



## Radioactive Racism: The History of Targeting Native American Communities with High-Level Atomic Waste Dumps

Low-income and minority communities are disproportionately targeted with facilities and wastes that have significant and adverse human health and environmental effects.<sup>1</sup> This places the burdens of society on those who are most vulnerable. These communities are at a tremendous economic and political disadvantage over the decision-making process that is dominated by large, wealthy corporations and/or government agencies. Ironically, low income and People of Color communities targeted with hazardous facilities often benefit the least from whatever societal “good” is purported to justify the generation of the hazardous substances in the first place.<sup>2</sup>

According to the 1990 U.S. Census (the very time period when the U.S. nuclear establishment intensified and accelerated its targeting of Native American communities with high-level radioactive waste dumps, as shown below), over 31% of Native Americans living on reservations had incomes below the federal poverty line.<sup>3</sup> After centuries of oppression and domination, stripped of their lands, resources, and traditional governments, these communities lack political power, and desperately need economic development. The “tribal sovereignty” of Native Americans, which makes their lands exempt from state law and many environmental regulations, only increases their attractiveness as targets for facilities unwanted elsewhere. Native Americans have already disproportionately borne the brunt of the impacts from the nuclear fuel chain over the past 60 years.<sup>4</sup> In the case of radioactive waste storage and disposal, the nuclear power establishment in industry and government is simply taking advantage of these vulnerable communities, attempting to hide from environmental regulation and widespread public opposition behind the shield of tribal sovereignty.

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*"We cannot rewrite the history of imbalance between our peoples. We can, however, write the future. It is the Native American cultures of this continent which have long adhered to the concept of planning for many generations of future unborn children in the decisions which are made today. This contrasts with the modern practices of American governments at all levels where planning and budgeting are done with most of the emphasis upon only the next fiscal year. With atomic facilities designed to safely hold radioactive materials with half-lives of thousands of years, it is the Native American culture and perspective that is best designed to correctly consider and balance the benefits and burdens of these proposals."*

*-- David Leroy, U.S. Nuclear Waste Negotiator, addressing the National Congress of American Indians<sup>5</sup> in 1991<sup>6</sup>*

**December 1987** – The U.S. Congress creates the Office of the Nuclear Waste Negotiator in an effort to open a federal “Monitored Retrievable Storage” (MRS) site for the interim storage of high-level nuclear waste. The dump is proposed to be “temporary”, and the Negotiator is authorized to seek states, counties, or Native American Tribes that might be interested in hosting such a facility in return for compensation. The process is supposed to be voluntary, where initial requests for information and preliminary discussions are

not viewed as a commitment to proceed further, and where a state, county, or tribe's elected representatives only act under authorization of the majority of their people.<sup>7</sup> There are no specific procedures, however, that the Negotiator must follow.

**August 1990** – David Leroy is confirmed by Congress as the first Nuclear Waste Negotiator.

**May 1991** - The Negotiator sends letters to states, counties, and every federally recognized tribe in the country, offering hundreds of thousands (and eventually millions) of dollars for first considering, and then ultimately hosting a dump. He follows up this initial introduction letter with a formal Request for Participation and Dialogue.<sup>8</sup> Of the 50 states and thousands of counties approached, only four counties officially respond,<sup>9</sup> and submit applications for Phase I study grants. These are Grant County in ND<sup>10</sup>, Apache County in NM, San Juan County in UT, and Fremont County in WY (about a 0.1% response rate). Out of the over five hundred federally recognized Tribes approached, over sixty respond. Twenty Tribes apply for Phase I study grants (this is a 3.7% response rate, almost 40 times higher than that of counties).<sup>11</sup> (In addition, four more tribes skipped the Phase I stage and proceeded directly to Phase II. See Sept. 1992 below). These Phase I study grants give the applicant \$100,000 to “investigate and learn” about the technical aspects of high-level atomic waste storage.

**October 1991 through August 1992** - Objections by State Governors and widespread public opposition prevent the four counties from moving forward in the process. The Negotiator begins to spend almost all of his time approaching and dealing with Tribes. In fact, the MRS siting process comes to center almost exclusively on Native American communities. Seventeen of the twenty Tribes that applied for grants are approved by the Negotiator. Four Tribes whose applications are approved, however, withdraw from the process before the funds are issued (these were the Chickasaw, Sac and Fox<sup>12</sup>, Absentee Shawnee, and Caddo Tribes, all in Oklahoma). This reduces the number of Tribes that receive Phase I grants to thirteen.

