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MR. ZOBARTE: This is a copy of my comments for the record. Good evening. My name is Ian Zobarte. John Wells was supposed to deliver these comments. I'm delivering them in his place.

- 1 [I'm here presenting comments on behalf of the Western Shoshone National Council. Copies of these comments will be sent to the United States Human Rights Commission, the European Parliament Commission on Human Rights, the Organization of American States Human Rights Commission for entities investigating the United States abuse of human rights, and the Department of Energy should bear in mind the foreign policy implications of attempting to site the high-level nuclear waste in the Western Shoshone territory.]
- 2 [The authority for the Western Shoshone National Council comments are provided on the basis of responsibility and authority of the National Council as a legitimate protector of the interest of the Western Shoshone to ensure the Western Shoshone public health, safety and property rights are protected because the United States ties too little protection for the Western Shoshone.

The Western Shoshone secured formal recognition from the United States through the negotiation and signing of a treaty of peace and friendship for the benefit of the Western Shoshone Nation and the United States. The treaty Ruby Valley granted specific rights to the United States. All other rights subject to the authority, title and within the boundaries of Western Shoshone territory are reserved for the Western Shoshone Nation for the use and benefit of Western Shoshone citizens. The Western Shoshone Nation possesses an express reservation of power and freedom of action. The exercise of these powers exists in the National Council of the Western Shoshone Nation.

The only rights surrendered by the Western Shoshone to the United States comes by the treaty of Ruby Valley. It is through the treaty of Ruby Valley that the United States may claim a right or exemption from the laws of the Western Shoshone Nation.

Further documentation of the lawful basis for the legitimate authority of the National Council is recognized in the United States law and international law as follows: The Northwest Territorial Ordinance, the United States Constitution, Article 6, paragraph 2, the 1848 Treaty of Guadeloupe Hidalgo and the Act of Congress organizing the Territory of Nevada in 1861, and providing that nothing in this act contained shall be construed to impair the rights or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and the Indians. All parts of the Nevada Act incorporated into the Nevada constitution, which is so.]

- 3 General comment. [The Western Shoshone Government understands that the United States Department of Energy is lame in capacity to address political matters. However the Western Shoshone customary law and treaties must be given due account in the relationship between the United States and the Western Shoshone Nation in order to put into operation superior power to protect the health, rights, liberties, freedoms and environment of the Western Shoshone people from an increasingly aggressive United States bureaucracy.

The protections provided by these laws preempt the application of United States laws, rules and regulation. The only opportunity by which the United States may make a lawful claim for nuclear material, transportation, use, storage or disposal is under the treaty of Ruby Valley the nuclear-free zone resolution, which is attached as appendix 2, which has provisions for dealing with existing problems from past United States nuclear activities and creates an opportunity under section 2 for the harmonization of the United States regulation under Western Shoshone law. Only initiative on the part of the United States is lacking.]

- 4 [Land use and ownership. The Department of Energy has consistently disregarded the law of the land and has turned the United States Constitution on its head. If we are to believe in the assumptions that the Nuclear Waste Policy Act as amended in 1987, preempts or is somehow paramount to a treaty which shares equal footing with the United States Constitution. To the United States Department of Energy's credit, there is made nowhere a claim of title or ownership to Yucca Mountain. The Western Shoshone Government awaits all claim by the United States Department of Energy of title to any part of Western Shoshone territory.]
- 5 [In volume 1, impact analysis, chapters 1-15, at 3.1.1.3, the Department of Energy misrepresents the facts of the Nuclear Regulatory Commission licensing criteria for a repository (10 CFR Part 60). The Nuclear Regulatory Commission requires site ownership and control, not ownership, or permanent control, which
- 6 is presented in the Department of Energy's DEIS 7, affected environment, page 3-7.] In volume 1, impacts analysis, chapter 1 through 15 at 3.1.1.3, Native American treaty issues, the DOE again misrepresents the facts.

The validity of the treaty of Ruby Valley is nowhere acknowledged in the Draft Environmental Impact Statement. There is no formal acknowledgement by the United States Department of Energy to the solemn obligations which the United States entered and agreed to by the treaty of Ruby Valley with the Western Shoshone Nation. To follow through on the United State's has a simplified interpretation of law is to trample the rights of the Western Shoshone people, ignore law, make no analysis or investigation which would provide the Department of Energy with an understanding of impacts to the Western Shoshone Nation.

