

Manufacturing Consent: Creation of Cultural Triage to Take Yucca Mountain

By Ian Zabarte

The Shoshone have lived in the Great Basin, home to Yucca Mountain, for more than 12,000 years. The Shoshone primary use of the land and water is their identity.

By the time nuclear weapons testing ended, over 1,000 nuclear tests were conducted on Shoshone land and people. In 1992, the Shoshone began to investigate their radiation exposure.

The Native Community Action Council (NCAC) was created to investigate and found, after review of the 1990 Department of Energy (DOE) Off-site Radiation Exposure Review, that Indian tribes received significantly higher radiation dose in fallout than non-Indians. Higher risk of exposures was found based on lifestyle differences that include: diet, mobility and shelter. The NCAC found increased exposure: 15 times greater for adults, 30 times for youth, and 60 times greater in utero. The results were used as a contention at the Nuclear Regulatory Commission (NRC) licensing of Yucca Mountain for a deep geologic repository for high-level radioactive waste.

Despite spending \$10 billion, the administration failed to meet the licensing requirements of the NRC under 10 CFR 960 121.12 OWNERSHIP. Even with the Bureau of Land Management master title plats, the DOE could not prove ownership to Yucca Mountain because the Treaty of Ruby Valley is controlling and, in “full force and effect.” Shoshone title remains unextinguished.

The DOE’s 1990 Yucca Mountain Cultural Resource Study created a study protocol of cultural triage.* Triage is appropriately used in natural disasters to determine where limited resources are used to maximize survival. Cultural triage is defined as, “a forced choice situation in which an ethnic group is faced with the decision to rank in importance equally valued cultural resources that could be affected by a proposed development project.” In Shoshone country, there is no natural disaster to invoke triage; there is no development project that justifies requiring the Shoshone to choose whether water or land is more important. As said earlier, water and land are Shoshone identity. What the Shoshone people experience with the Yucca Mountain radioactive waste proposal is a deliberate act to dismantle Shoshone living lifeways in relation to the land—an ethnic cleansing—for the benefit and profit of the nuclear industry.

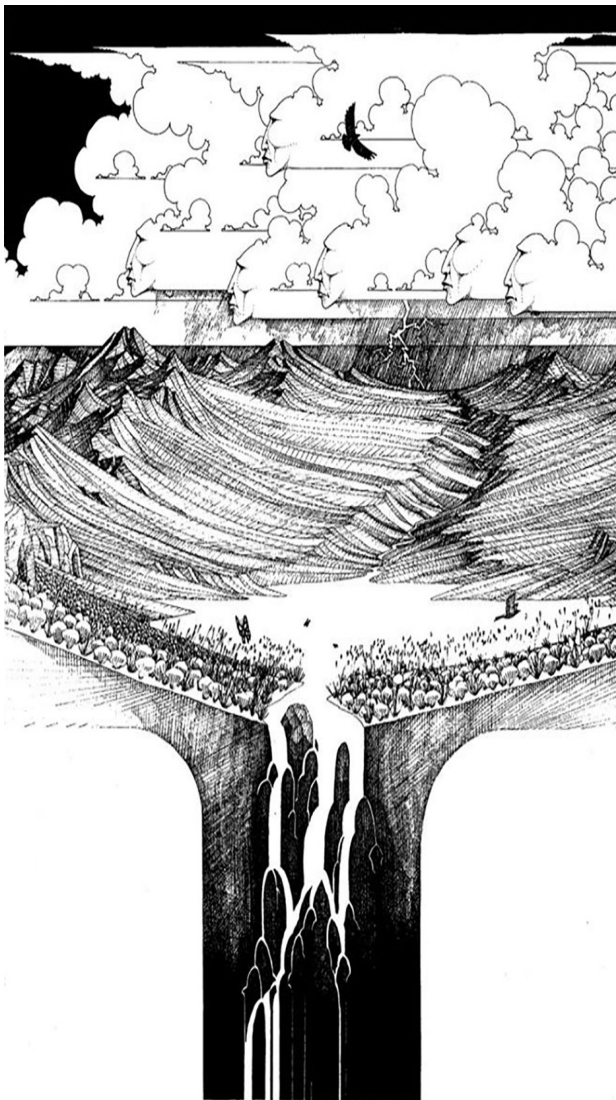
The DOE-funded research, organizing the Consolidated Group of Tribes and Organizations in 1988, paving the way for this cultural triage. Tribes unwittingly participated, manufacturing consent for the Yucca Mountain project by their consultation. The tribes involved include the Pahrump Paiute Tribe, an invented tribe, and the Las Vegas Indian Center, an urban social-welfare organization. Both entities were directed by the same individual who is not an Indian enrolled in any tribe. The remaining 14 federally recognized Indian tribes created by the US are “incompetents” under the guardianship of the Department of Interior. Federally recognized tribes, due to their dependency, are unable to give consent to involvement, research on them, or research outcomes.

The Consolidated Group of Tribes and Organizations has a new name, meeting as the Nuclear Energy Tribal Working Group at the National Conference of State Legislatures. It includes the fabricated tribe that misleads federally recognized tribes to this day with the funding and support of the DOE.

The Shoshone seek collaborators in the persistent struggle to create understanding of the health disparities and to mitigate the cascading effects suffered from radioactive fallout exposure. The Shoshone do not consent to Yucca Mountain or any other part of Shoshone country being used for nuclear waste disposal.

* Native American Cultural Resource Studies at Yucca Mountain, Nevada, 1990, Richard Stoffle

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By Shoshone artist Jack Malotte. Used with permission.

