of significance to Native peoples, but to settlers as well since they have a history imbued by their interactions with each other and with Native peoples. Further, the request was also made to make sure studies were informed by each tribe and other interested and knowledgeable people to assure it was comprehensive enough to provide a true picture of potential impact areas that should be avoided. Some sites in the land withdrawal area were said to even be eligible for nomination to the National Register of Historic Places and should be protected under the American Indian Religious Freedom Act (AIRFA), but “[g]iven the bastardized version of National Environmental Policy Act currently being applied to this project, is it still safe to assume that other relevant legislation remains intact?”¹⁵⁷ The Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA) are also laws that must be considered when impacts to lands occur to assure critical resources are protected and preserved.

Despite these laws, no one had the expectation that the Department of Energy would take the time to listen to the Western Shoshone or others to understand the importance of the sites nor would they be willing to pursue avoidance as a mitigation strategy because the sites do not reflect their beliefs or history. Part of this stems from the fact that the Department of Energy had not ever taken the time to interact with the Western Shoshone on their own terms to show their respect for cultural differences or to

learn about the essence of the beliefs of Native peoples from the area. This is evinced in a comment made by the Department of Energy officials in the EIS speaking about Native American “holy lands”¹⁵⁸ and how the Native peoples throughout the Great Basin do not concur about their ancestors being mobile hunter-gatherer societies before the arrival of Euro-Americans. Such a statement was deemed totally ludicrous because the letters and statements provided by Native peoples speak directly to this issue, thus the EIS was blatantly false and “[t]hese statements are outrageous and unsupportable stereotyping based on a sample of unknown representatives.”¹⁵⁹

In essence, many of the Western Shoshone believed that the Department of Energy was committing “cultural genocide”¹⁶⁰ as a result of its actions and this was validated in some of the archaeological studies that used a technique called “cultural triage.”¹⁶¹ This archaeological method forces Native peoples to rank sites in terms of their value and importance compared to others even when all are equally valued due to their specific cultural and historical contexts. The tribes also took issue with the fact that all of the plans for mitigation or resource protection ignored the need to have tribal monitors present when activities were in areas of tribal significance.

Socioeconomic impacts related to stigma and actual affects of contamination were also an area of concern in this subsection, as was human health and safety. The Tribal Chairman of the Timbisha Shoshone stated in one of her comments that the Department of Energy seems to have “ignored or intentionally obscured the real dangers of the project”¹⁶² since every time someone brings up the issue of environmental justice and risk assessments—especially for populations with unique rights and exposure pathways—the actions taken are minimal at best or do not occur in the first place.¹⁶³ She

then asked how public hearings and receiving documents can even be considered government-to-government interactions as required under law when there is no interaction to try to reach a consensus about dealing with such an important and dangerous issue. This, in and of itself, seemed to be a major environmental justice factor related to the Yucca Mountain project. Corbin Harney made similar assertions, stating that too many people in the area had died or were sick from cancer and there was no way he could believe that this wouldn't increase with current activities and eventual transportation.¹⁶⁴ The Timbisha also issued a statement about effects, asking why analyses seem to stop when the models get to a point where a declaration of "extreme uncertainty"¹⁶⁵ is made rather than ever getting to a point where the models situations can be deemed safe.

Another issue is the use of resources that do not even belong to the Department of Energy that are valued for a variety of uses and reasons. While this may include such things as grazing land for cattle or wild plants native to the area that can be used for traditional medical practices, it also includes water and the rights to use water. The State Water Engineer in Nevada denied the Department of Energy's application for water rights even though water is needed at the site so the Department of Energy tried seeking legal recourse to obtain rights even though, if the action was granted, this could impact others who depend on the limited water in the area for survival.¹⁶⁶ Thus, resource exploitation in this context is a critical issue that cannot be ignored. On the other hand, the Department of Energy's desire to obtain water rights in Nevada goes beyond the State Engineer since, under the Winter's Doctrine, Native Americans are granted rights to water on reserved lands. Hence, losing water—regardless of loss of use due to

contamination or taking—is a legal battle not easily won even if you are the Department of Energy so this issue was one victory, in a way, for Native peoples even though not directly a result of their own actions in their effort to oppose the Yucca Mountain project.

Tribes also lack monetary and functional resources that can be used to conduct analyses, buy equipment for emergency response, and develop mitigation and protection plans and this has also had a negative impact on tribes because it impedes their ability to feel they have the capacity to assure the health and safety of their people. Much of this stems from the fact that tribes are not considered “affected” so they are not entitled to such resources unlike some of their city, county, and state counterparts. Hence, this was another disproportionate impact the Western Shoshone did not believe they should have to bear.¹⁶⁷ Perhaps Duane Thompson of the Shoshone-Bannock put it best when he stated

On the one hand Department of Energy ‘believes that there would be no disproportionately high and adverse impacts to minority or low-income populations,’ then on the other hand acknowledges that Native tribes in the area consider the proposed repository to be an adverse element in their lives and environment. If the tribes, by Department of Energy definition, are a minority, and if the tribes feel the repository will have adverse impacts on them, then, ipso facto, there are adverse impacts to minorities.¹⁶⁸

The final comments pertaining to the environmental effects of the site were near the end of the subsection. Thus, it was almost as if they sum up the entire suite of concerns put forth in this chapter by emphasizing perceptions of environmental injustice, environmental racism, and colonialism. One of these comments was a compilation of the expressions of the Consolidated Group of Tribes and Organizations, the Ely and

Timbisha Shoshone, and the Western Shoshone Defense Project. These four groups provided 13 comments on these issues and they spoke of how the Department of Energy “brushed aside concerns of Native Americans in concluding that there would be no disproportionately high and adverse impacts to minority or low-income populations.”¹⁶⁹ Others joined them in this pronouncement and even stated that the site selection process was politically motivated and required an investigation into the decision itself—especially since the science behind the choice is troubling to some.

Particular issues of concern include finding water, faulting, and signs of volcanism that many Native and non-Native peoples alike believe should have been grounds for removing the Yucca Mountain site from consideration and it was so-called valid science that discovered these realities. Some commenters even went so far as to state that there was the appearance that this site was chosen because the people in the area “would have the least amount of power to fight against those hazards.”¹⁷⁰ The statement that the Yucca Mountain site puts the Western Shoshone nation in a situation where they have to continue to live with a “profoundly negative impact on political, economic, cultural, social, and spiritual survival”¹⁷¹ is another key indicator of perceptions pertaining to maltreatment and general injustice and this is in addition to the burdens they already bear with the Nevada Test Site.

So how did the Department of Energy respond to so many comments that were, at times, delivered with extreme emotion and commitment? They did so very professionally and government-like by stating the facts as they saw them and as prescribed by what they considered sound science. Basically, the Department of Energy believed the analytic techniques used for evaluating the Yucca Mountain site are well-documented processes

that should not be discounted since they have been validated by independent teams of experts from throughout the scientific community including members of the Nuclear Waste Technical Review Board and others at the National Academy of Sciences. Thus, the Department of Energy had faith in their models that indicated that the selected cladding process will result in less than 10% degradation at “50,000 years, and that about 15% would be perforated after 100,000.”¹⁷² Department of Energy officials also believe robots and other technologies developed to remediate accident sites are well-developed and reliable. To address volcanism and earthquakes, the former is considered to be waning but the Department of Energy still included the potential in the models per comments to try to estimate the impacts to humans and the environment. The models also consider aerial contamination events and magma intrusions into the tunnels where waste would be stored that could damage casks and contaminate groundwater; the results were determined to be minimal from the events with the potential risks decreasing with increasing distance from the site.

As for running the models based on worst-case scenarios, that was deemed problematic because another worst-case could always be devised. But to try to provide a more realistic response, the Department of Energy stated that when they run the models they do so with the recognition “that there is often a difference between calculated and perceived risk. However, the Department has focused its analyses upon impacts that can be estimated”¹⁷³ and leaves it up to decision-makers and regulators to determine whether the project is safe based on the information at hand. This includes information about a flexible design for the repository that will allow the Department of Energy to address

thermal loading issues to control the environment in the tunnels thereby ensuring the stability of the system.¹⁷⁴

As already indicated, the land withdrawal issue is one of the most contentious aspects of the policy debate for the Western Shoshone due to past interactions with the U.S. government that has led to skepticism and mistrust in terms of words and deeds—especially concerning land. Yet, while the Department of Energy understands the concerns the tribes have about the land to be withdrawn, the agency still defends the action because they must rely on the ruling provided by the Supreme Court about the status of the land claimed by the Western Shoshone.¹⁷⁵ According to Department of Energy officials, that ruling effectively means that there is no tribal land in the designated area. The Department of Energy did admit, though, that the segment to be withdrawn is larger than what is really needed so it can assure that it keeps a buffer between the public and the site to protect the repository and to allow for development of sufficient support facilities.¹⁷⁶

Land ownership issues aside, the bigger issue is the potential exposure and harm to plants, animals, and the human population should there be a leak of radionuclides to groundwater or through other mechanisms—with the effects of long-term exposure from Nevada Test Site activities compounding the issue. Commenters did not believe the information in the Final EIS was sufficient enough to satisfy their concerns about these types of impacts. However, the Department of Energy tried to get the Western Shoshone to understand that when they modeled this issue they found that the potential for harm through contamination was negligible even under the scenarios mentioned.

Despite recognizing that some substances would breach the facility boundaries at some point in time, the Department of Energy believes “that the natural and engineered barriers at Yucca Mountain would keep the release of radioactive materials well below”¹⁷⁷ the limits codified in relevant laws addressing such situations. Or, as the Environmental Protection Agency states, “absolute proof is not to be had in any sense of the word,”¹⁷⁸ thus the assumption that a “reasonable expectation...is the appropriate test of compliance.”¹⁷⁹ It is for this reason that

Department of Energy is confident that its approach to assessing the long-term performance of the repository addresses and compensates for important uncertainties, and provides a reasonable estimation of potential impacts associated with the ability of the repository to isolate waste over thousands of years.¹⁸⁰

This said, it is a little discouraging—but not unexpected—that the Department of Energy always falls back on the same premise about science being a superior form of knowledge hence the comment refuting the claims made by Corbin Harney about Yucca Mountain being a live mountain—a snake that moves—and that the snake “carries water for the people.”¹⁸¹ The Department of Energy stated in their follow-up that

[w]ithout considering the religious connotations of the comment, it is not difficult to associate these attributes of movement, complexity, and benevolence with a living thing. It is impressive that people, without benefit of data from subsurface exploration, would have historically linked these types of attributes to something they could not see.¹⁸²

Based on this, it is also not surprising that when asked to conduct more comprehensive cultural resources studies the response was that they did a study and summarized the information to provide the Native American perspective. The problem is that the study referred to was by a group that the Department of Energy had a hand in setting up and the information was not complete nor had it been vetted with the most important people to consider the information. However, the Department of Energy does not consider prior studies a problem since the main report, among others, was prepared by the American Indian Writer's Subgroup (AIWS) that was formed as a unit of the Consolidated Group of Tribes and Organizations, thus it does have several members representing the different tribes.

