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Native Americans and State and Local Governments

by

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DISCLAIMER

The Nevada Agency for Nuclear Projects/Nuclear Waste Project Office (NWPO) was created by the Nevada Legislature to oversee federal high-level nuclear waste activities in the State. Since 1985, it has dealt largely with the U.S. Department of Energy's (DOE) siting of a high-level nuclear waste repository at Yucca Mountain in southern Nevada. As part of its oversight role, NWPO has contracted for studies designed to assess the transportation impacts of a repository.

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STATE OF NEVADA

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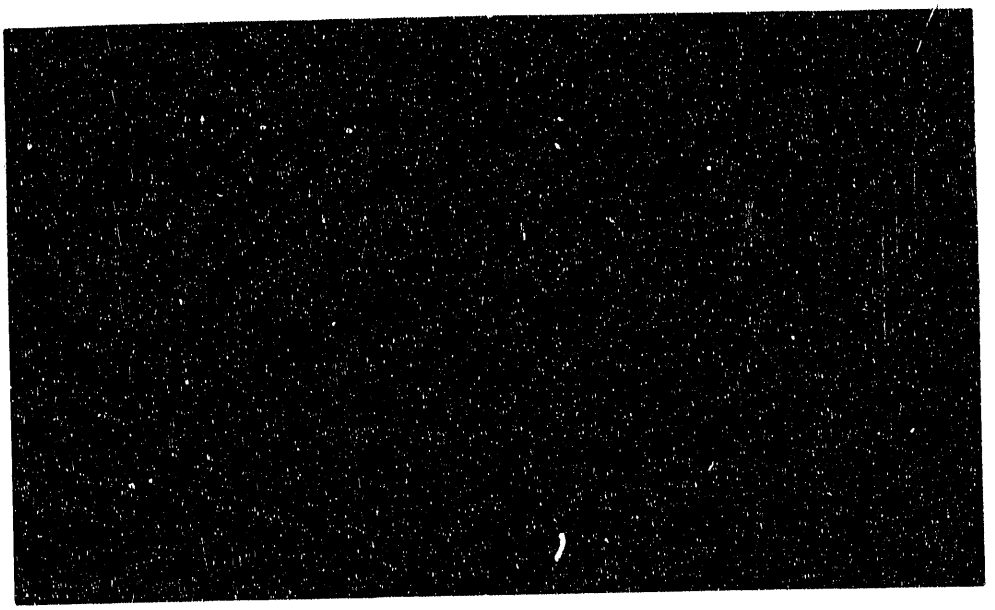

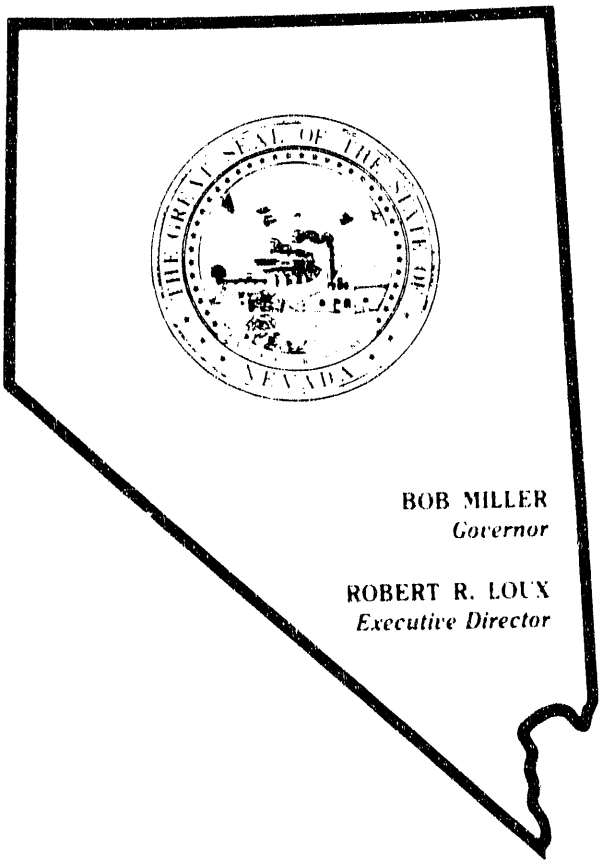

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NATIVE AMERICANS AND STATE AND LOCAL GOVERNMENTS

Native Americans' concerns arising from the possibility of establishment of a nuclear repository for high level wastes at Yucca Mountain fall principally into two main categories. First, the strongest objection to the repository comes from traditional Western Shoshones, who have organized into the Western Shoshone National Council, a new political/governmental structure in Nevada Indian country. Their objections are based on a claim that the Western Shoshones still own Yucca Mountain and also on the assertion that putting high level nuclear wastes into the ground is a violation of their religious views regarding nature. Second, there are several reservations around the Yucca Mountain site that might be affected in various ways by building of the repository. There is a question about how many such reservations there are, which can only be decided when more information is available (for example, about the transportation routes which will be used to convey radioactive materials to Yucca Mountain).

