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I N D I A N B U R I A L G R O U N D S F O R
N U C L E A R W A S T E

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WHAT DO YOU DO WITH a 50-year accumulation of some of the most toxic garbage ever produced? If federal bureaucrats and multinational corporations have their way, the nuclear industries of the world will dump high-level radioactive waste on North American Native lands.

The U.S. government has spent decades searching for a permanent repository for high-level nuclear waste. The Cold War's legacy is an enduring pile of toxic waste. A recent report by the U.S. Nuclear Weapons Cost Study Project estimated that the U.S. nuclear weapons program will end up costing \$3.9 trillion. Meanwhile, as growing stockpiles of high-level nuclear waste are overflowing at 110 nuclear reactors across the United States, the U.S. government and private utilities are undertaking an increasingly desperate search for "solutions."

Problems associated with nuclear waste disposal are "transcientific," according to former Oak Ridge National Laboratory head Alvin Weinberg. The staggering toxic durability of the waste means that the testing techniques of "normal science" do not apply, he says. Given this toxicity, few communities believe that the benefits of a nuclear dump would outweigh its costs. In lieu of other bidders, Native Americans and First Nation Canadians are being asked to assume this burden.

"Indians know that the general public doesn't want the waste around, so federal and corporate bureaucrats are using the old trick to go to 'Indian Country,' conveniently geographically removed from mainstream communities," says Lance Hughes of Oklahoma-based Native Americans for a Clean Environment. "The general public doesn't know anything about this move, and given the geographic and political segregation, they probably won't hear much about it."

RADIOACTIVE MOTHER EARTH

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA), providing an ostensible framework for dealing with

voluminous stockpiles of spent fuel and other radioactive waste from commercial nuclear power plants. The goal of NWPA was to locate a permanent geologic repository for the waste and to develop Monitored Retrievable Storage (MRS) facilities to deal with the immediate waste needs of the nation's nuclear reactors.

The NWPA proved difficult to implement, in part because of aggressive resistance by the states, which sought to keep high-level nuclear waste outside their borders. Mounting legal and financial concerns ultimately pushed Congress to revise the earlier act by passing the Nuclear Waste Policy Amendments Act (NWPAA) of 1987. NWPAA designated Yucca Mountain in Nevada as the future repository of high-level nuclear waste.

Given state resistance to giving a home to the world's most toxic wastes, nuclear business people and bureaucrats are now eyeing Indian reservations as both a temporary and permanent waste solution. Though such environmental racism is hardly new, David Leroy is widely credited with promoting the use of Indian reservations as a "solution" to the nuclear waste problem.

A professional "motivational" speaker and a former Republican lieutenant governor and attorney general of Idaho, Leroy was appointed as the first head of the U.S. Office of the Nuclear Waste Negotiator in August 1990. The nuclear power industry greeted Leroy's appointment with great fanfare; a trade publication touted him as one who could forge the "cult of the possible" by resolving the nuclear waste impasse.

To get communities to accept nuclear waste dumps, Leroy and other consultants came up with an MRS plan that offers a package deal -- money along with community facilities and improvements -- to any community that would accept a waste dump. Through this policy, the government hoped to get communities bidding against each other to win the compensation packages, thereby reducing the government's ultimate disposal costs. The government presented the waste proposals to the tribes as "economic development," downplaying the long-term dangers of high-level nuclear waste.

The Department of Energy (DOE) had been laying the groundwork. The DOE had given the National Congress of American Indians almost \$1 million in grants between 1986 and 1990 to encourage tribal government participation in nuclear waste disposal schemes. And the Council of Energy Resource Tribes (CERT), established by pro-development tribal leaders in the 1960s, is noted for its open-door relationship with federal and corporate officials.

Leroy attended the annual meeting of the National Congress of American Indians in San Francisco in December 1991 to push the Department of Energy's new management

strategy for commercial spent nuclear fuel. At the meeting, Leroy appealed to assembled leaders to draw on their "Native American culture and perspective" and its "timeless wisdom" to seize the opportunity to house the radioactive spent fuel. Quoting the famous Duwamish Chief Seattle Leroy said, "Every part of this soil is sacred in the estimation of [Indian] people," implying that no matter where the waste eventually ended up, it would still be on sacred ground. He then promised \$100,000 with "no strings attached" to any tribe that would agree to consider temporary waste storage. If a tribe opted to offer a temporary nuclear waste dump, the waste would be transferred after 40 years to the permanent storage slated for Yucca Mountain Leroy assured tribal leaders.