This point notwithstanding, many Western Shoshone took issue with this study because it did not reflect a complete assessment but rather samplings of sites. Hence, the Western Shoshone do not believe the study can even start to shed light on the entire history of sites of significance for such varied and mobile groups of people. In this case, it would appear that the Department of Energy is acting somewhat arrogantly by believing they can pick a group to inform policy for Native peoples without properly validating findings with knowledgeable members of the tribes the results are supposed to represent. It is also arrogant to believe that this type of interaction could be substituted for real government-to-government interactions, which is what the American Indian Writers Subgroup studies appear to represent. The situation also makes one wonder if the assessments really do comply with the other applicable regulations dealing with cultural and historic resources like AGPRA, ARPA, and the National Historic Preservation Act

(NHPA) despite the Department of Energy's statement that they are in full compliance with all rules and regulations.¹⁸³

Lastly, is a consideration of the full scope of environmental injustice and environmental racism issues and how they play into use of the land from the Department of Energy's perspective. Specifically, what does the Department of Energy think about such issues? As with many other issues reported herein, the Department of Energy believes that disproportionate impacts are not a concern and, therefore, there cannot be any type of environmental injustice or environmental racism impacting the Western Shoshone. But if this is true, how can the Department of Energy really excuse developing a rail corridor through Timbisha trust lands, which, as the Western Shoshone emphatically state, could potentially limit the tribe's proposed development for the land in the vicinity of the corridor, harm human health, and disrupt the plants and animals in the area while also trespassing on trust land?¹⁸⁴ Another impact was not having the proper resources to respond to incidents should an event occur, although the Department of Energy stated this was not an issue to be examined at the time of the Final EIS process because routes cannot be designated nor can resources for aid, training or mitigation be provided until the site is approved. At that time, Department of Energy officials would consider proposals for the award of resources to try to meet entities needs should they be deemed affected.

This determination seems like it would be problematic considering how the Department of Energy examines environmental justice and environmental racism claims. Being deemed "affected" in these contexts means determining that any impacts experienced by the Western Shoshone would have to exceed those expected for others in

the general population and the Department of Energy tends to believe this is not the case. This is also made more difficult by the fact that the Department of Energy believes the views of the American Indian Writers Subgroup (and concomitantly, the Consolidated Group of Tribes and Organizations) are representative enough to constitute proper government-to-government interactions. Consequently, the Department of Energy tends to accept their positions over others—right or wrong—in assessments about problems and with regard to decisions made to rectify them.¹⁸⁵ This is not to say that the Consolidated Group of Tribes and Organizations supports the Yucca Mountain decision, rather it means, as the Department of Energy puts it, the Consolidated Group of Tribes and Organizations “has agreed to be involved in an honest and participatory process.”¹⁸⁶ On the other hand, perceptions about interactions have resulted in a situation whereby the Department of Energy recognizes its

intrusion into what Native Americans consider an important cultural and spiritual area. Although these viewpoints may suggest that the Yucca Mountain site should not be developed, Department of Energy and the Consolidated Group of Tribes and Organizations recognize that restrictions on public access to the area have been generally beneficial and protective of cultural resources.¹⁸⁷

This brings up the point of whose interests are being represented and for what purpose? When addressing these concerns, the Department of Energy responded with what seems to be the stock answer about being in compliance with laws and regulations and actively working to promote “a government-to-government relationship”¹⁸⁸ respectful of the tribes’ status. However, they also asked a rhetorical question of the tribes. Specifically, Department of Energy officials asked: why is it okay to benefit from nuclear power while

also trying to minimize the risks to yourselves by asking those near nuclear power plants to continue to bear the risks in the absence of a facility like Yucca Mountain?

Comments and Responses: Chapter 8 – Transportation Modes, Routes, Affected Environment, and Impacts

This subsection is different, in a way, from the others in the Comment-Response document because transportation was not a required topic under the scope of the Final EIS for the repository. Transportation scoping and National Environmental Policy Act requirements would have kicked in had the facility been approved by the President and an operating license issued by the NRC. Nevertheless, the Department of Energy received so many comments related to transportation—many of which, coincidentally, focused on the lack of analyses on the topic—that the Department of Energy chose to respond to the extent possible and did incorporate information and make changes to the Final EIS as applicable based on the comments. For this reason, the comments and responses are briefly summarized in this section although not receiving a detailed explication as in some of the other subsections.

The primary issues in this section are not unlike those for the primary discussion focusing on the repository; generally, the same topics for the facility are covered, but the only transportation activities considered were related to facility support functions and the movement of wastes to the facility. Specific topics include general opposition, modes and routes, casks, operational policies and procedures, general transportation analyses and modeling of accidents, as well as overall impacts to the affected environment. A total of 43 comments on these topics were presented to the Department of Energy for consideration, with 24 of the comments focused on transportation analyses, accidents,

and impacts on the affected environment. Four of the remaining comments focused on opposition to transportation while the balance of the comments covered operational issues (15).

At the most fundamental level, commenters wanted to see detailed maps reflecting potential routes and the locales possibly affected. Among those expressing their opposition to transportation activities, the reasons given include disproportionate burdens since Nevada already has the Nevada Test Site; the potential for stigma as a result of nuclear waste traveling near schools, churches, businesses, and private residences; impacts to tribal lands because people are not confident in the stability of the casks and the skills of contractors to manage them safely; cumulative effects compounded by the effects of new activities since people residing in the area have already been subjected to radiation exposure due to the Nevada Test Site. Other issues examined the resource requirements for developing appropriate emergency response capabilities and for upgrading infrastructure to reduce the potential for accidents in problematic areas if routes through these areas cannot be avoided. Mitigation and liability issues were also mentioned, as was the need for pre-notification of shipments and routes so communities could be prepared in the event of a mishap.

The lack of a comprehensive transportation plan and scheme for government-to-government interactions with tribes was also lacking, although some thought it should be required since routes would have a disproportionate burden on the already burdened Native peoples throughout the area. Thoughts were also provided about the underestimate of risks from transportation-related activities because the number of shipments would be so large that a catastrophic event was bound to happen and the models should account for

such events. There was also a call to require adjusting models to account for seasonal and locale-specific conditions that might pose additional threats to safe transportation.

Environmental justice issues were also a frequent concern since rail and truck routes often pass through or near minority and low-income populations and this seemed like an especially valid argument near Yucca Mountain with the many tribes and important cultural sites spread throughout the Great Basin region. The rural nature of most of the area also means that if an accident occurs and emergency response capabilities cannot address the threat, then the time of exposure is greater than is the case in wealthier and larger communities where better emergency response capabilities and shorter travel times tend to be the reality. Importantly, the tribes also feel ill-prepared, generally, to respond to accidents because they lack resources to hire trained personnel thus they often must rely on volunteer responders to provide services. Hence, even when considering transportation, the Western Shoshone are forced to consider how to deal with the need to minimize the threats to their people while also protecting the environment from manmade contaminants that are predominantly not of their making.

Once again focusing on impacts to plants and animals, as well as water resources, there was a great deal of concern about the construction of transportation corridors to support waste transport activities since such work often creates environmental impacts that are both short- and long-term; this recognition prompted a call for a comprehensive study of biological and water assets along potential corridors to be included in any additional evaluations. Other commenters wanted the same type of studies for cultural assets as well, including archaeological, spiritual, farming and ranching, and recreational sites.

Responses to these comments were along the same lines as in Chapter 7 of the Comment-Response document, although this is not surprising since the issues were predominantly the same with the only difference being the emphasis on transportation activities rather than the repository itself. Thus, quantitative assessments emphasized the same methods for evaluating risks based upon “reasonable expectations”¹⁸⁹ under scenarios of “extreme uncertainty”¹⁹⁰ with the outcomes accepted by recognized scientists. The responses about specific routing issues were very broad since this topic was not part of the initial site evaluation and scoping process because transportation activities cannot occur until a facility is approved and licensed so there was no reason to spend money doing additional studies under a hypothetical scenario.

The same responses as provided heretofore were also provided when the Department of Energy was asked about extensive biological, hydrological, and cultural resource assessments related to actual transport activities. However, the Department of Energy did indicate their continued willingness to plan for effective government-to-government interactions with tribal governments to assure protecting and preserving their interests to the fullest extent possible. As for the issue of stigma, the Department of Energy felt no need to reinvent the wheel since the same studies relied upon for the Final EIS for the repository would be equally valid for transportation planning and evaluation. Finally, the Department of Energy intended to provide the resources needed for any affected entities—whether city, county, state, or tribal units of government—should a determination of “affected” status be rendered. This would include funds to improve and enhance emergency response and preparedness, while also assisting with any other actions deemed relevant to assure public health and safety and environmental protection.

Comments and Responses: Chapter 9 – No-action Alternative

Not unlike Chapter 2 of the Comment-Response document, only one comment was received for this chapter. The Shoshone-Bannock were the ones submitting the comment that specifically emphasized Native American issues affiliated with the no-action alternative. On the other hand, the comment was equally applicable to others under similar circumstances. In particular, the Shoshone-Bannock tribe sought to assure that the Department of Energy would not consider leaving waste at INEEL for fear it would leak and contaminate water and other important facets of life and culture. This was deemed unacceptable and the tribe equated any incidents to the missteps that led to relocations at “Times Beach and Love Canal.”¹⁹¹ Such relocations promoted the physical loss of lands, places, and space that are irreplaceable—even more so if considering the loss of other aspects of tribal livelihood like cultural places and spaces of spiritual significance, as well as providing political power. These types of situations also impact future generations who lose access to parts of their histories. Specifically, Duane Thompson states

Moreover, if tribal lands are contaminated and damaged habitation is restricted or eliminated which will result in the tribe losing its political powers to control and regulate the activities occurring on its homelands. Finally, the tribe may be unable to adequately preserve or protect its members’ general health, welfare, and safety through the loss of contaminated land.¹⁹²

While the Department of Energy stated this type of situation was highly unlikely, they said the no-action scenarios would only be short term anyway since the Department of Energy is mandated by law to take possession of the wastes under consideration for however long is required. On the other hand, this could take an extended period of time

since acquiring wastes would require new legislation to determine the next plan of action due to a failure to receive approval and open the repository as originally prescribed. Despite this reality, the Department of Energy did note the need to comply with its trust obligation even though the Shoshone-Bannock were not so sure about the level of commitment due to a history of bad relations with the U.S. government. Hence, the Western Shoshone admonished the Department of Energy to take care in how it proceeds or risk promoting a situation whereby their actions “would not be an exercise of guardianship, but an act of ‘confiscation’ or ‘spoliation’”¹⁹³ per the ruling in a court case between the Shoshone Tribe and the U.S. in 1937. This point notwithstanding, the situation in this case is fairly complex since addressing waste concerns for one tribe exposes others to risks under both of the proposed and no-action scenarios.

Comments and Responses: Chapter 10 – Cumulative Impacts

The Timbisha and Western Shoshone National Council both commented on the inadequacy of the EIS to provide a full assessment of cumulative impacts from past and present activities and how such will affect future cumulative affects when new activities are added. An additional issue is making sure that when discussing these issues information is provided in “plain language”¹⁹⁴ that everyone can understand and this is especially important when referencing the flexible design concept for the repository. At issue is how cumulative impacts can even be predicted when the design is flexible and there are so many unknowns already, like how special populations are affected; these include pregnant women, children, older individuals, and different ethnic groups.