This paper discusses two questions: the bearing of the continued vigorous assertion by traditionalist Western Shoshones of their land claim; and the extent to which Nevada state and local governments are able to understand and represent Indian viewpoints about Yucca Mountain.

I. <u>The Land Claim</u>. Traditional Western Shoshones continue to assert that no definitive, irreversible actions by the United

States government have yet deprived them of the bulk of their former lands. Since some time in 1990, the Western Shoshone National Council has used a map which it prepared which shows aboriginal Western Shoshone country (enclosed). The criteria on which this map is based are not stated but differ from those behind the map developed by the Indian Claims Commission in that joint use areas - territories which may also have been used by other Native American societies - are not excluded (Stewart 1966, Raymond Yowell, personal communication, November 29, 1990). The map clearly includes Yucca Mountain within traditional Western Shoshone territory.

A study by Stoffle et. al. (1990: 87-89) identifies two Western Shoshone and one Southern Paiute "districts" around Yucca Mountain; the Western Shoshone district of Oasis Valley includes Yucca Mountain while the other two districts include lands connected in various ways with the Oasis Valley district. However, it is clear from this same study that Southern Paiutes and Western Shoshones from other districts used the Yucca Mountain area at various times. Thus, while it is clear that Yucca Mountain was not exclusively owned by Western Shoshones in aboriginal times, available information supports the conclusion that Yucca Mountain was once within Western Shoshone territory. Since traditionalist Western Shoshones, who now include the leaders of a government claiming to speak today for all Western Shoshones, continue to assert that only small parts of their former territory have passed out of their hands, these claims need to be examined.

A detailed discussion of the complex legal history of the claims dispute is beyond the scope of this paper, but such a discussion is included (Rusco 1991). The rest of this section will summarize the traditionalist claims, discuss the formation of the Western Shoshone National Council, and report some of the ways by which traditionalist Western Shoshones continue to assert their land claims.

The Treaty of Ruby Valley, negotiated in 1863 and ratified in 1869, contained provisions consenting to the loss of Western Shoshone lands for various purposes - the establishment of towns, ranches, mines, forts, railroads, etc.. Uses allowed by the Treaty have never required more than a small percentage of aboriginal Western Shoshone land, however. Today, over 87 percent of their former land is administered by the federal government. The largest proportion is administered by the Bureau of Land Management, but there are also national forests, military bases, the Nevada Test Site, the Great Basin National Park, wilderness areas, and wildlife refuges within Western Shoshone country.

To this day, the federal government has not pointed to any clear cut act or acts that constituted unequivocal legal abolition of Western Shoshone aboriginal ownership of these lands. In fact, the only court which has ever examined traditionalist claims in detail agreed with them that all of the bases cited by government attorneys for believing that title had passed to the federal government are invalid. The Ninth Circuit Court of Appeals in 1983 decided that the Treaty of Guadalupe Hidalgo had not

extinguished Western Shoshone aboriginal rights, the homestead and Taylor Grazing acts had not had this effect, the Treaty itself provided for only a limited cession of lands, and the establishment of the Duck Valley Reservation in 1877 had not fulfilled a provision of the Treaty by which the Western Shoshones agreed to move to reservations when these were established within their territory (United States v. Dann, 706 F.2d. 919, Rusco 1989).

As one result of the absence of clear cut action ending aboriginal title, the date of taking of the land was set (by stipulation of government attorneys and those acting for the Western Shoshones) in the claims case as July 1, 1872, although there was no specific event on that day or in that year which had meaning regarding land ownership either to the Western Shoshones or to the federal government.

In spite of the absence of unequivocal taking of the land, the Indian Claims Commission determined in 1962 that the Western Shoshones had lost their lands in the 19th century, and later settled on the 1872 date as the time of taking. As a result of the claims process established by the Indian Claims Commission Act of 1946, the United States Supreme Court ruled in 1985 that Western Shoshones have been paid for their lands, because the money which the Claims Commission established as due the Western Shoshones for their land has been deposited in a special federal account from which individual Indians may some day receive payment (United States v. Dann, 470 E.S. 39 (1984). As the Supreme Court interprets the law, this payment precludes any further pursuit of

traditionalist land claims in the courts.

