

STATEMENT OF

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**REGARDING NUCLEAR WASTE MANAGEMENT AND THE SITING
FOR INTERIM STORAGE AND A PERMANENT REPOSITORY**

BEFORE THE

ENERGY COMMITTEE

UNITED STATES SENATE

JULY 30, 2013

Honorable Chairman Wyden and Ranking Member Murkowski and Energy Committee members:

I am Joe Garcia, Councilman from Ohkay Owingeh, and Southwest Area Vice President for the National Congress of American Indians, the oldest and largest national tribal advocacy organization in the country. On behalf of the NCAI membership of over 250 tribes we thank you for conducting this hearing and inviting the NCAI to share some of the issues facing tribal governments and communities regarding spent nuclear fuel and radioactive waste storage, disposal and transportation.

I fully understand this hearing is being held not as a general overview of the nuclear waste problems existing in this country, but about Senate Bill 1240 which addresses disposition of commercial generated spent nuclear fuel. However, it is incumbent on our organization to remind everyone of the longstanding detrimental impacts from environmental contamination and environmental health issues that nuclear activities continue to have on tribal lands that originated during the World War II era.

Native peoples contributed a significant share in the war effort as native warriors volunteered, fought and died to protect our homelands and this country. Tribal governments surrendered hundreds of thousands of acres of tribal lands for national defense purposes which were supposed to be returned to the tribes. That has not occurred. Additionally uranium mined and milled on tribal lands supplied the atomic materials for research and development of weaponry that ended the war.

There are contaminated places that require immediate mitigation. Legacy radioactive defense waste has destroyed sacred areas; stored radioisotopes are seeping into groundwater, river systems containing habitat for native fish and other foods and medicines critical to the cultural survival of native peoples. The NCAI urges this committee to conduct an oversight hearing to assess and address the myriad issues mentioned.

Following enactment of the Nuclear Waste Policy Act of 1982, the NCAI managed a cooperative agreement with the Department of Energy Office of Civilian Radioactive Waste Management to provide tribal governments with updates on implementation of the Act. Under the DOE cooperative agreement, the NCAI created the National Indian Nuclear Waste Policy Committee and coordinated myriad meetings involving tribal government, DOE, Nuclear Regulatory Commission, and Federal Emergency Management officials to discuss the siting and transportation status and tribal concerns.

Tribal governments varied in their view of NWPA implementation. Many bands of Shoshone and Paiute tribes were adamantly opposed to the siting of a permanent repository at Yucca Mountain because the location is in the middle of their traditional territory. Their resistance also came from being left out of the early stages and eventual finding of no significant impact of the Environmental Impact Statement. These tribes did not have the technical staff or the resources to fund western science studies but they are well versed in traditional ecological knowledge. Nevertheless they were rendered

helpless by the systematic definition of “affected Indian Tribes” as defined in the 1982 Nuclear Waste Policy Act.

Tribes like the Prairie Island Indian Community whose island reservation is adjacent to the Prairie Island Nuclear Generating Plant owned by Excel Energy Incorporated, needs to have a repository built to lessen the risk to their tribal community members which includes tribal government offices, tribal citizens’ homes, and their gaming facility.

In the last search for an interim storage facility, Monitored Retrieval Storage, several tribes were negotiating with the Office of the Nuclear Waste Negotiator, the independent entity charged with this responsibility. Five tribes and seven states had stepped forward before the process was closed. The Skull Valley Goshute Tribe came the closest despite some tribal community ‘s citizens resisting the effort, however the most damaging opposition was the state in enacting state laws and lobby for federal legislation to derail the project.

These examples of self-determination in exercising tribal sovereignty are intact and you will likely see a repeat of tribes supporting and opposing in varying degrees S. 1240 implementation if it is enacted.

It appears that recommendations from the Blue Ribbon Commission on America’s Nuclear Future are incorporated into S. 1240. One of the Blue Ribbon Commission’s Principal Findings on Siting Processes and Related Issues states that, ““State, tribal and local and tribal officials have primary responsibility for public safety and protection of the environment. These officials should be fully involved in the development of storage and transportation solutions and should be the primary interface with their communities. Their cooperation and involvement in past and ongoing projects has been a critical element of success.”