Department of Energy officials responded that with regard to the flexible design scenario the estimated cumulative effects would be the highest expected dose with the any improvements in design purportedly reducing the potential impacts so there should

be little concern about this issue. The Department of Energy also apologized for confusion due to the language while also indicating that the plans would be updated as new information became available. Considering past, present, and future exposure issues, it was deemed improbable that specific models addressing issues with special populations would ever be accurate let alone for multiple areas under changing circumstances and due to varying lifestyles. Basically, they said there are too many unknown factors to consider all such factors in the models. However, the Department of Energy pointed out that the models do examine localized effects from all activities past, present, and as best as possible for future activities as well as for potential transportation activities. The models based the estimates on customary population risk factors for normal individuals and workers based on standards developed by the International Commission on Radiological Protection.¹⁹⁵

What is lacking from this response is an acknowledgement of the specific issue relating to specialized exposure pathways for some groups with the Department of Energy always normalizing the information based on accepted standards and practices even though there are always exceptions to such rules. The specific point made by Ian Zabarte of the Western Shoshone National Council is that subsistence and Native lifestyles are incredibly important to many residents in the Yucca Mountain area, throughout Nevada, and downwind, so he had hoped “that our comments not only inform the Department of Energy, but the American peoples as well, people working together to understand the full scope of probable impacts for our sake and that of our future generations.”¹⁹⁶

Comments and Responses: Chapter 11 – Impact Mitigation and Compensation

Four comments were provided from the Western Shoshone on this issue: two from the Ely Shoshone and two from the Consolidated Group of Tribes and Organizations. There was a general impression among the Ely Shoshone that the “[t]echnical, institutional, economic feasibility”¹⁹⁷ of mitigation strategies have not been fully presented nor do they feel the federal government has the sense of commitment needed to fully explicate such issues. Arthur Kaamasee, the Ely Shoshone tribal chairman, also elaborated on the need to make community specific inquiries because differences in history, geography, economics, and environmental conditions affect the type of mitigation strategies that might be required. Richard Arnold of the Consolidated Group of Tribes and Organizations also weighed in on this issue stating that the EIS “alludes to and specifically states actually that the Department of Energy will continue its protection of Native American cultural resources and protect the traditional cultural properties. It will implement appropriate mitigation measures. To date there’s been no studies specific to traditional cultural properties...nor cultural landscapes.”¹⁹⁸ Arnold thus asked that the Department of Energy make provisions for including these kinds of studies if they are indeed committed to providing such protections. Another concern was that the Department of Energy talks about archaeological findings throughout this section in the EIS, yet the Consolidated Group of Tribes and Organizations stated that there has not been any consultation on what sites might have been found nor the requirements for mitigation other than the sampling in the American Indian Writers Subgroup write-ups.

In response, the Department of Energy stated that they have not yet determined the requirements for any mitigation strategies or plans. But officials did add that when it was necessary, they would develop such plans according to all applicable regulations

because they were committed to assuring the identification and protection of all cultural, traditional, and historic properties of relevance to potentially affected parties. The Department of Energy also acknowledged the importance of consulting, “as appropriate, with parties who have an interest in traditional cultural properties along the route.”¹⁹⁹ However, with regard to the site-specific EIS, Department of Energy officials indicated that they had not identified any such properties except those belonging to Native Americans so a specific plan to consult, identify additional properties, and develop a mitigation plan was not warranted. It was unclear, however, as to the level of commitment in this regard due to the fact that these two groups specifically had to insinuate themselves into the decision-making process by calling Department of Energy out on the fact that all pertinent sites are not just related to Native peoples, per se. Important exceptions to this determination were noted by Western Shoshone commenters in their discussions of impacts in Chapter 7.

Comments and Responses: Chapter 12 – Department of Energy Credibility

While many comments were made about the credibility of the Department of Energy, four were made by only one Western Shoshone group: Corbin Harney of the Shundahai Network made them all. Generally, this set of comments, as did most of the others in this topic, castigated the Department of Energy for their lack of trustworthiness and inability to prove to people that they had any desire to act responsibly in their dealings with others. Harney specifically stated that, having seen Western Shoshone and downwinders suffering or dying from the effects of weapons testing at the Nevada Test Site, he knows that radiation knows no boundaries and he “cannot believe the Nuclear Energy Department is telling the truth.”²⁰⁰ His skepticism is driven by the fact that he has

not been able to identify anyone among the people he approached about the Department of Energy speaking with them.

On the other hand, Harney admitted that this was also the responsibility of his people, but they all could not get to the meetings and needed the time to be able to interpret the long documents and understand them so they could make comments. Thus, Harney's statement was also a challenge to the Department of Energy to extend the comment period so that all people had the opportunity to make their voice heard on this important issue because "[t]his is a chance that we have, and this is a chance that we might only have."²⁰¹ Yes, his words are emotionally driven, but that is to be expected based on not only what he says he has witnessed but also based on his beliefs that "[w]e are not appreciating our Mother Earth. We are destroying it today... Tomorrow we might not have a Mother Earth to give us water, the food...the luxuries that we have."²⁰²

Due to the nature of Harney's comments, the response by the Department of Energy was what I consider to be somewhat defensive stating that the "[m]anagement and disposition of these [nuclear] materials in a manner that ensures that the materials do not adversely affect the public health and safety and the environment for this or future generations poses challenging long-term problems."²⁰³ But, the Department of Energy also stated that while this is the case, they are well aware of their responsibility to isolate and monitor these "legacy materials"²⁰⁴ to assure public health and well-being. To this end, the Department of Energy indicated that they are striving to incorporate the lessons they have learned to try to conduct its newer programs "without environmental insult"²⁰⁵ as they work to overcome public criticism and build public trust.

The caveat, though, was that the Department of Energy wanted people to also be aware of the fact that ultimate decision-making authority does not typically lie with them on important programs like Yucca Mountain. Department of Energy officials pointed out that it is the President who makes the final call on programs like Yucca Mountain once a recommendation has been made to open the facility and only after having received a license for construction and operation from the NRC. In terms of public trust, the respondent also stated that the Department of Energy does everything in its power to encourage public involvement and does include “public input in its decisions when appropriate and feasible, and will provide feedback to the public on its reasoning.”²⁰⁶ To create the space for public involvement the Department of Energy cited providing every means possible for the public to be involved and comment, including accepting input through written comments via the mail, email, facsimile machine, and at meetings, as well as accepting oral comments at meetings or by telephone.

Comments and Responses: Chapter 13 – Comments Outside the Scope of this EIS

Due to the nature of these comments, they will not receive extensive attention. However, as part of the EIS, it is important to note that there was one comment provided by a Western Shoshone so it will be briefly discussed. This comment was provided by Carrie Dann of the Western Shoshone Defense Project in an attempt to make the Western Shoshone position known with regard to the need to pursue safer technologies for producing energy. Dann was adamant about identifying technologies that do not have the impacts that things nuclear do to assure a safer and healthier future for all people. The Department of Energy responded that they are aware of desires about cleaner and safer technologies and informed the commenters that they have such programs in place as part of plans specified in National Energy Policy. The Department of Energy also pointed out,

however, that such considerations were outside the scope of this process since they did not directly relate to the Yucca Mountain project.

CHAPTER SIX

CONCLUSIONS AND RUMINATIONS: WILL THERE EVER BE AN ANSWER TO REDUCE CONFLICT AND DEVELOP REAL *PUBLIC* POLICY IN THE AFTERMATH OF COLONIALISM?

This study has examined the history behind U.S.-Western Shoshone relationships and how this history has affected the Western Shoshone as new issues emerge that encourage active engagement by the tribes of the Western Shoshone nation in public policy discussions. In particular, I have discussed the function of this history in shaping the terrain of discourse between the Western Shoshone nation and the federal government in discussions about the High-Level Nuclear Waste Geological Repository that was to be developed at Yucca Mountain in Nevada. This effort required examining public records developed during the environmental impact evaluation process in an attempt to understand how the convoluted history of U.S.-Western Shoshone relations informed perceptions and defined responses to proposed actions between these two groups during the policy process. The study design was intended to explicate the degree to which the Department of Energy failed to secure support for the Yucca Mountain High-level Waste Repository from the Western Shoshone tribes and bands of the Great Basin precisely because of the nature of historical relations imbued by vestiges of colonialism and to this end I feel I have mostly achieved my goal.

Additionally, I believe I was able to confirm that Valerie Kuletz's perception of nuclearism is a reality for Native Americans in the nuclear waste siting debate. However, the picture does not appear as bleak as that portrayed by Kuletz since I believe I have also shown that the Western Shoshone are fighting nuclearism and making their voices heard

in a variety of ways to preserve life and liberty even if it is not totally defined in their desired terms. On the other hand, it is unclear beyond the perseverance shown by the Western Shoshone whether they would have been successful in their quest to halt Yucca Mountain or even preserve access based on the nature of the responses made by the DOE to the Western Shoshone. It is also unclear to what extent the DOE might have considered the nature of Western Shoshone requests and comments beyond the need to aggregately respond to comments following the procedures set forth in the guidelines for the EIS process as specified in NEPA.

On the other hand, from my vantage point, the comments from the Western Shoshone do indicate that they were not happy with the form of consultation between the respective tribes and bands and the DOE and this would appear to indicate that the DOE did not respect the tenets of Executive Order 13175 as it pertains to the NEPA process. I consider this to be a sign that the same patterns of historical interactions are still present that serve to effectively “kill the Indian and save the man”²⁰⁷ since ignoring individual tribal consultations and promoting a DOE-defined tribal group consultation tends to blur the lines of individual tribal units. This, in and of itself, looks like a step toward erasure by promoting some sort of pan-Indian group without a distinct identity. This point notwithstanding, the fact is that the Western Shoshone needed—and wanted—to be the ones determining how their peoples were impacted by describing and talking about the impacts to their people rather than the Department of Energy determining whether they were affected or not while concomitantly trying to help the DOE understand why they took the position that they did. This was inherently clear in all of the primary documents reviewed for this study. In my opinion, promoting information exchange and

understanding the issues of concern to others is what the public participation component in the *public* policy processes is supposed to encourage and facilitate per the National Environmental Policy Act. Further, the two Executive Orders (E.O. 12898 and E.O. 13175) issued by President Clinton in 1994 and 2000, respectively, were intended to assure that marginalized groups received special consideration and due process in airing concerns rather than being outright dismissed due to perceptions that such groups have no standing as appears to be the case with the Yucca Mountain project.

It appears that DOE did this even though NEPA allows a lot of leeway for subjective judgments about the nature of the information that can be considered applicable to decisions. Had the DOE taken a more open stance and considered the merits of the Western Shoshone arguments at deeper, subjective level rather than always evaluating the issues based solely on scientific or technological merit, the outcome in terms of relations might have been altogether different. But this was not how things were done, thus, the DOE seemed to only be interested in complying with the letter of the law in its most broad terms rather than utilizing discretionary leeway afforded to them. This seems problematic to me, especially since it could have seemingly opened the decision up for legal challenge if it could be proven that DOE ignored the need to consider how issues might have specifically come under the two executive orders promulgated by President Clinton. This point notwithstanding, this issue is beyond the scope of this project. However, an examination of this issue—via interviews with policymakers involved in the decision making process over time—might shed light on why the DOE acted as they did so that this situation is not repeated within the context of other policy domains.