This plan was partially successful. By May 1992, the U.S. Nuclear Waste Negotiator's office doled out 20 "Phase I" MRS planning grants of \$100,000 each to Indian communities. Most of these tribes have opted not to accept nuclear waste, some of them returning the grant money to the U.S. government. Nine tribes applied for the \$200,000 that accompanies what the government calls Phase IIa of its disposal plan, which involves further site study and community "education." Four applicants received the funds. These four tribes subsequently applied for the \$2.8 million attached to Phase IIb, when final preparations are made and serious decisions are made about construction design and location.

Just three tribes, the Mescalero Apache in New Mexico, the Paiute-Shoshone on the Oregon-Nevada border and the Skull Valley Goshutes in Utah are left in the running. The fourth tribe, the Tonkawa Tribe in Oklahoma, was the first tribe to hold a popular referendum on the issue, with a majority of tribal members rejecting the MRS proposal in September 1994.

Although the three remaining tribes still are negotiating over the waste sites, Congress provisionally cut further funding of the MRS program in 1993, responding to lobbying by the National Environmental Coalition of Native Americans (NECONA) and other groups. Though funding was revived last year and various federalized and privatized waste plans are under congressional consideration, the funding crunch in Congress has left the program in limbo.

LEADERS TAKE BAIT

This impasse comes at a time when stockpiles of nuclear waste at utility plants across the country are either reaching or exceeding storage capacities. In an attempt to get the federal government to solve their problem, 20 states and 14 nuclear power utility companies have sued the DOE, asserting that the federal government abdicated its obligation under the 1957 Price-Anderson Indemnity Act to limit the industry's liabilities.

Recognizing that they may not prevail, nuclear utilities also have banded together to pursue a private-sector waste facility. To find a home for such a facility. Much of the industry's energies have been focused on the Mescalero Apache Tribal Council (MATC).

Mescalero Apaches, whose reservation lies in southern New Mexico, were the first to sign up for the MRS program. As Tribal President Wendell Chino likes to say, "The Navajos make rugs, the Pueblos make pottery and the Mescaleros make money." Toward this end, the MATC quickly moved through the initial stages of the MRS program and applied for the \$2.8 million incentive attached to Phase IIb. This stage, which completes all of the preliminary hurdles that must be cleared prior to the actual construction of a waste dump facility, has been stalled by a lack of funding.

Inspired by its bid for an MRS site, the MATC is also pursuing a separate private-sector track. The MATC is aggressively negotiating with 33 utility companies to construct a privately owned and operated nuclear waste dump on the Mescalero Reservation to store highly radioactive spent fuel from nuclear reactors. The utilities hope to have the facility up and running by 1998. Its estimated cost is more than \$1.5 billion and would most likely be located in the Three Rivers area on the western edge of the Mescalero Apache Reservation.

In explaining the Tribal Council's position, MATC Vice President Fred Peso echoes Leroy's manipulation of Native American traditions and beliefs. "The Mescaleros can bear this [waste storage] responsibility because of our strong traditional values that favor protection of the Earth. We can serve as reliable, trustworthy and responsible guardians of the nation's spent fuel," he told a Department of Energy-sponsored conference on high-level radioactive waste. "We believe that spent fuel is a business opportunity, a service provided to a willing customer by a willing supplier in exchange for a reasonable profit. Thirty-three utility companies agree with us."

DIVIDED TRIBE

Many Mescalero Apaches question whether MATC fairly represents the tribe's will. Maintaining that the tribe's constitution has worked to silence tribal members, Mescalero Apache member Rufina Marie Laws says, "The Mescalero Apache people have been diabolically and deliberately excluded. At the same time, the tribe is actively being obligated to agreements and contracts without the input and consensus of the people. Many tribal members are opposed to siting nuclear waste storage on our homeland, for they believe it will be a violation of our sacred land and sacred mountain, Sierra Blanca."

Both the MRS and private sector storage plans pose substantial health risks for the Mescalero Reservation. Even

industry-friendly scientists admit that radiation will be emitted from containers filled with the highly radioactive spent fuel during transportation and storage -- even if no accident occurs.

The entire prospect of nuclear waste being stored on Native American reservations can be traced to the 1934 Indian Reorganization Act, by which the U.S. government imposed tribal constitutions on Native American tribes. These constitutions provide no system of checks and balances; all power within a tribe rests in the Tribal Council. Too often, this centralized structure allows a few self-serving politicians to use the councils to serve the narrow interests of a few leaders.

To broaden the tribal debate, Laws formed Apaches Against Nuclear Waste, a group that later changed its name to Humans Against Nuclear Waste Dumps (HANDS). "As I met more people concerned with this issue, I realized that it takes on a much broader scope than just the Apache." Laws says. "We are giving support to other Native American groups across the country that are facing this issue.... This radioactive waste knows no boundaries, be they geographical, political or racial."