Although there are substantial reasons for believing that the claims process was in this case unjust and violated due process of law (Orlando 1986), and although the Western Shoshone National Council has opposed actual payment to individuals, this holding by the Supreme Court presumably prevents the Western Shoshones from pursuing their claims through litigation.

All litigation arising out of traditionalist claims is not precluded, however, and several actions by Western Shoshones arising out of their belief that they still possess aboriginal title to most of their former territory have led or could lead to litigation.

1. The Western Shoshone National Council has considered a suit to assert that the distribution of land within Western Shoshone country by the federal government to the Central Pacific Railroad in the 19th century was illegal in spite of the Treaty provisions which authorize the construction of railroads. The basis for such a suit would include a provision of the federal act authorizing granting of land to the railroad; this states that Indian aboriginal ownership must be extinguished before land distribution can begin. Since it is clear that no such extinguishment took place during the 1860s, there is ground for a legal challenge in this area. Such a suit could cloud title to much of the private land within Western Shoshone country until it is settled (Records of Western Shoshone National Council, examined in the law offices of Thomas Luebben, Albuquerque).

2. A hunting and fishing case resulting from suit by the Western Shoshone National Council against the Nevada Department of Wildlife is potentially of very great importance. This federal case has resulted in de facto control by the Western Shoshone National Council of hunting and fishing by Western Shoshones within their territory since January 4, 1988. On June 26, 1991, there was a hearing in Reno of the Ninth Circuit Court of Appeals to listen to arguments over whether the Ruby Valley Treaty protects aboriginal hunting and fishing rights, but no decision has yet been handed down. If there is a judicial finding that the Treaty protects these rights, the National Council could gain long-range control of hunting and fishing within its territory.

3. Western Shoshone ranchers at Duckwater, South Fork and Yomba Reservations have for several years refused to pay grazing fees to the Bureau of Land Management, on the ground that the land involved still belongs to them; at Duckwater, moneys which would have gone to the BLM have been put into an escrow account which could be used to make future payments. As of April, 1991, the BLM had levied fines on the Indian ranchers for nonpayment of fees but had not resorted to litigation to collect past fees and fines (Raymond Yowell, personal communication, April 27, 1991, Jerry Millett, personal communication, May 23, 1991, Reno Gazette Journal, September 22, 1991: 10A).

4. For several years, the Western Shoshone National Council has opposed nuclear testing at the Nevada Test Site. A member of the Council, William Rosse, Sr. of Yomba, chairs the Council's

Environmental Committee and leads these efforts. Rosse regularly participates in protests at Mercury (on the Test Site) against such testing, and is often joined by traditional religious leader Corbin Harney, Pauline Esteves, a tribal leader from the Timbisha Band in Death Valley, or various other Western Shoshone traditionalists. In 1987, a protest march resulting in civil disobedience (by crossing the cattleguard at Mercury which marks the boundary of the NTS) was led by the principal officers of the Western Shoshone National Council.

As part of the Western Shoshone protest, Rosse since 1986 has issued to protesters permits from the National Council which grant permission to be on Western Shoshone territory (sample enclosed). The traditionalist land claim behind this practice has been made the basis of several suits challenging the legality of indictments for trespass in such cases, but apparently no judicial opinion has dealt directly with the validity of these permits. For example, in 1987 a motion was made in the Justice Court of Beatty Township to dismiss a trespassing complaint against Nancy E. Heiner on the ground that her possession of a permit signed by representatives of the Western Shoshone Nation meant that she was present upon the land in question "with the permission of the owners of aboriginal title thereto, the Western Shoshone Nation..." (Nevada v. Heiner, Motion to Dismiss Criminal Complaint, filed April 30, 1987). On May 5, 1987, Ms. Heiner was notified that the complaint against her had been dismissed following a motion from the District Attorney of Nye County, but no reason was given for the dismissal. (Justice of

the Peace Bill Sullivan to Nancy E. Heiner, May 5, 1987).

No indictments for simple trespass have actually proceeded as far as a trial, however, since the Nye County District Attorney announced a change in policy in April, 1987. There have been convictions of several individuals for more than symbolic trespass - infiltrators have hiked to the town of Mercury and close to spots where underground detonations were planned - but no court has formally acknowledged the defense based upon Western Shoshone land claims (Albert Marquis, personal communication, June 11, 1991, conversations with persons in offices of American Peace Test, June 11, 1991, and Nevada Desert Experience, June 11, 1991).