Returning to the point at hand, my reading of the National Environmental Policy Act Guidance document on these issues states that without participation from diverse groups there is no way to effectively obtain “full consideration of the potential environmental impacts.”²⁰⁸ It is for this reason that the Guidance document also indicates that such efforts should include “government-to-government consultation with affected Indian tribes and to seek their participation as cooperating agencies. For this to be meaningful, the public should have access to enough information so that it is well informed and can provide constructive input.”²⁰⁹ The intent, then, appears to have been to set up a process that reduces conflicts while educating all parties involved and potentially affected by a federal action. Another key facet of the guidelines is assuring that interactions are early in the policymaking process so that a diligent effort can be made to overcome potential problems inherent to the process that “may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making processes of federal agencies under customary National Environmental Policy Act procedures.”²¹⁰

Hence, public participation is not supposed to mean listening to issues and then deciding that none of the comments fit the prescriptions of a particular line of thought or reasoning. In particular, it does not mean discounting the issues different peoples put forth because the science behind decisions has been validated and recognized by highly appointed scientists who are members of such prestigious organizations as the National Academy of Sciences and the Nuclear Waste Technical Review Board. Nowhere in the language reported above is there any reference to science being overriding criteria that

can be used for discounting public perceptions and opinions of impacts. As a matter of fact, the Guidance document stipulates that

Agencies should recognize that the impacts within minority populations, low-income populations, or Indian tribes may be *different from impacts on the general population due to a community's distinct cultural practices* [my emphasis]. For example, data on different patterns of living, such as subsistence fish, vegetation, or wildlife consumption and the use of well water in rural communities may be relevant to the analysis. Where a proposed agency action would not cause *any* [my emphasis] adverse environmental impacts, and therefore would not cause any disproportionately high and adverse human health or environmental impacts, specific demographic analysis may not be warranted. Where environments of Indian tribes may be affected, agencies must consider pertinent treaty, statutory, or executive order rights and consult with tribal governments in a manner consistent with the government-to-government relationship.²¹¹

Recall that many of the issues noted—like impacts to different lifeways and lack of meaningful government-to-government interactions—were critical complaints cited by the various Western Shoshone tribes and groups participating in the comment phase of the Yucca Mountain EIS process. Not only was this message repeated time and time again by Harney, but also was the message from Carrie Dann, a Western Shoshone elder and activist for her people's rights. Several tribal leaders like Pauline Esteves (Timbisha Shoshone), Arthur Kaamasee (Ely Shoshone), Duane Thompson (Shoshone-Bannock), Henry Blackeye (Duckwater Shoshone), Kevin Brady (Yomba Shoshone), Lydia Johnson (Battle Mountain band-TeMoak Shoshone), and Ian Zabarte (Western Shoshone National

Council) also spoke to these points. And, interestingly, the Consolidated Group of Tribal Organizations that was established by the federal government in the early days of the Nevada Test Site was also intended to be utilized again during the Yucca Mountain EIS process to facilitate interactions and enhance identification and understanding of Native issues. However, I believe that the Department of Energy had hoped this group would provide just enough information and general support for the Yucca Mountain project that it would count for government-to-government relations, but as already mentioned, this was not the result. Not only did this proposition fail to be accepted by the Western Shoshone tribes involved in the process, the Consolidated Group of Tribes and Organizations did not support the premise of the Yucca Mountain project itself.

In this light, I guess it is irrelevant whether the Department of Energy had intended by design to manipulate the government-to-government process by utilizing the Consolidated Group of Tribes and Organizations in this way or just made a bad assumption based on a feeble notion of the tribes accepting this type of inclusion within the context of participatory and consultative decision-making. This point notwithstanding, it seems quite inappropriate for a government entity with such a powerful role in protecting human health and safety and the environment to act so irresponsibly in its reading of statutes and judicial interpretation about how to address tribal rights and claims. It was also problematic that the Department of Energy tried to define what constituted consultation and government-to-government participation without seeking consensus about the process from the required participants. Thus, from my perspective, the fact that the tribes themselves continually made reference to the failure of the Department of Energy to interact per the guidelines while also not actively

seeking tribal input from those knowledgeable about the full scope of possible impacts to tribal lifeways explicitly bespeaks of colonialism.

This prompts me to question how anyone can deem the effort documented in the public record of the EIS proceedings valid if, in theory, it does not abide by all aspects of the regulations or guidelines set forth for sound decision-making especially when special populations with unique rights and status are involved. Yet, the Final EIS was found to be complete and in compliance with the letter of the law although not the intent in terms of prescriptions to considering the merits of claims within the context of the Executive Orders from the Yucca Mountain policy era. Furthermore, the final EIS went on to state that it was determined that there were no particular impacts that would be disproportionately born by any with the benefits judged to outweigh any costs that might have been identified. But this finding is based on the premise that the Tribes had no unique positions or claims meriting special treatment and I believe this is far from the truth in light of their status necessitating their participation at a level commensurate with that of other sovereign government entities like cities, states, and counties.

Despite this reality, on July 23, 2002 President Bush signed Public Law 107-200, which was a joint resolution designating the Yucca Mountain site for the high-level geological repository because the information presented in the Final EIS was deemed sufficient in terms of finding no significant impacts that would warrant forestalling opening the Yucca Mountain facility.²¹² This meant the next hurdle was the NRC licensing process and further scoping and refining the transportation planning phase of the project as was proclaimed in the Record of Decision rendered in April 2004.²¹³ This is a moot point, however, since the process came to a halt in 2009 when the Department

of Energy decided they needed to reconsider Yucca Mountain and nuclear waste management policy under the newly elected Obama Administration, which spoke often of looming budget cuts for DOE. This was to be the end for Yucca Mountain for the time being, since the new administration ultimately cancelled the project after its funding came into question in a rider attached to the 2011 Department of Defense continuing resolution.

While not an unwelcome outcome for some, it was not foreseen as a result of the billions of dollars spent on the site suitability and designation process that began in 1982 with the implementation of the Nuclear Waste Policy Act and the eventual site designation by President Bush in 2002. On the other hand, terminating the siting process and ending the project did not resolve the broader issues spoken about throughout this treatise, which is the continuation of colonialism and how the thinking that was prominent in the early days of the blossoming U.S. has continued to take a toll on Native peoples. Albeit I am not trying to say that this had led to the demise of nations and their peoples altogether. While this has occurred in a few cases with some tribes ceasing to exist either because they lost federal recognition or their members have died off and the culture has become a relic of the past, Native peoples are still searching for ways to achieve greater recognition and seeking rights as nations unto themselves. For the Western Shoshone this process continues to be warranted because they failed to achieve the type of recognition they desired about their different lifeways and how understanding these differences requires interacting with people on their own terms rather than trying to meld them in the image of the U.S. persona when it does not fit Western Shoshone traditions nor customary practices. This, in and of itself, however, is a central tenet of

colonialism and is a familiar commodity among the Western Shoshone and other Native peoples despite the failure of this form of thinking to make Native peoples relics of the past as evinced by their continued status as living cultures.

This issue needed to be addressed because there continues to be a debate about colonialism by many scholars not only in the U.S., but in the global arena as well, as the continuing effects of colonialism are felt and Native and indigenous peoples all over the world try to maintain the integrity of their cultures during the quest to survive. The efforts by colonized groups, therefore, serve to characterize a response that is more active than passive as Native and indigenous peoples throughout the world assertively work to make their presence known by keeping their voices and stories alive. These groups illustrate that they are—and will continue to be—living cultures despite grand schemes to force assimilation and erasure.

Colonialism and the Post-colonial

There is much debate in academia about whether the post-colonial era reflects a phase wherein colonialism has come to a close. Others believe there is too much evidence, like treaty violations affecting the Western Shoshone and the treatment they received during the Yucca Mountain EIS process that contests this reality. Thus, I propose an alternate reality that construes the post-colonial as a period wherein colonized peoples stand up for their rights and find creative ways to continue to make their presence known all the while trying to find ways to interact in the U.S. policy process when issues have direct impacts. A critical component for contextualizing this form of post-colonialism is that it eschews an end to colonialism with once-colonized subjects taking active roles in defining themselves, their cultures, and, almost rewriting themselves into

the present as active participants in overcoming troubled histories and specifying futures in their own terms.

Vine Deloria (Standing Rock Sioux) is one Native scholar who played an active role in this debate and he might even be considered a key revolutionary actor, in a manner of speaking, because he set out to encourage Native peoples to believe in the “validity of their own cultures and the resources, categories or knowledge, and the modes of discourse already at their disposal for reasoned, analytical thought.”²¹⁴ By encouraging such an active envisioning of themselves and the world, Deloria has thus created what has come to be considered a “‘metascience,’ that is, a critique of Euro-Western science from the perspective of indigenous knowledge systems.”²¹⁵ The presumption is that, without developing their own persona and articulating a way to focus on who they are as peoples with their own history and culture that interacts within and against other histories and cultures, there will be little chance to overcome the uncertainties posed by Western forms of knowledge and incumbent rules that have colonized Native peoples for centuries.

Or, as Grounds, Tinker, and Wilkins believe, Native peoples need to engage in lively pursuit of “Indigenous self-determination [which] begins with individual self-determination.”²¹⁶ These scholars believe that by doing this Native peoples will have a more effective means for escaping the grasp of the “ideological and semantic confines of Western legal and political discourse” that has enabled bureaucratic processes like that for the Yucca Mountain project to continue to entrap them in colonizing discourses. Specifically, the Yucca Mountain policy process seemed to ignore the rights and beliefs of the Western Shoshone and others in their quest to preserve their cultures and identities

as Native peoples with different lifeways. But this is understandable since there is not yet a standard set of practices to define proper or desirable forms of interactions between federally recognized tribes and the U.S. government and this situation needs to change.

One Native scholar who has actively embraced the ideas espoused by Deloria is Taiaiake Alfred (Mohawk) and he just may offer a path for finally shedding the vestiges of colonial discourse that have heretofore defined interactions with the U.S. thereby allowing Native peoples to begin to articulate what interactions and negotiations would look like between themselves and the U.S. from their own perspective. Alfred believes that getting to this point requires challenging colonialism and changing how Native peoples see themselves. Specifically, one manner in which Alfred has attempted to challenge colonialism is by drawing on Deloria's writings to unsettle notions about the utility of the term sovereignty as a means to an end for Native peoples. Sovereignty, from this perspective, is not a user friendly term but one that is bound up within "colonial political tradition"²¹⁷ as is the notion of self-government. Perhaps this is why there were such differences in opinion during the EIS process about what truly constituted government-to-government consultation and interactions since the Western Shoshone were forced to interact within the context of Western ideas and laws that define how decisions affecting citizens of the U.S. are to be made. The ability to embrace that way of life, the thought processes, and laws have a different impact on those who see the ways of the U.S. government as foreign and strange when talking about the land and actions to protect people let alone defining forms of governance that are atypical for most Native peoples.

Recall that Corbin Harney spoke frequently about this issue when he addressed Mother Earth; the interconnectedness of people, plants and animals to the land; and what the land has to offer but only if the proper respect is shown for the provider of life. This is not a concept wholly embraced by the typical American despite the greening of America as people recycle and try to find ways to manage ever-growing waste streams and develop alternative sources of energy to lessen the impact on the environment in the interest of protecting natural and dwindling resources while also assuring human survival. Thus, right here we see a difference in worldviews between many Native peoples—especially the more traditional peoples—versus many Americans. Many Native peoples view humans as just one of the many interacting components within an environmental system. Alfred takes a similar position, and casts his vision for educating others as a political strategy where indigenous peoples “develop a forward-looking vision while recalling their own traditions ‘honoring the autonomy of individual conscience, non-coercive authority, and the deep interconnection between human beings and other elements of creation.’”²¹⁸

This position is not without risks, however, since many Native peoples have embraced the notions of sovereignty and self-determination. Basically, these concepts became a part of who Native peoples were to become as newly recognized nations under the Indian Reorganization Act with its prescriptions for defining how Native Americans would govern their peoples and interact with their trustee, the federal government. This tendency has become less, however, as more tribes fight for lost resources, rights, and monetary settlements for treaty violations and maltreatment that has severely degraded the status of many tribes. On the other hand, this caused some tribes to consider violating

their sacrosanct ways of being and knowing to find ways to cover the costs of taking care of their people until such a time that better options became available since the federal government has ceased or reduced many forms of support despite still serving as trustee responsible for protecting tribal interests. Examples include both the Mescalero and Skull Valley Band of Goshutes who considered hosting Monitored Retrieval Storage sites, although these projects never came to fruition as already discussed. Hence, the bottom line is that the trust relationship has become tenuous, with the various federal entities interacting with tribes varying in how they interpret the requirements of the trust relationship with many decisions typically emphasizing how best to serve U.S. over tribal interests.