NRC Okays Unlawful Licensing Language in Planned NM Radioactive Waste Site

Beyond Nuclear to Challenge Decision in Federal Court

In an astounding, extra-legal ruling April 23, 2020, the Nuclear Regulatory Commission (NRC) acknowledged that a company’s formal application to place a large quantity of highly radioactive irradiated nuclear reactor fuel waste in southeast New Mexico violates federal law, and yet ruled that the unlawful provisions of the company’s license application could be ignored and the license approved.

The national watchdog organization Beyond Nuclear formally challenged the NRC’s authority to approve the application. The basis for the challenge was that the application suggests that the US Department of Energy (DOE) may become the owner of the waste reactor fuel even as it is stored on the property of the private, for-profit firm Holtec International (See article to the right, “Public Weighing In...”) The US Nuclear Waste Policy Act (NWPA) prohibits the federal government from taking ownership, and therefore financial liability, of waste reactor fuel rods (currently the private property of reactor companies) until after a federal repository for permanent disposal is operating. This illegality was explicitly acknowledged in the NRC’s decision.

Liability for the waste is a game-ending challenge for the nuclear industry, since its high-level radioactive waste is ferociously deadly for about one-million years. Once ownership of the waste changes hands, liability for radiation accidents—failed waste cask loading, transport crashes, breaks or leaks from faulty casks, failure of underground storage containers or systems (like one in February 2014 at New Mexico’s WIPP site)—moves from the industry that created the cancer-causing waste to US tax payers.

Nevertheless the NRC threw out Beyond Nuclear’s challenge to the project on the grounds that Holtec could be depended on not to implement the unlawful provision if the license were granted. Kevin Kamps, radioactive waste specialist for Beyond Nuclear, said about the shocking NRC decision: “On behalf of our members and supporters in New Mexico, and across the country along the road, rail, and waterway routes in most states, that would be used to haul the high risk, high-level radioactive waste out west, we will appeal the NRC Commissioners’ bad ruling to the federal court.” —*JL*

—Carlsbad Current-Argus, May 2; and Beyond Nuclear, Apr. 27, 2020

Public Weighing in on Environmental Impact of Holtec and ISP CIS

By Leona Morgan

Holtec International in partnership with Eddy-Lea Energy Alliance (ELEA) is currently seeking to license, build and operate a “temporary” dump for high-level radioactive waste—used reactor fuel rods. Their proposal to the Nuclear Regulatory Commission (NRC) anticipates waste storage for 40 years initially, with 80 years of renewals, totaling 120 years of operation. Since the application for the Consolidated Interim Storage (CIS) facility in southeast New Mexico was submitted in March 2017, opponents have been raising their voices against it.

Completing the licensing application and becoming permitted to operate a CIS is a long procedure. Nonetheless, Holtec has met legal resistance at every step. Recently, the application has been before the Atomic Safety Licensing Board (ASLB), which functions under the NRC. Aside from the ASLB process, Holtec’s National Environmental Policy Act (NEPA) evaluation is also moving forward.

Six separate petitioners submitted over 50 arguments to the ASLB opposing the project. These entities formally challenged the legitimacy of Holtec’s application and raised “contentions” about nation-wide waste transports, risks to water, integrity of canisters, legality of the license, exposure to radiation, and environmental justice, to name a few. The NRC/ASLB judges denied all the original contentions. Appeals to intervene by the petitioners were also denied (See “NRC Okays Unlawful Licensing Language” to the left). Another round of appeals will be filed and a few contentions may be considered. One in particular relates to safety concerns over the proximity of oil and gas production to the dump site. The issue was raised by New Mexico State Land Commissioner Stephanie Garcia Richard, who also informed the NRC that Holtec neglected to communicate with the State Land Office and misrepresented its ownership of the site.

As part of the NEPA assessment, Holtec’s Draft Environmental Impact Statement was recently published, and the NRC is currently accepting public comments. However, there are no clear plans for public hearings. Community members are concerned that the NRC may hold webcast meetings in lieu of in-person hearings, silencing the voices of the area residents who are most impacted. People of color, mostly Hispanic, would be disproportionately affected if the proposal moves ahead—a clear example of environmental racism.

Terry Lodge, attorney for a national coalition of organizations that was denied intervention by the ASLB, says, “The Draft Environmental Impact Statement answers nearly none of the questions raised by the seven grassroots groups who intervened from across the country. The evidence shows that Holtec may hold [waste reactor] fuel indefinitely, counted as multiple centuries, not 100 years. If there is no final underground repository licensed, Holtec—sitting there with shallow-buried ‘forever’ waste—is it. New Mexico must not lose this fight.”

Two applications for CIS are currently going through the NEPA process. Interim Storage Partners’ application is facing a time line and pattern of opposition similar to Holtec.

Take Action: New Mexico’s and national groups opposing both proposals urge everyone to send public comments by their respective deadlines: July 22, 2020 for Holtec/ELEA, and Sept. 4, 2020 for Interim Storage Partners (Waste Control Specialists/Orano USA). **Holtec:** E-mail comments to: Holtec-CISFEIS@nrc.gov. Please include the Docket Number—docket ID NRC-2018-0052—in your email subject line, as well as in the text of your emailed comments. **Waste Control Specialists (Interim Storage Partners):** WCS_CISF_EIS@nrc.gov. The Docket ID, NRC-2016-0231, should be included in the subject line of comments.

—Leona Morgan works with Nuclear Issues Study Group and Halt Holtec in New Mexico.