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Timbisha Shoshone Tribe

October 10, 2001

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RE: Timbisha Shoshone Tribe's Comments on the *Yucca Mountain Preliminary Site Suitability Evaluation* and Related Topics

Dear Ms. Hanlon:

These preliminary comments on the Department of Energy's *Yucca Mountain Preliminary Site Suitability Evaluation* are submitted by the Timbisha Shoshone Tribe. A Tribal Resolution and additional comments regarding the *Site Suitability Evaluation* will be submitted before the October 19 deadline.

The following comments will address the unacceptable process for tribal (and public) input, and the *Yucca Mountain Preliminary Site Suitability Evaluation* document itself.

(1) Comments on the process for tribal (and public) input

As has been stated before, the Yucca Mountain project is illegally being proposed on Western Shoshone lands without Western Shoshone approval. This is a violation of the Treaty of Ruby Valley and tribal sovereignty. In addition, the Western Shoshone National Council, of which the Timbisha Shoshone Tribe is a member, declared in 1995 that all Western Shoshone lands were a *Nuclear Free Zone*, thus barring the storage, use, or disposal of all radioactive materials. It is the responsibility of the Western Shoshone of this generation to *protect* future generations, not poison them.

Criteria for the *Yucca Mountain Preliminary Site Suitability Evaluation* is provided in *proposed* guidelines 10 CFR 963. Like the state of Nevada and many other governmental units, organizations, and individuals, the Timbisha Shoshone Tribe submitted comments regarding the proposed guidelines in February, 2000. The Tribe recommended that the proposed guidelines retain the stricter guidelines found in 10 CFR 960. A *Site Suitability Evaluation* should have been written according to the final guidelines, which supposedly would have been revised in response to the comments. Instead, we are given a "preliminary" evaluation according to "proposed" Guidelines. What is the rush, since the Yucca Mountain project is constantly being revised due to profound uncertainties regarding radionuclide leakage into the groundwater, storage container viability, dangers of volcanic eruption, dangerous transportation logistics, and vulnerability to terrorist attacks?

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The Timbisha Shoshone Tribe strongly recommends that the *Yucca Mountain Preliminary Site Suitability Evaluation* be revised and finalized according to the final guidelines of 10 CFR 963. At that point, a public comment period should be initiated.

In addition to the above reasons for extending the comment period until the final guidelines and corresponding final *Site Suitability Evaluation* is available, the Final EIS for the Yucca Mountain Project has also not been completed. Although the DOE attempts to delink the EIS from the *Site Suitability Evaluation* and all other reports, it is apparent that an environmental impact analysis is inextricably related to site suitability. The Timbisha Shoshone Tribe also submitted comments on the DEIS and the Supplemental EIS. An evaluation of *Site Suitability* would be inherently incomplete without the Final EIS for reference.

The Timbisha Shoshone Tribe strongly recommends that the final *Yucca Mountain Site Suitability Evaluation* (revised according to the final guidelines of 10 CFR 963) be available for public comment after the Final EIS for the Yucca Mountain project is completed. Since much information will be presented for the first time, it is recommended that a six month comment period be initiated. In addition, public hearings should be held in all the places across the country where hearings were held for the Draft EIS. Extremely inadequate notice was given for the "extended" public hearings (i.e., five days notice for the hearing in Independence, CA—one person from the public showed up)—proper and timely notice must be given for public input.

The unresolved dangers of the Yucca Mountain project demand that the DOE **listen** and respond to the concerns of tribes and others who may know much more than the DOE about "site suitability." If the ancestors of the Timbisha Shoshone had left such a poison for future generations we probably would be dead or not able to live here anymore. The ancestors would never do this, and the Timbisha Shoshone Tribe of today will never approve the desecration of this land for future generations. The *Site Suitability Evaluation* is supposedly for 10,000 years. There must be no politically motivated rush to push through the relocation of a poison you still don't understand, don't know what to do with, but continually reproduce. Common sense alone demands that this madness must stop.