Ruminations and Resolutions

So where do we go from here? Is there a solution that will help overcome colonizing rhetoric as tribal peoples reclaim vanishing identities and renew their commitment to their cultures and their ways of being and knowing the best that they can in an altered and generally modernized state of being? I believe there is a way to move forward and to apply the lessons that have been learned by examining policy failures from the perspective of those impacted. But this requires understanding and embracing the perspectives of the peoples who believe they are impacted, which requires attempting to understand what it is that imbues their perspectives. In other words, as a policymaker, one cannot assume that because they know the science behind a plan of action is sound, that simply telling people this will make them believe a particular policy can protect human health and safety and the environment in a way that is meaningful for all. This is far from the truth when actions and deeds do not always reflect a respect for people and the environment as defined within particular belief systems even if policymakers perceive

a policy as intended and designed to equally serve all.

Evidence of this was pervasive during the EIS process for the Yucca Mountain project where, time and again, responses to comments tended to value scientific and technological evaluations over more subjective and often emotive expressions of concerns about various types of impacts that were of great interest to the Western Shoshone. In this sense, it seems that science and technology were used to validate decisions despite the importance of cultural issues and traditions to the tribes participating in the EIS process. On the other hand, it might be that the DOE chose to turn a blind eye to the issues or just did not want to acknowledge them because of the implications for the project if they did so. It could also be that they just did not know how to address such issues because DOE officials were tasked with making objective decisions based on the scientific merit of studies and technical assessments and subjective realities are not easily dealt with under such constraints. Regardless, what transpired poses problems for the policy process generally if public concerns are supposed to be considered and addressed in an efficacious manner but there is the perception among some people that not all public concerns are equally valued.

This is especially important in contentious policy domains where there is the potential to impact some populations more than others, yet this potential is not recognized because policymakers often lack the depth of knowledge required to truly understand why this may be the case so they can make appropriate policy recommendations to avoid imposing on such populations. On the other hand, it is unfair to place all of the blame for such situations on policymakers and their bureaucracies if potentially impacted populations fail to proactively find a way to come to the table or at least force recognition

of their need to participate at a particular level in the policy process. To be sure, the Western Shoshone could be equally blamed for not gaining the recognition and access to the policy process that they desired, although such a situation might be attributed to the fact that there was little trust in the government in terms of doing what was right and fair due to historical relations. The problem is that there is no way to really no how to allocate blame in the absence of information about how both sides sought to encourage and engage interaction, although the Western Shoshone comments would seem to indicate that the DOE was not too proactive in terms of viewing the tribes as government entities that should participate as such on a regular basis.

But this did not have to be the case. Public policy can be informed by Native perspectives and policymakers can strive to build trust by focusing on ways to empower Native peoples while concomitantly serving the interest of the federal government to enact wide-reaching policy that provides benefits for all in a conciliatory but not condescending manner. This requires actively remembering rather than ignoring history since the latter is a means for erasing the presence and reality of Native peoples who are indeed alive and living cultures working toward recovery and revitalization even if touched and changed by modernity. In other words, as Alfred states, there needs to be a way to understand a “Native American paradigm”²¹⁹ that “incorporates the idea of renewal”²²⁰ and this can occur if one understands that the

Ideal personality in Native American cultures is a person who shows kindness to all, who puts the group ahead of the individual wants and desires, who is a generalist, who is steeped in spiritual and ritual knowledge—a person who goes about daily life and approaches ‘all his or her relations’ in a sea of friendship,

easygoing-ness, humour, and good feelings. She or he is a person who attempts to suppress inner feelings, anger, and disagreement with the group. She or he is a person who is expected to display bravery, hardiness, and strength against enemies and outsiders. She or he is a person who is adaptable and takes the world as it comes without complaint. That is the way it used to be! That is the way it should be!²²¹

If Corbin Harney were still alive, I would ask him to what extent he concurs with this belief, although I think I know the answer. In one of his last comments published in the Final EIS he states

Each and everyone of us, I don't care where you come from, we're on this one Earth together. We're drinking the same water everybody drinks, everyone drinks. I don't care what it is. Even the mosquito drinks water. Those are the things that we're going to have to protect. The life that was put here by the nature, we cannot walk away from it. We're going to have to change the direction. Our scientists are going to have to come up with a cleaner power, a cleaner water. Ain't no way that we're going to stop this water from flowing underneath us. It's already happening throughout the world....

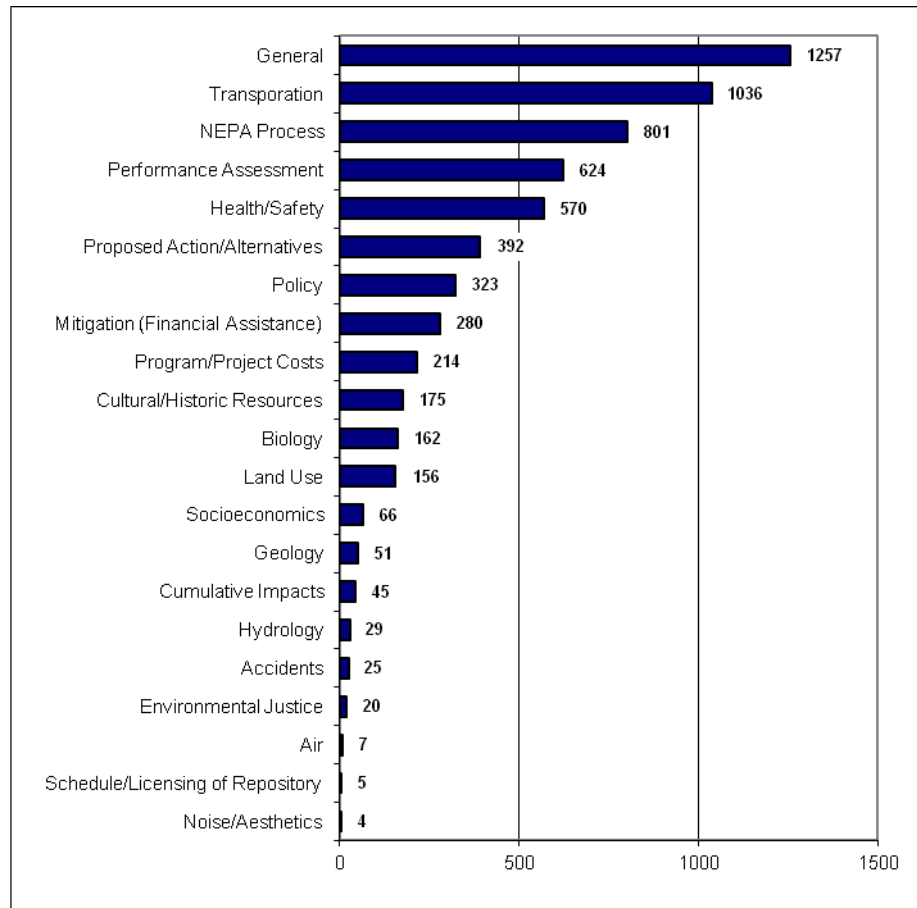
Let's do something together. Let's talk to one another. Let's not go agin' each other and say, 'I know better than you do,' and I say there for you people. You don't know too much about this Earth at all. Now you coming back to me and asking me what kind of herb can I use to heal myself? The Native people know that. They lived here for millions of years, but we're not going to tell you unless if you want to begin it.²²²

Can it be better stated? I don't think so. Real solutions need to come from working together and not by taking sides and casting blame. We all need to listen better and work to understand differences. And, generally, everyone has the same goals, although we forget that sometimes because the same words are not used and people often speak past one another because it is presumed everyone comes from the same place. But, it is time to remove the blinders and open our eyes and recognize difference is pervasive and understanding it makes it easier to resolve even what seem to be the most untenable problems. In the context of this discussion, one particularly valuable method for seeking a commonly acceptable resolution is by identifying stakeholders in a policy domain during the design phase of policy development so that these people can be brought together to make sure that the proper parties are at the table. An important part of this process is understanding the nature of relations inherent to the different parties involved, though, to make sure that culturally imbued practices are understood yet do not promote ignoring any one part of the societies of the groups participating. Specifically, the power dynamics of gender roles are important to understand, as well as how decisions are made and when in societies in an effort to not exclude important voices that might need to be heard—yet could be excluded based on cultural practices—in the absence of full participation of those in a potentially impacted group. It would also be helpful to understand how different decision-makers in failed policy domains saw the policy formation process unfold and to understand their positions and perceptions about why failures occurred and when the biggest impediments to success first came into view. This can help prevent some of the same mistakes from being repeated in future policy efforts pertaining to a variety of policy domains.

Once all parties are identified and issues such as those just discussed are understood, the principle players can then actively work in small groups that independently define issues of concern, help each other understand the nature of concerns, and then produce a consensus plan to guide further decision-making when these smaller working groups are brought together to merge their plans into a larger consensus plan. In essence, this involves utilizing a collaborative governance model that should more effectively promote efficacious decisions than current policymaking models that rely on public meetings to ascertain what concerns are but rarely engage the public expressing those concerns in developing the solutions necessary to enhance the potential for achieving success during the policy implementation process. The only additional issue, then, is making sure that all parties recognize that the goal is developing robustly-informed policy that makes the most sense without forcing a requirement for full consensus on a policy issue since this is not possible to achieve in an imperfect world where differences abound.

APPENDICES

APPENDIX A
TOP ISSUE CATEGORIES FROM SCOPING MEETING



APPENDIX B

TABLE OF WESTERN SHOSHONE COMMENT DOCUMENTS FINAL EIS FOR YUCCA MOUNTAIN

Tribe/Organization by Member	FEIS	Record Count	# Documents	Date Letter/Statement
Battle Mountain Band TeMoak Western Shoshone				
Lydia Johnson, Tribal Chairperson	1864	1	1	2/17/2000
Consolidated Group of Tribal Organizations				
Richard Arnold	2074	2	3	1/14/2000
	2087	3		1/14/2000
	10334	4		6/8/2001
Duckwater Shoshone				
Henry Blackeye	1848	5	1	2/25/2000
Ely Shoshone				
Arthur Kaamasee, Tribal Chairman	1441	6	1	2/9/2000
Jerry Charles	2080	7	1	2/22/2000
Jerry Charmer	10346	8	1	6/8/2001
Shoshone-Bannock				
Duane Thompson	1928	9	1	2/28/2000
Shundahai Network				
Corbin Harney	1275	10	2	2/9/2000
	2240	11		2/22/2000
Timbisha Shoshone				
Bill Helmer	10278	12	3	6/5/2001
	10279	13		6/5/2001
	10344	14		6/8/2001
Pauline Esteves, Tribal Chair	263	15	5	11/4/1999
	376	16		11/4/1999
	1863	17		2/24/2000
	1906	18		2/28/2000
	2077	19		11/14/2000
Ken Watterson	10336	20	1	6/8/2001
Grace Goad	2078	21	1	11/4/2000
Western Shoshone				
Corbin Harney, Spiritual Leader	1662	22	12	2/20/2000
	2298	23		2/22/2000
	88	24		9/27/1999
	624	25		12/9/1999
	1463	26		1/13/2000
	1483	24		1/13/2000
	2097	28		1/11/2000
	2202	29		2/2/2000
	2206	30		2/2/2000
	2273	31		2/22/2000
	10113	32		6/5/2001
	10154	33		6/7/2001
	Carrie Dann	634		34
Richard Dann	411	35	1	12/13/1999
Western Shoshone Defense Project				
Carrie Dann	1965	36	1	2/28/2000
Christopher Sewall	638	37	1	12/9/1999
Western Shoshone National Council				
Ian Zabarte	2156	38	3	1/11/2000
	10029	39		6/5/2001
	10132	40		6/5/2001
Yomba Shoshone				
Kevin Brady	1724	41	1	2/22/2000