**September 1992** –The Negotiator begins to negotiate and court the thirteen Tribal councils. Eight of the thirteen Tribes that received Phase I study grants drop out of the process. This leaves the Mescalero Apache Tribe (New Mexico), the Prairie Island Community (Minnesota), the Skull Valley Band of Goshutes (Utah), the Eastern Shawnee Tribe (Oklahoma), and the Fort McDermitt Paiute/Shoshone Tribe (Oregon and Nevada). These Tribes and four others that skipped Phase I (Miami Tribe in Oklahoma, Ute Mountain Tribe of Colorado, Tonkawa Tribe of Oklahoma, and the Northern Arapaho Tribe of Wyoming) proceed to apply for Phase II-A grants (which provide \$200,000, and require a more focused investigation of potential sites and local response).

**March 1993** - The Mescalero Apache, Skull Valley Goshutes, Tonkawa, and the Fort McDermitt Tribe are the only Tribes that remain interested in the proposed dump. They receive Phase II-A grants.

**August 1993** – The Mescalero Apache Tribe leadership moves to take one step further into the process, submitting an application for a Phase II-B grant to the Waste Negotiator, and expressing a desire to begin formal negotiations. A similar application is soon submitted by the Skull Valley Goshutes.

**October 1993** – Congress votes to effectively cancel the Office of the Waste Negotiator and the study-grant program<sup>13</sup>. Authorization and funding for the office expires in December 1994.

**December 1993** – A private consortium of 33 nuclear utilities forms to pick up where the Negotiator left off, and begins negotiating with both the Mescalero Apaches and Skull Valley Goshutes. The consortium is headed by Northern States Power, which is based in Minnesota.

**March 1994** - The consortium begins serious negotiations with the Mescalero Tribe, which has been headed by Wendell Chino for decades. The consortium supports these negotiations by providing the tribal council significant sums of money. Rufina Marie Laws, a Mescalero Apache living on the reservation, opposes the dump and begins to rally people against it, founding a group called Humans Against Nuclear-Waste Dumping (HANDS).

**September 1994** - The Tonkawa Tribe in Oklahoma holds a popular referendum on hosting the “temporary” dump. A majority of tribal members reject the proposal.

**December 1994** – The consortium and the Mescalero Tribe leadership reach a tentative agreement about a temporary high-level radioactive waste facility. The Tribal Council has been involved in negotiations leading to this agreement for over three years, yet tribal members themselves know little about the proposal. No public meetings have been held. Several members of the Tribe have attempted to call meetings, but the Council has ignored such requests.<sup>14</sup>

**January 1995** – When the proposal to host the MRS dump comes before the Tribe for a vote, the Mescalero Apaches vote 490 to 362 to deny it. Mescalero Waste-Storage project manager Silas Cochise says the project was defeated by elderly tribal members, apparently unwilling to risk their grandchildren’s future.<sup>15</sup>

**March 1995** – A petition drive begins, calling for a second referendum. Although tribal officials characterize the petition drive as a grassroots initiative, the move to overturn the referendum is led by the Tribal Housing Director. Many on the Reservation believe that the Tribal council, dissatisfied with the January referendum, is directly backing the effort. The Tribe is torn apart as tribal leaders barrage the tribe’s 3,300 members with letters. Rumors circulate that each tribal member will receive \$2,000 if the MRS referendum passes. As the tribal official heading up the petition drive is also in charge of tribal housing and other support services, many tribal members fear voicing opposition to the dump, lest they suffer retaliation and loss of services. It is reported that the petition gathers enough signatures to force a second vote, though the signature sheets have not been made available to the public. The Mescalero Apache Tribe votes again, this time overturning the earlier January referendum by a vote count of 593 to 372, and approving the dump on their land. Negotiations with the nuclear utility companies continue.<sup>16</sup>

**April 1995** – Ironically, just after the dump has been “approved” by the Mescalero Tribe, issues emerge amongst the consortium of utilities. Many of the 33 companies have doubts about the necessity of the project, and are unwilling to get financially involved. The consortium of utilities begins to fray as a result. Northern States Power admits that the actual number of companies still committed may be fewer than 16.<sup>17</sup> Opposition to the dump continues on the reservation, and communities along the transportation routes throughout New Mexico begin to oppose it as well.