MATC Chair Wendell Chino and other council members refused to be interviewed about the project. In a written response to inquiries, Chino says that MATC members were elected to office by a majority vote and promote careful economic development. "We recognize the special scrutiny that a nuclear waste project naturally attracts," Chino's statement says. "The storage of spent nuclear fuel is a 21st century industry with the attendant complement of high-tech, high-wage jobs not often available to Indian tribes. The Tribal Council continues to pursue this project because it believes it is in the best interest of tribal people, utilizing the best technological knowledge and expertise in the nuclear waste field."

VOICE OF THE PEOPLE

In December 1994, the 33-member coalition of nuclear utilities and MATC reached a tentative agreement to construct a temporary high-level radioactive waste dump. Northern States Power Chairman Jim Howard, the leader of the group of the utility companies negotiating with MATC, said, "This is an historic agreement. We and our partners the Mescalero have put together in nine months the key contours of a significant step in our country's energy and environmental future -- providing for safe storage of spent nuclear fuel."

In spite of tribal council involvement in the negotiations over three years, tribal members knew little about the details. No public meetings were held on the issue during the negotiations even though several had been scheduled. A small notice appeared on January 16 in the

local Ruidoso Newspaper in which MATC said that it might soon hold a tribal referendum. It was not until January 25, however, that many people received confirmation that an official informational meeting would be held the next day and a referendum on January 31.

The more than 400 tribal members who attended the January 26 informational meeting discovered that information was scarce. The only document that MATC made public was two copies of the Letter of Intent that they had drawn up with the utilities -- and they were available at the Mescalero Nuclear Waste Negotiator's office. Still, this letter is enlightening. The Letter of Intent directs MATC and the utilities to set up a Facility Corporation to carry out the project. The corporation would have nine directors -- four from the tribe and five from the utilities.

On January 31, 1995, Mescalero Apache tribal members voted 490 to 362 to halt all further negotiations with nuclear utilities over hosting the proposed private sector temporary nuclear waste storage facility. The results of the vote stunned both the MATC and nuclear utility officials, who had reached a tentative agreement on the facility. "The voice of the Mescalero Apache spirit has been heard," noted Rufina Marie Laws.

"Very few of us will be around 40 years from now," said Joseph Geronimo, great grandson of the famous Apache Chief Geronimo, in explaining the vote. "Our children would be stuck with it. And what would they get for it? Nothing." In rejecting what many saw as an outright bribe to sell their homeland to the highest bidder, Geronimo said, "Our people have made the choice that their tradition and culture is the most important thing in the world, and Grandmother Earth is not for sale at any price."

MATC President Wendell Chino told the New York Times that "right or wrong, they [tribal members] made a decision. I don't have a problem with it. I just recognize the fact that the Mescalero people have shut the door on themselves in not accepting a great opportunity."

REVOKED REFERENDUM

Soon after a majority of Mescalero Apache members rejected the facility, a petition drive was begun to overturn the referendum. The Mescalero Apache Tribal Constitution stipulates that if 30 percent of the eligible Mescalero voters sign a revocation petition, a new referendum must be held.

Although tribal officials characterized the petition drive as a grass-roots initiative, the move to overturn the referendum was led by Tribal Housing Director Fred Kaydahzinne. Many on the Reservation believe that MATC directly backed the effort. Kaydahzinne deployed 20 on-duty tribal employees to gather signatures. MATC says that 710

signatures -- enough to force a second vote -- were gathered, though the signature sheets have not been made available to the public.

"It was real hard for people to turn [Kaydahzinne] down," says Rufina Marie Laws, given his influence over tribal housing and other support services. Many tribal members privately acknowledge that they were under great pressure from the tribal establishment to sign the petition.

Commenting on the fact that Tribal President Wendell Chino appoints all key tribal posts, including election, voting and housing officials, Laws says, "We don't have any checks and balances in our tribal constitution. And the tribal council is just a rubber stamp."

After the petition drive had officially overturned the first referendum, tribal officials beefed up their media and lobbying campaign, claiming that the facility would bring \$250 million in wages, lease payments and associated income to the Mescalero. Tribal members with close ties to the Tribal Council promised that each tribal member would receive a \$2,000 cash payment if the second referendum supported the facility, although tribal leaders never backed this promise publicly.

"It's out and out bribery," says Rufina Marie Laws. "The negative vote left the industry scrambling, the tribal leaders stunned, and everyone totally elated throughout the world. Has this new petition drive been initiated by the industry who is left squirming with nowhere to put the waste?"

Tribal officials' heavy-handed tactics worked. The second round vote in March 1995 brought a 593-372 vote count in favor of continuing negotiations with the nuclear utility companies, although no material evidence of this vote has been made public.

"This project will bring jobs and a better life for our people, but more important, it will enable us to build a secure future for our children and grandchildren," announced Tribal President Wendell Chino in a statement welcoming the second vote. "We always believed that once the tribe had all the facts on safety that they'd support it," says Scott Northard, project manager for Minnesota-based Northern States Power (NSP), which leads the utility consortium. "Obviously, we are interested in proceeding and believe the project will be good for all involved."