APPENDIX C

**CORBIN HARNEY FINAL EIS DOCUMENT#002298:
WSNC RESOLUTION PERTAINING TO STATUS AS NUCLEAR FREE ZONE**

RECEIVED

EIS002298

FEB 22 2000

San Bernadino, CA 2/22/00
Exhibit 2.7.45 2-5

Corbin Harney

**WESTERN SHOSHONE NATION
DECLARATION OF A NUCLEAR FREE ZONE**

WHEREAS, The people of the Western Shoshone Nation find the presence radioactive materials, nuclear power facilities and nuclear weapons facilities within the lands, the watershed or airshed of the lands of the Western Shoshone Nation, known in the Shoshone language as Newe Sogobia, as set forth in the Treaty of Ruby Valley of 1863, to be in conflict with the maintenance of the community's economic well-being, health, and general welfare; and,

WHEREAS, Nuclear weapons testing by the United States government on Western Shoshone lands, in direct conflict with Western Shoshone National Council law and policy, has left portions of Newe Sogobia scarred and permanently contaminated with radiation; and,

WHEREAS, The aforementioned nuclear weapons testing by the United States government on Western Shoshone lands has already caused widespread cancer, bringing illness and death to Western Shoshone, members of other Indian nations, and the non-Indian people of the Great Basin region; and,

WHEREAS, The United States government continues to contaminate Western Shoshone lands at the Nevada Test Site by importing and, dumping, radioactively and chemically contaminated soil and other waste products; and,

WHEREAS, The United States Geological Survey has found that the aquifer under the Beatty radioactive waste dump site is about to become contaminated with long-lived radionuclides, endangering drinking water on Western Shoshone lands; and,

WHEREAS, The government of the United States, against the expressed wishes of the Western Shoshone National Council, is proposing to store highly-irradiated fuel from commercial nuclear power plants, which will remain deadly for hundreds of thousands of years, at Yucca Mountain, within Western Shoshone lands; and,

WHEREAS, A high volume of truck transportation of radioactive wastes can be expected through the Western Shoshone Nation's lands and the surrounding region, increasing the likelihood of an accident and the rapid dispersal to the environment of deadly, long-lived radioactive wastes; and,

WHEREAS, The presence of radioactive waste dumps in the region, and the publicity surrounding it, will severely harm the economy of the Western Shoshone and neighboring peoples; and,

WHEREAS, Over 4,500 local communities throughout the world, 25 nations; and the regions of the Antarctic, Latin America and the South Pacific have been declared nuclear free zones; and,

WHEREAS, The National Council of the Western Shoshone encourages the development of clean, renewable energy resources in order to create jobs that maintain the traditional Native American values of care-taking and balance with natural creation; and,

WHEREAS, The National Council of the Western Shoshone encourages research into radioactive waste neutralization techniques and demands the stabilization and or clean up, if possible, of existing radioactive waste on the lands of the Western Shoshone Nation;

NOW, THEREFORE

SECTION 1. BE IT ORDAINED BY THE WESTERN SHOSHONE NATIONAL COUNCIL, That the following declaration be added to and made a part of the laws of the Western Shoshone Nation:

NUCLEAR FREE ZONE
DEFINITIONS,

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS APPLY:

IRADIOACTIVE MATERIALS ARE ANY RADIOACTIVE WASTE PRODUCTS OR MATERIALS GENERATED, REFINED OR MADE RADIOACTIVE BY ANY UNITED STATES GOVERNMENT AGENCY OR PURSUANT TO FEDERAL OR STATE GOVERNMENT CONTRACT OR LICENSE. AND INCLUDING THAT WHICH THE UNITED STATES NUCLEAR REGULATORY COMMISSION CLASSIFIED AS LOW-LEVEL RADIOACTIVE WASTE AS OF JANUARY 1, 1989, BUT WHICH MAY BE CLASSIFIED AS BELOW REGULATORY CONCERN WASTE AFTER THAT DATE. INUCLEAR WEAPON IS ANY DEVICE, THE PURPOSES OF WHICH IS THE USE AS A WEAPON, A WEAPON PROTOTYPE, OR A WEAPON TEST DEVICE, THE INTENDED DETONATION OF WHICH RESULTS FROM THE ENERGY RELEASED BY FISSION AND/OR FUSION REACTIONS INVOLVING ATOMIC NUCLEI. INUCLEAR WEAPON INCLUDES THE WEAPON'S GUIDANCE AND PROPUSSION SYSTEM AND TRIGGERING MECHANISM, I.E., THE MEANS OF TRANSPORTATING, GUIDING, PROPELLING, TRIGGERING, OR DETONATING THE WEAPON, PROVIDED THAT SUCH MEANS IS DESTROYED OR RENDERED USELESS IN THE NORMAL TRANSPORTATING, PROPELLING, TRIGGERING, OR DETONATION OF THE WEAPON. IPERSON MEANS A NATURAL PERSON, AS WELL AS A CORPORATION, INSTITUTION, OR OTHER ENTITY.

PROHIBITION OF STORAGE, USE OR DISPOSAL OF RADIOACTIVE MATERIALS.

EXCEPT AS SPECIFICALLY EXEMPTED IN THIS ARTICLE, NO PERSON SHALL IMPORT, STORE, INCINERATE, TREAT, PROCESS, OR DISPOSE OF RADIOACTIVE MATERIALS, FOR ANY PURPOSE, WITHIN THE LANDS OF THE WESTERN SHOSHONE NATION, OR WITHIN LAND FILLS OR INCINERATORS OWNED OR LICENSED BY THE WESTERN SHOSHONE NATION.

PROHIBITION OF NUCLEAR WEAPONS WORK.

NO PERSON SHALL KNOWINGLY, WITHIN THE LANDS OF THE WESTERN SHOSHONE NATION, DESIGN, TEST, PRODUCE, LAUNCH, MAINTAIN, OR STORE NUCLEAR WEAPONS OR COMPONENTS OF NUCLEAR WEAPONS.

PROHIBITION OF NUCLEAR REACTORS.

NO PERSON SHALL CONSTRUCT, OPERATE, A NUCLEAR REACTOR WITHIN THE LANDS OF THE WESTERN SHOSHONE NATION.

PROHIBITION OF URANIUM AND MILLING.



NO PERSON SHALL CONSTRUCT OR OPERATE A URANIUM MINE OR MILLING OPERATION WITHIN THE LANDS OF THE WESTER SHOSHONE NATION.

MIGRATION OF RADIOACTIVE MATERIALS.

NO PERSON OR OTHER NATION SHALL ALLOW THE MIGRATION OF RADIOACTIVE MATERIALS FROM NEIGHBORING LANDS INTO THE LANDS OF THE WESTERN SHOSHONE NATION.

NUCLLEAR FREE ZONE SIGNS.

THE WESTERN SHOSHONE NATIONAL COUNCIL SHALL POST AND MAINTAIN APPROPRIATE SIGNS AT ALL RECOGNIZED ENTERANCES TO THE LANDS OF THE WESTERN SHOSHONE NATION, AT ENTERANCES TO THE YUCCA MOUNTAIN FACILITY AND THE NEVADA NUCLEAR TEST SITE, AND THE NATIONAL COUNCIL OFFICE IN CACTUS SPRINGS, PROCLAIMING THE WESTERN SHOSHONE NATION'S STATUS AS A NUCLEAR FREE ZONE.

ENFORCEMENT

EACH VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A \$1,000,000 FINE. EACH DAY OF VIOLATION SHALL BE DEEMED A SEPARATE VIOLATION. ENFORVEMENT WILL BE BY A DULY AUTHORIZED AGENT OF THE WESTERN SHOSHONE NATION.

THIS DECLARARION IS HEREBY ENACTED ON THIS 2ND DAY OF DECEMBER, 1995 BY CONSENSUS OF THE WESTERN SHOSHONE NATIONAL COUNCIL.

RAYMOND D. YOWELL, CHIEF

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NOTES

¹ This point speaks to the fact that some tribes have ceased to exist as they were once known—if they continue to exist at all even if only as individuals with a cultural affiliation. While this has occurred for a variety of reasons over the centuries since first contact on the American continent, federal calls to eradicate tribes' official status to allow the government to meet the growing needs of a developing nation had a significant impact on native survivance in the past. The issue discussed herein has the same potential for eradicating native peoples who live life differently than the predominant culture in the United States today and that is the population known as *Americans*.

² Motto of Carlisle Indian Boarding School founded by Capt. Richard Henry Pratt. Although I have modified the sentiment slightly because there is little question that the health and safety of the Navajo was not on the forefront the minds of government and industry despite the fact that the Bureau of Indian Affairs was expressly tasked with protecting the rights and welfare of Indian nations.

³ The theme embedded herein, then, is how to understand the differential realities that affect sundry groups such that policy preferences and attitudes can be understood in specific contexts. It is my contention that such an understanding will facilitate achieving greater consensus about how to deal with intractable problems like the nation's ever-increasing nuclear burden. The bottom line is that nuclear waste is not going away even if the U.S. heeds the call by many indigenous peoples and anti-nuclear groups throughout the world to cease all nuclear activities that produce wastes and often burden Native populations.³ This is true because the U.S., as well as other nations throughout the world, have not effectively addressed how to deal with existing wastes in a socially and culturally efficacious manner by adequately exploring the diversity of stakeholders and how cultural differences affect opinions on policy issues.

⁴ I use the notion of survivance as defined by Gerald Vizenor because I believe it reflects the manner in which Native nations have been able to persevere against even the most daunting odds under colonialism here in the U.S. Vizenor states that survivance "is more than survival, more than endurance or mere response; the stories of survivance are an active presence.... The native stories of survivance are successive and natural estates; survivance is an active repudiation of dominance, tragedy, and victimry." See Gerald Vizenor, *Fugitive Poses: Native American Indian Scenes of Absence and Presence* (Lincoln: University of Nebraska Press, 1998), p. 15.

⁵ Clifford Geertz. "Thick Description: Toward an Interpretative Theory of Culture." In *The Interpretation of Cultures*. (New York: Basic Books, 1973), pp. 3-30; as used herein, I follow the precept set forth by Geertz who states "Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretative one in search of meaning. It is explication I am after, construing social expression on their surface enigmatical" (5). What I am after

is understanding the significance and meaning of interactions and their outcomes because such knowledge helps assure that I come closer to defining a policy model that uses cultural difference rather than pursues cultural indifference to promote the development of better and more conciliatory policies in contentious policy domains.

⁶ There are many examples in U.S. history where the dual status of Native Americans as sovereign nations unto themselves and domestic dependent nations has and has not been recognized and they are too numerous to address here. Further, discussing these other cases would diverge from the level of specificity desired to for explication of the issue at hand. Hence, suffice it to say, that—as a federal government entity—the Bureau of Indian Affairs

⁷ The operative phrase here is “just one group,” because there have been many players involved in this policy process since it began several years ago albeit not considered in the same light in terms of credibility. Specifically, Senator Harry Reid had more power and prestige than did the Western Shoshone, which was proven when he joined ranks with Speaker of the House Nancy Pelosi after President Obama took the Office of the Presidency in 2008. Basically, both Senator Reid and Speaker Pelosi had greater opportunities to gain the ear of President Obama who acted swiftly to quash Yucca Mountain from consideration as the nation’s leading solution for high-level radioactive waste storage despite decades of research on this issue and billions of dollars being spent. And for all of this, we are still not any closer to a near-term solution for permanently managing the nation’s high-level radioactive waste. This is especially troubling since researchers and policy makers alike have shown renewed interest in pursuing the production of nuclear energy in an attempt to reduce greenhouse gas emissions through the use of so-called *clean* energy. The question not being kept at the forefront of discussion, though, is how can nuclear energy be considered clean if so much waste requires storage? Expanding nuclear energy production will not help this situation either.