The inadequate comment period for the *Yucca Mountain Preliminary Site Suitability Evaluation* also undercuts adequate time for proper government-to-government consultation between the DOE and the Timbisha Shoshone Tribe. As the Consolidated Groups, Tribes, and Organizations (CGTO) stated at its October 5, 2001 meeting with the DOE in Las Vegas, the CGTO-DOE meetings do not take the place of government-to-government consultation. Because of the extremely short time frame for comments, it may not be possible to schedule a government-to-government consultation with the Timbisha Shoshone Tribe before the comment period ends. **Again, it is strongly recommended that the comment period for the *Yucca Mountain Preliminary Site***

***Suitability Evaluation* be extended until the final *Yucca Mountain Site Suitability Evaluation* (revised according to the final guidelines of 10 CFR 963) is available *and* the Final EIS for the Yucca Mountain project is completed and available for review.**

(2) Comments on the *Yucca Mountain Preliminary Site Suitability Evaluation*

Even though the Timbisha Shoshone Tribe and other Indian tribes would be impacted by the Yucca Mountain Project, no tribe has yet been afforded "affected status" designation by the DOE, as provided for in Section 116 (a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended. Unlike the State of Nevada or counties in the region, the Timbisha Shoshone Tribe was never given any funds to fully address the complex environmental and cultural issues associated with the proposed nuclear waste repository at Yucca Mountain.

On April 16, 2001, the Timbisha Shoshone tribe petitioned the Department of the Interior (DOI) for "Affected Indian Tribe" status. To date, there has been no response from the DOI regarding a decision. While this decision is pending, the burden is on the DOE to provide the most complete, pro-active, government-to-government consultation on all the complex, interlinked, and scientifically technical reports and evaluations. Thus far, the DOE has failed in this Trust responsibility.

The *Yucca Mountain Preliminary Site Suitability Evaluation,* like the *DEIS*, *SEIS*, *Yucca Mountain Science and Engineering Report*, *Total System Performance Assessment for the Site Recommendation*, and countless other documents available for pubic review, is a poorly written, technical work-in-progress **which doesn't even attempt** to provide clear, concise information which the public can comment upon. For instance, key passages in the *Summary of Results* are not in bold or italics, do not have bullets for emphasis, and are not highlighted at the beginning of the chapter. In order to find out the important conclusions of the 300 page document, one has to wade through unemphasized, ordinary text (i.e., pp. 4-2 and 4-5,4-6). The *Site Suitability Evaluation* is still raw data, a technical report that demands a revision in clear language. Such raw, unedited, technical reports require extended comment periods for adequate evaluation.

Despite these hindrances, a few preliminary comments can be made on the *Yucca Mountain Preliminary Site Suitability Evaluation.*

(1) The 10,000 year regulatory compliance period is insufficient because groundwater contamination from leaked radionuclides is predicted by the DOE to occur after 10,000 years (other scientists have predicted leakage within a thousand years). The predictive models for 10,000 years are extremely abstract and virtually worthless, since they are based upon data which is constantly being revised as new data is accumulated. If present-day science cannot produce an adequate model of site suitability which extends to the full length of the project—300,000 years plus—then we know that the DOE does

not have the capability for a full analysis of all the potential impacts of the project. Future generations should not have to pay for the U.S. government's avoidable mistakes.

(2) Does the *Yucca Mountain Preliminary Site Suitability Evaluation* consider the proposed changes in design as presented in the SDEIS? If yes or no, where is this stated in the *Evaluation*? **Which** Yucca Mountain project is being preliminarily evaluated?

(3) Section 3.3.10.4 on inadvertent human intrusion seems extremely inadequate after the events of September 11, 2001. The proposed 10 CFR 963 Guidelines and the corresponding *Yucca Mountain y Site Suitability Evaluation* need to be revised in light of recent events.

As stated above, more comments and a Tribal Resolution regarding the *Yucca Mountain Preliminary Site Suitability Evaluation* and the DOE process for will be forthcoming. We ask that the staff of the Department of Energy consider the fate of future generations rather than political expediency to be their guide. The decision on the Yucca Mountain site suitability will determine who will live and who will die. It is not to be taken lightly, and it should absolutely not be arrived at hastily.

In conclusion, the Timbisha Shoshone Tribe will be directly effected by the proposed Yucca Mountain project. Since the Furnace Creek parcel of the Tribe is down-gradient from the groundwater of Yucca Mountain, the predicted radionuclide leakage from the storage casks will eventually reach the Timbisha Shoshone. Also, the proposed Carlin/Caliente Bonnie Claire rail corridor alignment for the transport of high level nuclear waste bisects the Scotty's Junction trust land of the Timbisha Shoshone Tribe in Nevada. If built, the proposed Yucca Mountain project would adversely effect future members of the Timbisha Shoshone Tribe as well as all living things at the site vicinity and along the proposed transportation corridors. Nothing presented in the *Yucca Mountain Preliminary Site Suitability Evaluation* or any of the other DOE documents justifies the site suitability of Yucca Mountain for the storage of high level nuclear waste. It is apparent that the DOE doesn't know the meaning of "site suitability."

Sincerely,

Barbara Durham

Barbara Durham
Tribal Administrator

Bill Helmer

Bill Helmer
EPA Program Director
Timbisha Shoshone Tribe