S. 1240 contains provisions regarding the guidelines for the consideration of storage facilities that call for the Administrator to evaluate the extent that states and tribes will support the proposal. We support this language, and encourage you to go even further in ensuring consultation with affected tribal governments.

Section 205 of the S. 1240 would establish the Nuclear Waste Oversight Board. Among the Board’s duties is to oversee use of funds in complying with the mission plan. The Oversight board should include professional staff with experience in working with and for tribal governments to ensure that there is ongoing tribal government consultation regarding programmatic and policy development. The professional staff should be able to assess the policy and programs information dissemination and required consultation to fulfill trust obligations regarding all impacts to trust lands and resources from upon which the trust relationship is based.

One of the critical issues surrounding the Nuclear Waste Policy Act and S. 1240 is transportation of spent nuclear fuel through state, tribal and local jurisdictions. Section 180(c) of the Nuclear Waste Policy Act calls for the safe and routine transportation of its materials. Safe and routine transportation includes notice to state and tribal governments, community and citizen public safety awareness and radiological emergency response capability in the event of a transportation accident.

Tribal governments have less emergency management capacity than state counterparts due to tribal ineligibility to access the hundreds of millions of dollars for these purposes which has been provided by federal agencies including the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS). We urge that the Committee to call upon DOE, FEMA, and the DHS to work with tribes on potential transportation routes to assess current radiological emergency response capability and develop programs and policies to achieve the capability required for safe and routine transportation. Otherwise this will be another unfunded mandate for tribal governments which have public safety responsibility for the likelihood of triple figure radioactive waste shipments but lack the necessary emergency management infrastructure.

We believe tribal governments retain regulatory authority over commercial radioactive waste shipments as they have over other hazardous materials and are working to transportation departments with inspection, permitting and other oversight authority. It is possible that tribes impacted by the proposed spent nuclear fuel shipments may seek to create and manage transportation departments to oversee radioactive materials shipments, which is well within their rights. However a tribal regulatory scheme also might include comity and shared responsibilities with surrounding jurisdictions.

Last month the Nuclear Regulatory Commission issued its Final Rule on Advanced Notification to Native American Tribes of Certain Shipments of Nuclear Waste. The implementation action requires licensees to provide advanced to federally recognized tribal governments notice of certain shipments of irradiated reactor fuel and other nuclear wastes that pass within or across their reservations. This rulemaking began over 15 years ago but we believe the NRC is fulfilling its fiduciary responsibility in following through with this Final Rule.

Our last issue, not specifically contained in S. 1240 but of equal importance is that we need the committee's assistance to guide the DOE to get back on track regarding its duties and responsibilities under the DOE Indian Policy, to work on a government to government basis with tribes regarding the overall impacts of the Nuclear Waste Policy Act, and if enacted, the Nuclear Waste Administration Act.

The DOE Office of Nuclear Energy is currently funding several interstate regional organizations to attend meetings and disseminate information to state governments and citizens about current and proposed radioactive waste transportation campaigns. To their benefit, states have multiple streams of input into the process and issues. However tribes do not have the same opportunity as the Office of Nuclear Energy has

chosen to not support an intertribal organization for these purposes despite inquires and requests from tribal official and the NCAI.

The absence of an entity to provide an opportunity and venue to discuss the current status of DOE activities with tribal officials is contradictory to the intent and purpose of the DOE Indian Policy. We urge the Committee to inquire of the Office of Nuclear Energy their reasons for not supporting an inter-tribal organization to serve the tribes in the same capacity as currently funded inter-state organizations.

As the effort to resolve accumulation of spent nuclear fuel and radioactive waste moves forward, we urge this committee to be mindful of the legacy of impacts and the cost tribal governments and peoples have borne in defense of their homelands and this country. We believe the resolution of these problems will be beneficial to all citizens of this country. Thank you again for the opportunity for the NCAI to share the views of our organization and constituent tribal governments.