**June 1995** – Scott Northard, Manager of Technical Standards at Northern States Power, submits testimony before the U.S. House of Representatives Commerce Committee’s Subcommittee on Energy & Power, which is holding a series of High-Level Nuclear Waste Policy hearings. Northard states that NSP and 32 other companies, in “partnership” with the Mescalero Apache Tribe, are in the process of designing and licensing a MRS facility. He says this has allowed the industry to avoid “continually facing obstacles in this emotionally and highly charged area” and to proceed “in a more timely [and] cost effective manner”.<sup>18</sup>

**August 1995** - Concerned with relying too much on one possible “waste solution”, the nuclear industry begins to push in Congress for an interim storage facility on the Nevada Test Site, next door to the proposed Yucca Mountain Repository. (Between 1995 and 2000, the bill is reintroduced each session of Congress and passes one or both Houses, but faces a veto threat by President Clinton. On April 25, 2000, Clinton vetoes such a bill passed by both Houses; on May 2, the Senate sustains Clinton’s veto.)

**May 1996** – The Mescalero Tribe breaks off negotiations with the utility consortium led by Northern States Power.<sup>19</sup>

**December 1996** –Northern States Power reorganizes and forms a smaller consortium of eight utilities. The consortium calls itself Private Fuel Storage (PFS). Leon Bear, disputed Chairman of the Skull Valley Goshute Tribe, signs a preliminary lease with PFS soon after. See “Skull Valley Goshutes/PFS Timeline.”

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## References

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<sup>1</sup> The United Church of Christ Commission for Racial Justice Report, Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities Surrounding Hazardous Waste Sites. New York: United Church of Christ, 1987.

<sup>2</sup> The most complex issue about environmental justice is its meaning, and how such a notion could be implemented. The 1994 Clinton Presidential Executive Order instructs that, "To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review [which Clinton had completed in 1993], each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States..." This sounds simple enough, but in truth it is a much larger and more complex issue. Many people agree, for instance, that it is unjust to specifically target a poor and vulnerable community against their will with a facility that has high adverse human health and environmental impacts. These communities are often not able to economically or politically oppose such a project, and they also frequently find it difficult to mandate and enforce strict regulation if a project is sited there. These communities have virtually no say in the decisions being made, and they often benefit the least from the processes of which they will bear the burden. What complicates the situation is when a company looking to site a facility doesn't acknowledge the vulnerability of a community or any intention to specifically target it. In some cases, they even say the process is voluntary and beneficial. The community is just "naturally" economically and politically the place that will end up being the site for the facility. These impoverished communities' governing bodies are only interested in hosting hazardous facilities because of the promised income that would accompany the project. Yet, this dynamic is also environmental injustice. The impoverishment of segments of the population in this country is not an accident, and it is not reflective of some "character" of those segments. Our history is scarred with the systematic and violent oppression of Native American, African American, Latin American and other Peoples of Color and low income levels (see Bury My Heart at Wounded Knee by Dee Brown and A People's History of the United States: 1492-Present by Howard Zinn), and this can not be ignored. Until these significant historical wrongs and the poverty they created are remedied in some way, it is not necessary for a company to publicly acknowledge the vulnerability of a particular community for it to be environmental injustice. Such acknowledgement would only highlight the underlying reality.

<sup>3</sup> United States Dept. of Commerce. Economics and Statistics Administration, Bureau of the Census. We the First Americans. Washington: 1993.

<sup>4</sup> The nuclear fuel chain involves the mining and milling of uranium, and the processing, conversion and enrichment of it into fuel for nuclear reactors and atomic weaponry. Most of the uranium in the U.S. is located on Native American lands. Uranium mines were, and continue to be, on Navajo lands throughout the Grants Mineral Belt (Arizona and New Mexico), on Laguna Pueblo land in New Mexico and tribal lands in the Northwest, as well as on and near Sioux Indian lands in western South Dakota. These mines have taken a particularly hard toll on the communities near them. Native Americans miners, most of whom were never informed of the dangers of uranium, were exposed to its particulate and radioactive gases in the mines for decades. They have suffered large numbers of lung cancer fatalities, a disease almost entirely unknown among the Navajos and Pueblos before uranium mining. Mining debris and mill tailings, as milling often takes place near the mines to minimize transport of waste rock, were put into unlined storage ponds or out in the open air, where often they leached into nearby soil and water. Groundwater that entered into the mines, and thus became contaminated, was regularly pumped out into rivers and lakes. Worsening this already poor situation, when mining ceased in the late 1970's (because of the drop in uranium prices), companies abandoned the mines. They did this without sealing the tunnels, filling the pits, or removing the large piles of radioactive and toxic tailings. As a result, Native American families have lived for many decades in very close proximity to the mines, grazed their livestock there, and had children playing in them. Uranium mine tailings have been used in roads, homes, buildings and school