⁸ Michael Gerrard. *Whose Backyard, Whose Risk: Fear and Fairness in Toxic and Nuclear Waste Siting*. (Cambridge: The MIT Press, 1994).

⁹ James Lester, David Allen, and Kelly Hill. *Environmental Injustice in the United States*. (Boulder: Westview Press, 2001).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Valerie Kuletz. *The Tainted Desert: Environmental and Social Ruin in the American West*. (New York: Routledge, 1998); Valerie Kuletz. “Invisible Spaces, Violent Places: Cold War Nuclear and Militarized Landscapes.” In *Violent Environments*. Nancy Lee Peluso and Michael Watts, eds. (Ithaca: Cornell University Press, 2001).

¹³ Ward Churchill. *Struggle for the Land: Native North American Resistance to Genocide, Ecocide, and Colonization*. (San Francisco: City Lights Books, 2002).

¹⁴ Winona LaDuke. *All Our Relations: Native Struggles for Land and Life*. (Cambridge: South End Press, 1999).

¹⁵ While this term is used by Kuletz in *The Tainted Desert: Environmental and Social Ruin in the American West*. (New York: Routledge, 1998), the term was appropriated by Kuletz to illustrate how the development of things nuclear has an impact beyond that of the intended use of weapons specifically and fits the usage as I use it herein to take on a more derogatory cast within the context of framing a form of colonialism. However, the term actually dates back to 1974 when it was first coined by Robert Lifton and it referred to the production and use of nuclear weapons (see Lifton, Robert Jay & Richard Falk, *Indefensible Weapons: The Political and psychological Case Against Nuclearism* (New York: Basic Books, 1982)).

¹⁶ David E. Wilkins and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Indian Law*. Norman: University of Oklahoma Press, 2001.

¹⁷ Ibid.

¹⁸ Deloria, Vine, Jr. and Clifford M. Lytle. *The Nations Within: The Past and Future of American Indian Sovereignty*. (Austin: University of Texas Press, 1984); Vine Deloria, Jr. and Clifford Lytle. *American Indians, American Justice*. (Austin: University of Texas Press, 1983).

¹⁹ Ibid.

²⁰ Wilkins and K Lomawaima, p. 6.

²¹ Joseph Masco. *The Nuclear Borderlands: The Manhattan Project in Post-Cold War New Mexico*. (Princeton: Princeton University Press, 2006).

²² Of particular interest in this context is a consideration of Foucault's notions of biopolitics, Biopower, and governmentality and how such issues frame "technologies of power"; the specific aspect of interest here is how such affect discourse surrounding notions of sovereignty and types of sovereign power in different contexts.

²³ Doug Brugge, Timothy Benally, and Phil Harrison. "Memories Come to us in the Rain and the Wind." *In Motion Magazine*. <http://www.inmotionmagazine.com/brugge.html> (retrieved October 10, 2005)

²⁴ My emphasis at this juncture is exploring the degree to which a public policy debate cast aside one aspect of the need for public input by mischaracterizing some of the

stakeholders in terms of this particular debate, although this practice has implications for an array of public policies.

²⁵ Alpha Institute, *National Environmental Coalition of Native Americans*, <http://oraibi.alphacdc.com/necona/>.

²⁶ Grace Thorpe, "No Nuclear Waste on Indian land," *Red Power: The American Indians' Fight for Freedom*, eds. Alvin Josephy, Jr., Joane Nagel, and Troy Johnson, (Lincoln: University of Nebraska Press, 1999), 163.

²⁷ Ibid.

²⁸ Alpha Institute, *National Environmental Coalition of Native Americans*, <http://oraibi.alphacdc.com/necona/legacy.html>.

²⁹ Treaty of Peace and Friendship, October 1, 1863.

³⁰ Corbin Harney, *Western Shoshone Land and Sovereignty*, <http://www.nativeweb.org/pages/legal/shoshone/>.

³¹ Steven Newcomb, "Yowell and Reid Agree and Disagree," *Indian Country Today*, (Oneida, March 20, 2002).

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ This was the motto of Captain Richard H. Pratt when speaking of the need to educate Indians.

³⁷ Brenda Norrell, "Western Shoshone Urge Probe of Human Rights Violations," *Indian Country Today*, (Oneida, February 1, 2006).

³⁸ Ibid.

³⁹ Brenda Norrell, "Western Shoshone Appeal for United Nations Intervention," *Indian Country Today*, (Oneida, August 24, 2005).

⁴⁰ Anonymous, "Western Shoshone Take Their Case to the United Nations," *Indian Country Today*, (Oneida, February 23, 2006).

⁴¹ Ibid.

⁴² Norrell, February 1, 2006.

⁴³ Ibid.

⁴⁴ Native American Rights Fund, *NARF*, <http://www.narf.org/>

⁴⁵ *Honor the Earth*, <http://www.honorearth.com/aboutus/mission.html>

⁴⁶ Ibid.

⁴⁷ Peter P. d'Errico, "Introduction: Native Americans in American Politics," *Encyclopedia of Minorities in American Politics*, ed. Jeffrey D. Schultz, (Phoenix: The Oryx Press, 2000), 11-12.

⁴⁸ Ibid., 11. See also Ian Zabarte, "Poison Fire, Sacred Earth," *Testimonies, Lectures, Conclusions*, (Salzburg: The World Uranium Hearings, 1992), p. 169.

⁴⁹ Ibid. 11.

⁵⁰ Great Basin Information Project (accessed July 29, 2011 at http://www.nbii.gov/portal/server.pt?open=512&objID=561&&PageID=1597&mode=2&in_hi_userid=2&cached=true).

⁵¹ Mac, M. J., P. A. Opler, C. E. Puckett Haecker, and P. D. Doran. 1998. Status and trends of the nation's biological resources. Vol. 2. U.S. Department of the Interior, U.S. Geological Survey, Reston, Va. pp. 505-542.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Crum, page 1. The term *Newe* roughly translates to "the people."

⁵⁵ Ibid.

⁵⁶ Corbin Harney, *The Way It Is*, p.

⁵⁷ They did not have a written language before the coming of Euro-Americans, which is a common finding of many studies of Native peoples.

⁵⁸ Crum, p. 13.

⁵⁹ Treaty of Ruby Valley, October 1, 1863, 18 Statutes at Large 689.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Squatting has been defined by many sources and is a commonly known term in the English language. According to the on-line Random House dictionary, squatters are: “1. a person or thing that squats. 2. a person who settles on land or occupies property without title, right, or payment of rent. 3. a person who settles on land under government regulation, in order to acquire title.” See: squatters. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/squatters> (accessed: July 15, 2009).

⁶⁷ The settlement is also troubling due to the fact that the ruling was based on a decision made in 1977 although the date of the so-called taking was 1872, which added insult to injury since it affected the amount paid since; the valuation considered the land at the earlier date rather than being based on current monetary value—it also failed to consider lost revenues from resource extraction that occurred over time on those lands.

⁶⁸ Peter d'Errico presented and extensively wrote on this topic, although a strong summary of his research is presented in "Native Americans In America: A Theoretical And Historical Overview," *Wicazo Sa Review*, Spring 14:1 (1999): 7-28.

⁶⁹ Ward Churchill, *Struggle for the Land: Native North American Resistance to Genocide, Ecocide, and Colonization*, (San Francisco: City Lights Books, 2002), 185.

⁷⁰ Kuletz, *The Tainted Desert*, 188.

⁷¹ Council of Energy Resource tribes, “Launching the tribes into a New Millennium,” *Red Power: The American Indians’ Fight for Freedom*, eds. Alvin Josephy, Jr., Joane Nagel, and Troy Johnson (Lincoln: University of Nebraska Press, 1999), 156.

⁷² Ibid.

⁷³ Randel D. Hanson, “Indian Burial Grounds for Nuclear Waste,” *Multinational Monitor* XVI, no. 9 (1995): 4, <http://www.cwis.org/fwdp/Americas/nukewast.txt>.

⁷⁴ Ibid.

⁷⁵ Ross C. Rocky Anderson, “State of the City Address,” *Salt Lake Tribune*, (Salt Lake City, January 11, 2005).

⁷⁶ Alvin Josephy, Jr., Joane Nagel, and Troy Johnson, “Introduction,” *Red Power: The American Indians’ Fight for Freedom*, eds. Alvin Josephy, Jr., Joane Nagel, and Troy Johnson, (Lincoln: University of Nebraska Press, 1999), 4.

⁷⁷ Winona LaDuke, “Traditional Ecological Knowledge and Environmental Futures.” *Endangered Peoples: Indigenous Rights and the Environment*, (Niwot: University Press of Colorado, 1994), 129.

⁷⁸ Basically, economic challenges, climate change, religious intolerance, and terrorism are all factors that seem to keep leaders the world over from resting or being able to make decisions that have the least impact on the fewest individuals. On the other hand, people have to make decisions about what they will tolerate or find a way to make changes that might provide stronger means for assuring survival of their beliefs in support of their chosen path in life.

⁷⁹ *Ibid.*, 131

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 132.

⁸² Leon Bear, Statement Defending Private Fuel Storage Decision, <http://www.privatefuelstorage.com/voices/bear.html>

⁸³ In LaDuke, “Traditional Ecological Knowledge,” 134.

⁸⁴ *Ibid.*, 137.

⁸⁵ *Ibid.*, 138.

⁸⁶ *Ibid.*, 139.

⁸⁷ The U.S. government was required to take over the waste by 1998, but delays in site studies and legal issues kept this from happening. This set the stage for a new round of issues when nuclear power plant companies sought legal relief since the federal government was in default of its own mandate to take on the waste and this had costs for the plant operators. Further, beyond the legalities of not taking the waste, in addition to growing questions about the equity and safety of the Yucca Mountain site, President Obama put an end to further site consideration until such a time as some resolution could be achieved about how to deal with the problem of nuclear waste in the most efficacious and expeditious manner.

⁸⁸ United States Government. *The National Environmental Policy Act*, (Washington, D.C.: U.S. Government Printing Office, 1970) is known as Public Law 91-190 and it is codified at 42 U.S.C. 4321-4370.

⁸⁹ *Ibid.*, 101(a), 42 U.S.C. 4331(a). Also see Robert V. Percival, Alan S. Miller, Christopher H. Shroeder, and James P. Leape, “Protection of Public Resources.” *Environmental Regulation Law, Science, and Policy*, (Boston: Little, Brown, and Company, 1992), 1021.

⁹⁰ *Ibid.*, 42 U.S.C. 4332(C).

⁹¹ Robert V. Percival, Alan S. Miller, Christopher H. Shroeder, and James P. Leape, 1024.

⁹² Executive Order 12898 (1994)

⁹³ Executive Order 13175 (2000)

⁹⁴ *Hanly v. Kleindienst* 471 F.2d 823 (2d Cir. 1972).

⁹⁵ Robert V. Percival, Alan S. Miller, Christopher H. Shroeder, and James P. Leape, 1051.

⁹⁶ Evelyn Nieves, “A Land’s ‘Caretakers’ Oppose Nuclear-Dump Plan,” *The New York times*, April 23, 2000.

⁹⁷ *Ibid.*

⁹⁸ “Nuclear Waste. One Big Dump,” *The Economist*, April 20, 1996, 22.