New Mexico Attorney General Tom Udall countered that, "It appears to me that the tribal leadership has strong-armed members to get this result."

AFTERMATH

The continuing struggle over the private and public

nuclear dump proposals is creating deep divisions between friends and families on the Mescalero Reservation. As a clan-based community, the Mescalero Apache are highly sensitive to open discord. Mescalero children have been fighting over the issue in schools and elders who hold together the traditional clan structure are under great stress.

In the wake of the second vote, the group Apache Stronghold formed on the Mescalero Reservation to work against the proposed nuclear waste storage facility. The group is rapidly expanding membership, despite the threat of being blackballed from tribal employment, housing and other MATC-controlled services.

"The main reason I'm against this is because of my kids: I want them to have what I have had growing up," says 23 year-old Apache Stronghold member Abraham Chee, Sr. "It upsets me that Wendell Chino is an elder and supports this. He should know our traditions. Nuclear waste is against our traditions. The people voted 'No' the first time. The things that us Apache people pray to are our land, the trees, the sky. We learned this from our parents and our grandparents. We need to keep carrying these traditions on. I guess those who want this nuclear waste don't know what our grandparents fought for."

"Wendell Chino wrote an open letter to our Congressman, Joe Skeen, welcoming a congressional investigation and hearing on the second vote, and I hope that Joe Skeen ... can take him up on that," says Joseph Geronimo. "Wendell Chino sold us out. There's enough land on the Pentagon, there's enough land on the Mall in front of the Capitol. There's enough land out there, they can store it in Times Square. But they're not going to store it here. There will be no nuclear waste dump on my reservation, this I owe to my ancestors. I can understand how my great-grandpa felt when his own people turned scout against him. That's exactly what Wendell Chino has done. They turned scouts."

Following the second vote, the tribe is set to receive quarterly installments of \$167,750 each. These payments are to continue for six years until they total \$4 million. By that time, the facility is supposed to be completed.

In June 1995, a corporation by the name of the Mescalero Environmental, Inc. was formed to facilitate the development of the private dump. Made up of members of the MATC and nuclear industry officials, the corporation has begun its application procedures to obtain licensing from the federal Nuclear Regulatory Commission.

Ironically, after their victory in the second Mescalero vote, the consortium of nuclear utilities pushing the private project has begun to fray, with many of the utilities that originally supported the scheme backing out. NSP officials recently said that 23 of the original 33

nuclear utilities were still on board, but they later acknowledged that they had overstated the number. The actual number of utilities that are still financially committed to the project may be fewer than 16, Doug Antony of NSP now says.

It is unclear whether the dump will be built at Mescalero in the face of opposition by tribal members as well as New Mexicans living along the transportation routes who do not want highly radioactive waste shipped through their communities.

The plan to use the Mescalero Reservation as a temporary storage site assumes that a permanent storage facility will be established. Yet Major unresolved political and technical questions still dog the Yucca Mountain project. Recently, a sizable earthquake in the area raised new safety and feasibility questions. Scientists continue to debate whether the geography of the region could isolate the deadly waste from the biosphere for millennia. Scientists at Los Alamos Laboratories in New Mexico warned in March 1995 that the planned method of burying radioactive waste at Yucca Mountain could result in explosions. And Western Shoshone in the region have organized a resistance campaign.

With so many political stumbling blocks facing the project, high-level nuclear waste may never take up permanent residence in Yucca Mountain. As a result, tribes that agree to provide temporary nuclear waste storage could get stuck with yet another broken U.S. government promise -- and a large stockpile of spent nuclear fuel.

UTILITIES THAT WANT TO DUMP NUCLEAR
WASTE ON MESCALERO RESERVATION

American Electric Power Service Company (Columbus, OH)
Baltimore Gas & Electric Company (Baltimore, MD)
Centerior Energy Corporation (Independence, OH)
Commonwealth Edison Company (Chicago, IL)
Consolidated Edison Company (New York, NY)
Dairyland Power Coop (Lacrosse WI)
General Public Utilities (GPU) Corporation (Parsippany, NJ)
Illinois Power Company (Decatur, IL)
Niagra Mohawk Power Corporation (Syracuse, NY)
Northern States Power (Minneapolis, MN)
Pacific Gas and Electric Company (San Francisco, CA)
Public Service Electric and Gas Company (Newark, NJ)
Southern California Edison (Rosemead, CA)
Southern Nuclear Operating Corporation (St. Petersburg, FL)
Wisconsin Electric Power Company (Milwaukee, WI)
Wisconsin Public Service Company (Green Bay, WI)

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