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playgrounds. Serious health effects have been documented (See, for example, Peter H. Eichstaedt, *If You Poison Us: Uranium and Native Americans*, Red Crane Books, Santa Fe, New Mexico, 1994; *Poison Fire, Sacred Earth: Testimonies, Lectures, Conclusions*, The World Uranium Hearing, Salzburg, Austria, September, 1992; *This Is My Homeland: Stories of the effects of nuclear industries by people of the Serpent River First Nation and the north shore of Lake Huron*, edited by Lorraine Rekmans, Keith Lewis and Anabel Dwyer, Serpent River First Nation, 2003; Winona LaDuke, "Nuclear Waste: Dumping on the Indians," *All Our Relations*, South End Press, 2001.) Some of the extraction and processing facilities for converting milled uranium into nuclear fuel (such as Kerr-McGee's Sequoyah Fuels Plant at Gore, Oklahoma) have also disproportionately impacted Native communities. Nuclear reactors, such as those at Prairie Island, Minnesota and Big Rock Point, Michigan, have been built next to Native American communities or on their sacred sites against the tribes' will. Such exploitation extends back to the dawn of the Atomic Age, such as during the Manhattan Project in the 1940's when the Los Alamos National Laboratory in New Mexico was built near Pueblo Indian communities directly on top of their sacred burial grounds, and when the "Trinity" test – the first atomic weapons explosion in history – was conducted immediately upwind of the Mescalero Apache Indian Reservation in New Mexico, a tribal community targeted 40 to 50 years later for a national high-level radioactive waste dump.

<sup>5</sup> The National Congress of American Indians (NCAI) is comprised of tribal chairpersons and is the oldest Native American organization in the U.S. Between 1986 and 1990 alone, DOE gave NCAI nearly \$1 million in grants - more than 25% of the organization's total revenue -- to study nuclear waste storage options on Native American reservations. On Nov. 2, 1992, DOE announced it would grant \$1.8 million in "sole source" Cooperative Agreement funding to NCAI for another five years. These monies were granted in order to "provide assistance services to ensure participation of Indian tribal governments in the planning and development of storage and transportation of high-level nuclear waste." Such large sums of money effectively silenced NCAI opposition to the targeting of Native American reservations for high-level radioactive waste dumps. For more information, please refer to Winona LaDuke's "Native Environmentalism," reprinted from *Earth Island Journal in Cultural Survival Quarterly*, Winter 1994, pages 47 - 48.

<sup>6</sup> Leroy, David. "Federalism on Your Terms: An Invitation for Dialogue, Government to Government." Address to National Congress of American Indians. San Francisco, CA. 4 Dec. 1991. In this speech, David Leroy argues that Native American Tribes are incredibly suited (even preferable) for storing the country's high-level nuclear waste. He cites the Native American values of long-term health and sustainability as reason for this. Coming on the eve of the 500th anniversary of what many Native Americans and modern historians regard as Columbus's brutal invasion of this hemisphere, quoting the famous Duwamish leader Sealth (more commonly known as Chief Seattle) many times, Leroy's words were regarded as Machiavellian and Orwellian by many of those in attendance. After the speech, one man called Leroy's linkage of the Native ethic and nuclear waste "the granddaddy of all oxymorons," and a Duwamish woman asked Leroy why, if he so liked quoting Sealth, her tribe had been dispossessed of what later became the City of Seattle and still not received full federal recognition (Wahpepah, Wilda. "Tribal Leaders Get N-Waste Pitch". *The Oregonian*, 5 Dec. 1991).

<sup>7</sup> These intentions, however, did not always translate into reality. Although voluntary siting has been championed as a procedurally fair alternative to traditional siting policy, it is not necessarily fair. The economic impoverishment of tribes, the tendency for tribal leaders to act without the authorization or even knowledge of their people, and the Bureau of Indian Affairs' ability to interfere in internal tribal affairs arbitrarily and capriciously (as there are no existing regulations or statutory standards defining the appropriate procedures the BIA must follow regarding internal tribal disputes), all mean that this siting process was all too often not fair, nor truly voluntary.