⁹⁹ The nature of comments and information provided by the media be addressed in more detail in Chapter 5, which focuses specifically on official and unofficial comments that informed the policy process.

¹⁰⁰ See note 87.

¹⁰¹ M. V. Rajeev Gowda and Doug Easterling, “Nuclear Waste and Native America: The monitored retrieval storage Siting Experience,” *Risk: Health, Safety and Environment* 9, (1998): 230-231.

¹⁰² *Ibid.*, 231.

¹⁰³ *Ibid.*, 233.

¹⁰⁴ *Ibid.*, 234.

¹⁰⁵ Ibid.

¹⁰⁶ Douglas Easterling and Howard Kunreuther, *The Dilemma to Site a High-level radioactive waste Repository*, (Norwell: Kluwer Academic Publishers, 1995), 73.

¹⁰⁷ The reserved rights doctrine states that Indians had rights to their lands and all else belonging to them—including their affairs—and they retained these rights unless expressly stated in treaties with the U.S. The intent of this doctrine as stated by the courts was to clarify “the manner in which treaty documents should be read so as to eliminate, insofar as possible, the disparities that history and cultural difference had created.” Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice*, (Austin: University of Texas press, 1983), 50. Also see David Wilkins and K. Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law*, (Norman: University of Oklahoma Press, 2001), 120.

¹⁰⁸ Ibid.

¹⁰⁹ Easterling and Kunreuther, *The Dilemma*, 79.

¹¹⁰ Ibid., 75.

¹¹¹ Ken Verdoia, “Rufina Marie Laws: Anti-Nuclear Activist, Mescalero Apache Reservation,” <http://kued.org/skullvalley/documentary/interviews/laws2.html>

¹¹² Gowda and Easterling, *Risk*, 238.

¹¹³ U.S. Environmental Protection Agency, *Environmental Justice: Guidance Under the National Environmental Policy Act*, (Washington, D.C.: Council on Environmental Quality, 1997), p12.

¹¹⁴ U.S. Department of Energy, Final 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, Readers Guide and Summary, (Washington D.C.: Department of Energy, 2002), S88.

¹¹⁵ Ibid, S37-38.

¹¹⁶ Ibid, S38. Also see note 67 in this volume referencing d’Errico.

¹¹⁷ Ibid, S56.

¹¹⁸ Such laws include the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources and Protection Act.

¹¹⁹ U.S. Department of Energy summary of the *Final Environmental Impact Statement*, S57.

¹²⁰ *Ibid.*, S81.

¹²¹ Carrie Dann, discussion with author with, November 30 - December 2, 2006.

¹²² U.S. Department of Energy, Summary of Public Scoping Comments Related to the 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, (Washington D.C.: Department of Energy, 1997), 10.

¹²³ While the number of issues was larger, only the top 10 are shown here for ease of discussion. However, a figure that includes all issues is provided in Appendix A.

¹²⁴ *Ibid.*

¹²⁵ U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Final 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, Department of Energy/EIS-0250 (Washington, DC: US Government Printing Office, 2002), CR-1.

¹²⁶ The CGTO comments are included because members of the Western Shoshone tribes and bands participate in the organization so the comments can be equally attributed to Western Shoshone as much as to any other affiliated group represented by the CGTO.

¹²⁷ The roster provided in Appendix B shows the tribal or organizational affiliations and the number of responses presented to the Department of Energy during the FEIS process by each individual.

¹²⁸ OCRWM, CR1-1.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, CR1-32.

¹³¹ Arthur Kaamasee, Personal communication to the U.S. Department of Energy by regarding the Yucca Mountain EIS process (Document #EIS0001441), .

¹³² *Ibid.*

¹³³ Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process; Document #EIS001483.

¹³⁴ *Ibid.*

¹³⁵ Personal communication to the U.S. Department of Energy by Carrie Dann regarding the Yucca Mountain EIS process; Document #EIS001965.

¹³⁶ Ibid.

¹³⁷ Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process; Document #EIS000376.

¹³⁸ Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process; Document #EIS001906.

¹³⁹ U.S. Environmental Protection Agency, *Environmental Justice: Guidance Under the National Environmental Policy Act*, (Washington, D.C.: Council on Environmental Quality, 1997), p12.

¹⁴⁰ Personal communication to the U.S. Department of Energy by Ian Zabarte regarding the Yucca Mountain EIS process; Document #EIS0010132.

¹⁴¹ Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process; Document #EIS0001441.

¹⁴² Ibid.

¹⁴³ Personal communication to the U.S. Department of Energy by Bill Helmer regarding the Yucca Mountain EIS process; Document #EIS0010278.

¹⁴⁴ OCRWM, CR3-33.

¹⁴⁵ OCRWM, CR3-167.

¹⁴⁶ OCRWM, CR3-190.

¹⁴⁷ OCRWM, CR3-201.

¹⁴⁸ Ibid.

¹⁴⁹ Personal communication to the U.S. Department of Energy by Duane Thompson regarding the Yucca Mountain EIS process; Document #EIS001928.

¹⁵⁰ The resolution can be read in its entirety in Appendix C.

¹⁵¹ OCRWM, CR7-84.

¹⁵² OCRWM, CR7-134.

¹⁵³ OCRWM, CR7-104.

¹⁵⁴ Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #EIS000624.

¹⁵⁵ OCRWM, CR7-287.

¹⁵⁶ Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #EIS001928, CR7-472.

¹⁵⁷ Personal communication to the U.S. Department of Energy by Carrie Dann regarding the Yucca Mountain EIS process, Document #EIS001928 and OCRWM, CR7-560.

¹⁵⁸ Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process; Document #EIS001441 and OCRWM, CR7-564.

¹⁵⁹ Ibid.

¹⁶⁰ Three comments mentioned these issues and the concurrence on the topic by the Ely and Timbisha Shoshone and the WSNC. See Personal communication to the U.S. Department of Energy by Ian Zabarte regarding the Yucca Mountain EIS process, Document #EIS002156; Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process; Document #EIS001441; and Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process; Document #EIS010146.

¹⁶¹ OCRWM, CR7-567. Also see Personal communication to the U.S. Department of Energy by Bill Helm Pauline Esteves regarding the Yucca Mountain EIS process, Document #EIS010146; Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process, Document #EIS001441; and Personal communication to the U.S. Department of Energy by Ian Zabarte regarding the Yucca Mountain EIS process, Document #EIS002156.

¹⁶² Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process; Document #EIS000376.

¹⁶³ This was a common expression among the CGTO, the Timbisha and Battle Mountain Band of Te-Moak Shoshone, and the WSNC. See OCRWM, CR7-733. Also see Personal communication to the U.S. Department of Energy by Richard Arnold regarding the Yucca Mountain EIS process, Document #EIS002074; Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process, Document #EIS000263; Personal communication to the U.S. Department of Energy by Ian Zabarte regarding the Yucca Mountain EIS process, Document #EIS002156; Personal communication to the U.S. Department of Energy by Lydia Johnson regarding the Yucca Mountain EIS process, Document #EIS001864.

¹⁶⁴ Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #EIS002097 and #EIS000088.

¹⁶⁵ Personal communication to the U.S. Department of Energy by Bill Helmer regarding the Yucca Mountain EIS process, Document #EIS010279.

¹⁶⁶ OCRWM, CR7-685. Also see Personal communication to the U.S. Department of Energy by Bill Helmer regarding the Yucca Mountain EIS process, Document #EIS010279.

¹⁶⁷ Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process; Document #EIS001441.

¹⁶⁸ Personal communication to the U.S. Department of Energy by Duane Thompson regarding the Yucca Mountain EIS process, Document #EIS001928, and CR7-721.

¹⁶⁹ OCRWM, CR7-734-735; also see Personal communication to the U.S. Department of Energy by Richard Arnold regarding the Yucca Mountain EIS process, Document #EIS010334; Personal communication to the U.S. Department of Energy by Pauline Esteves regarding the Yucca Mountain EIS process, Document #EIS000263; Personal communication to the U.S. Department of Energy by Bill Helmer regarding the Yucca Mountain EIS process, Document #EIS010344; Personal communication to the U.S. Department of Energy by Jerry Charmer regarding the Yucca Mountain EIS process, Document #010346; Personal communication to the U.S. Department of Energy by Carrie Dann regarding the Yucca Mountain EIS process, Document #001965; Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #001463; Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #002202; Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #002097; Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process, Document #04120; Personal communication to the U.S. Department of Energy by Ken Watterson regarding the Yucca Mountain EIS process, Document #010336; Personal communication to the U.S. Department of Energy by Carrie Dann regarding the Yucca Mountain EIS process, Document #000634; Personal communication to the U.S. Department of Energy by Christopher Sewall regarding the Yucca Mountain EIS process, Document #000638.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² OCRWM, CR7-82.

¹⁷³ OCRWM, CR7-134.

¹⁷⁴ OCRWM, CR7-232.

¹⁷⁵ OCRWM, CR7-280.

¹⁷⁶ Ibid.

¹⁷⁷ OCRWM, CR7-364.

¹⁷⁸ OCRWM, CR7-365

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ OCRWM, CR7-472.

¹⁸² Ibid.

¹⁸³ OCRWM, CR7-568.

¹⁸⁴ OCRWM, CR7-704.

¹⁸⁵ OCRWM, CR7-729.

¹⁸⁶ OCRWM, CR7-735.

¹⁸⁷ OCRWM, CR7-736.

¹⁸⁸ OCRWM, CR7-738.

¹⁸⁹ See OCRWM, CR7-365 and the discussion pertaining to note 173.

¹⁹⁰ See Personal communication to the U.S. Department of Energy by Bill Helmer regarding the Yucca Mountain EIS process, Document #EIS010279 and the discussion pertaining to note 159.

¹⁹¹ Personal communication to the U.S. Department of Energy by Duane Thompson regarding the Yucca Mountain EIS process, Document #EIS001928, and CR9-43.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ OCRWM, CR10-72.

¹⁹⁵ OCRWM, CR10-4.

¹⁹⁶ Personal communication to the U.S. Department of Energy by Ian Zabarte regarding the Yucca Mountain EIS process, Document #EIS002156.

¹⁹⁷ Personal communication to the U.S. Department of Energy by Arthur Kaamasee regarding the Yucca Mountain EIS process; Document #EIS001441.

¹⁹⁸ Personal communication to the U.S. Department of Energy by Richard Arnold regarding the Yucca Mountain EIS process; Document #EIS010334.

¹⁹⁹ OCRWM, CR11-28.

²⁰⁰ Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process; Document #EIS002240.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ OCRWM, CR12-2.

²⁰⁴ Ibid.

²⁰⁵ Ibid., CR12-3.

²⁰⁶ Ibid.

²⁰⁷ This was the motto of Captain Richard H. Pratt when speaking of the need to educate Indians.

²⁰⁸ OCRWM, CR12-3.

²⁰⁹ Ibid.

²¹⁰ Ibid., 13.

²¹¹ Ibid., 14.

²¹² U.S. National Archives and Records Administration, "Record of Decision on Mode of Transportation and Nevada Rail Corridor for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," *Federal Register* 69, no. 68 (April 2004): 18557.

²¹³ Ibid.

²¹⁴ Richard A. Grounds, George E. Tinker, and David E. Wilkins, *Native Voices: American Indian Identity & Resistance*, (Lawrence: University Press of Kansas, 2003), xi.

²¹⁵ Ibid., xi.

²¹⁶ Ibid., xiii.

²¹⁷ Ibid., 130.

²¹⁸ Ibid., 133.

²¹⁹ Taiaiake Alfred. *Wasase*, 9.

²²⁰ Ibid.

²²¹ Ibid.

²²² Personal communication to the U.S. Department of Energy by Corbin Harney regarding the Yucca Mountain EIS process; Document #EIS002097.