The United States relies on information in the Dan litigation, especially United States versus Dan and the other United States litigation in the Ninth Circuit Court, 1989 to argue that the statutory bar enacted by Congress of the Indian claims provision, intervention to protect their territorial integrity. The Congressional ruling, including the statutes, and the Supreme Court's conjuring in Dan of a bar to actual litigation with Shoshone rights to territorial integrity demands what is called a consistent irrigation of power, which means that the United States cannot demand title to any portion of Western Shoshone territory.

- 7 [To the contrary, the authorities stated earlier in these comments are the basis for continuing protection of the Western Shoshone people and the foundation of the exercise of Western Shoshone rights, title and authority in conformance with international forms.] Cultural resources volume 1, impact analysis, chapter 1 through 15, affected environment. 3.1.6.2, Native American interests. The DEIS fails to identify the Western Shoshone Nation as we actually exist.

For the purpose of cultural resource studies, the Department of Energy created the Pahrump Paiute Tribe, which centers at the Las Vegas Indian Center, which out of a hundred percent of its service serves three percent of Western Shoshone and six percent of Southern Paiute who may have ties to Yucca Mountain. The Western Shoshone National Council was not identified for the burden of proof of this cultural resource study and the treaty of Ruby Valley was not included in any review.]

- 8 [The director of the Las Vegas Indian Center participated in the cultural resource study, became a paid consultant of the Department of Energy, then an employee of the, and the problem with this relationship is that the Department of Energy employee sat in the capacity making recommendation for the Las Vegas Indian Center, the Pahrump Paiute, the community advisory, Department of Energy programs and the National Indian Nuclear Waste Policy Committee. It is through this unethical mess that the Department of Energy bolsters claims of Native American involvement.]

- 9 [Researchers working with Dr. Richard Stoffle, the principal, cultural resource studies, recognizing the moral and ethical problems associated with study activities found it necessary to withdraw from the Department of Energy's American Indian Religious Freedom Compliance Program for personal and philosophical reasons. The systematic process used in the cultural study developed for the United States Department of Energy is called cultural triage, which is defined as the 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. The term was created by Dr. Richard Stoffle, staff professor at the University of Michigan Institute for Social Research. According to the Oxford English Dictionary, the word "triage" is of French origin and comes from trier, to pick our cull. It denotes the action of assorting according to quality.

When used in the Department of -- by the Department of Energy to support its development, triage equals genocide. Under international law, it is defined as the systematic killing of a people in whole or in part. This is what is happening to the Western Shoshone people, slowly, piece by piece, our cultural resources are taken or destroyed in part. The acts of the Department of Energy in developing Western Shoshone territory for a nuclear waste dump violate Western Shoshone custom, international law under the United Nations Convention on Prevention and Punishment of the Crime of Genocide, and United States law under the United States Genocide Implementation Act, also known as the Proxmire Act.]

- 10 [Environmental justice. In Volume 1-Impact Analysis, chapter 1-15, Environmental Consequences of Repository Construction, Operation and Monitoring, and Closure, 4.1.13, Environmental Justice, the Department of Energy missed the mark. Executive Order 12898 requires federal agencies to specifically consider ethnic minorities with subsistence lifestyles. This is not considered in the Draft Environmental
- 11 Impact Statement. [The Western Shoshone Government is faced with a serious public health crisis from legacy nuclear weapons testing of the United States and United Kingdom which have seriously contaminated the soil and groundwater of Western Shoshone territory. We have undertaken research into the existing uncertain health effects which are known to be plausible from radiation exposure.

We are currently in the process of determining the causal relationship between nuclear weapons testing and our own experience of adverse health effects. It is from this informed experience that we present these comments to the United States Department of Energy here this evening. It is primarily from lifestyle differences that we now understand that our exposure from radiation is based, 131 fallout from the Nevada fallout was seven times greater than non-native populations.]

- 12 [Lifestyle differences are important, but are not considered in the DEIS. The National Council believes that racial discrimination plays a role in the selection of Western Shoshone territory for site investigation as proposed for high-level nuclear waste, from nine sites to one politically weak one within the Western Shoshone Nation.

We expect the Department of Energy to investigate the processes by which site selection and standards are proposed to uncover institutional racism which the National Council believes result are from forcible trespass by the Department of Energy. Since racism and discrimination are not openly admitted in the process, a cursory review is inadequate to identify racial discrimination. A thorough investigation is therefore necessary to get to the root cause of racial discrimination.]

In conclusion, we hope that our comments not only inform the Department of Energy, but the American people as well, people working together to understand the full scope of probable impacts for our sake and that of our future generations. Additional comments will be submitted in writing. Thank you.