<sup>8</sup> Leroy, David. "Federalism on Your Terms: An Invitation for Dialogue, Government to Government." Address to National Congress of American Indians. San Francisco, CA. 4 Dec. 1991. Also, Leroy's May 3, 1991 form letter to Indian Tribal Leaders.

<sup>9</sup> "Federal, State, and Local Governments: 1997 Census of Governments", Bureau of the Census,

<http://www.census.gov/govs/www/cog.html>

<sup>10</sup> The Grant County supervisors were ousted by voters after it was revealed that they had applied for a MRS study grant without their constituents' knowledge or permission. Grant County's involvement with the project was discontinued shortly thereafter.

<sup>11</sup> These included: Mescalero Apache Tribe, NM; Chickasaw Nation, OK; Sac and Fox Nation, OK; Prairie Island Nation, MN; Yakima Indian Nation, WA; Skull Valley Goshute Tribe, UT; Alabama Quassarte Tribe, OK; Eastern Shawnee Tribe, OK; Tetlin Village, AK; Lower Brule Sioux, SD; Akhiok-Kaguyak, AK; Apache Development Authority, OK; Absentee Shawnee Tribe, OK; Ponca Tribe, OK; Caddo Tribe, OK; Ft. McDermitt Paiute Shoshone, NV. The Miami Tribe in Oklahoma, Ute Mountain Tribe of Colorado, Tonkawa Tribe of Oklahoma, and the Northern Arapaho Tribe of Wyoming skipped Phase I but proceeded directly to the larger Phase II monetary grants. See September 1992 in the timeline above.

<sup>12</sup> On February 29, 1992, the Sac and Fox tribal members called a special meeting to vote on their application for an MRS. They became the first tribe to vote and reject the storage of nuclear waste on their land. Grace Thorpe was the leading opponent to this dump. She had read about the proposed storage in a newspaper, was outraged that she hadn't been informed about it, and then educated herself and the tribe about the hazards. Of the 75 voters in attendance at a special meeting, 70 voted against it. The five who voted for it were the members of the Tribal Council who had earlier

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accepted the money for the MRS study. The Council was ordered by the vote to return the money, and many of the members involved were voted out of office. On August 28th 1993, the Sac and Fox Nation became the first tribe in Oklahoma to declare a "Nuclear Free Zone" (NFZ) on their tribal lands. Grace Thorpe was instrumental to this and went on to help many other tribes across the U.S. resist dumps targeted at their communities.

<sup>13</sup> To some extent, this came about because of pressure from New Mexico and other states, who were concerned about the growing possibility of a MRS facility (particularly one being sited without their permission, control, or profit). Also, the nuclear power industry and its supporters in Congress had grown impatient with the lack of success of the Negotiator, and instead began to push for "interim storage" of high-level radioactive waste on Western Shoshone Indian land at the Nevada Test Site near Yucca Mountain the very next congressional session. In addition, grassroots Native American activists like Grace Thorpe also played a very important role in the demise of the Negotiator program.

<sup>14</sup> For instance, a petition was signed by 221 Tribal members in July requesting a public meeting to discuss the pros and cons of such an MRS facility. The Tribal Council refused, but tribal members invited speakers and held the meeting anyway on August 12, 1992.

<sup>15</sup> Davis, Tony. "Apaches Send a Signal to Nuclear Industry." High Country News 20 Feb. 1995:

<sup>16</sup> Davis, Tony. "Flip-Flop on Storing Nuclear Waste Shakes up Tribe." High Country News 29 May 1995.

<sup>17</sup> Hanson, Randel. "Indian Burial Grounds for Nuclear Waste." Multinational Monitor Sept. 1995: 6. 19 Apr. 2005. <<http://www.multinationalmonitor.org/hyper/mm0995.07.html>>

<sup>18</sup> U.S. Congress. House. Committee on Commerce. Subcommittee on Energy and Power. High-Level Nuclear Waste Policy: Interim Storage. Hearing, 28 June 1995. 104<sup>th</sup> Congress, 1<sup>st</sup> Session, Serial no. 104-24. Washington, U.S. Govt. Print Off., 1995.

<sup>19</sup> Meersman, Tom. "NSP's talks on nuclear waste break off; Storage sought in New Mexico." Star Tribune [Minneapolis, MN] 19 Apr. 1996.