In 1988, four individuals - Louis P. Benezet, Grace M. Bukowski, Karen Croxall and Robert A. Fulkerson - were indicted for trespass for entering land in the Groom Range which had been added to the Nellis Air Force Base by Congressional action earlier that year. Part of their defense against this charge asserted that "each of the Defendants had been issued a permit by the governing Council of the Western Shoshone Nation, whose aboriginal title to the area involved has not been extinguished, granting permission to be present within the area in which they were arrested." (Trial Memorandum of Law, Nevada v. Benezet, et. al.) They were found guilty by the Justice of the Peace of Pahranagat Valley Township in 1989 but appealed to the 7th Judicial District Court of Nevada. As of November 25, 1991, no decision has been rendered in this case (Richard E. Olson, personal communication, June 13, 1991, Ian Zabarte, personal communication, November 25, 1991).

The peace-oriented groups which plan most of the demonstrations at the Nevada Test Site continue to recognize traditionalist land claims. Rosse, for example, is a member of the steering committee of American Peace Test, which with the Nevada Desert Experience group has organized most of the demonstrations. The cover of a handbook for a 1989 protest sponsored by American Peace Test featured three slogans - "Stop Nuclear Testing", "Reclaim Shoshone Land", and "Don't Pay War Taxes", with a drawing by Western Shoshone artist Jack Malotte as the background. The handbook also included a brief greeting from William Rosse which mentioned the permits he issues, a one-page description of "The Shoshone Land Rights Struggle", and a statement from Raymond Yowell, Chief of the Western Shoshone Nation, which included these comments:

> The Nevada Test Site was created illegally in 1951 by an executive order of President Truman in violation of Shoshone land rights and the 1863 Treaty of Ruby Valley. We never agreed to give our land to the United States. This is Shoshone land. Its use by the United States for nuclear testing is a blatant violation of law and of our civil and property rights.... The Western Shoshone National Council is committed to stopping nuclear testing and the nuclear arms race (American Peace Test 1989).

In late 1990, Chief Yowell joined with several peace movements in the Soviet Union, Japan, Holland, and Germany to sponsor a petition asking all nations possessing nuclear weapons to cease testing them and to support the International Comprehensive Test Ban Treaty Conference held in New York City in January, 1991 ("People's Comprehensive Test Ban Treaty", enclosed).

William Rosse and Corbin Harney participated in protest

actions at the Test Site in January and April, 1991. In April, there were about 1500 persons present at the protest and about 650 were arrested for trespass (Conversations with persons in the offices of American Peace Test and Nevada Desert Experience, June 12, 1991).

For four years, beginning in 1987, Citizen Alert, a private group with offices in Reno and Las Vegas, has sponsored the Dorothy Legaretta Memorial Caravan each spring. Typically, the Caravan visits the Nevada Test Site, where its members participate in protests against nuclear testing, and Duckwater Reservation. Rosse and Corbin Harney usually attend and introduce participants to Western Shoshone religious views and the traditional land claims (Citizen Alert, Winter 1991: 3).

During 1990, Rosse, accompanied by Citizen Alert staffer J. R. Wilkinson, made two tours of a number of cities in California and the Southwest to inform people in these communities about the Yucca Mountain repository and determine attitudes toward the transportation of nuclear wastes through various communities which might lie along transportation routes. They carried with them a mock nuclear waste canister, one of several designs which have been developed for transportation of high level nuclear wastes (Citizen Alert, Spring 1991: 17 and Winter 1991: 1, 6-7).

5. Dramatic action which challenged the federal Wild Horse and Burro Protection Act took place in the summer of 1990. In August the National Council authorized the roundup of wild horses on the range near Duckwater, Nevada. A contract was signed with an

individual to assemble these horses and ship them to Texas for slaughter. The National Council took this action because it believed that it had authority over all forms of wildlife, including feral horses, within its territory. It believed that the BLM program was failing to control excessive numbers of wild horses, particularly in the Duckwater area. The long-range purposes were to reduce the wild horse herd in that area to a sustainable level over the long run and improve the quality of the herd by culling some animals and introducing better-quality stallions. Eventually it is planned to hold an annual auction of one year-old horses, to keep herd numbers to the sustainable level and to raise money for the National Council (Raymond Yowell, personal communication, April 27, 1991, Western Shoshone Nation Newsletter, vol. 1 No. 1 (January, 1991): 9-10, Ian Zabarte, personal communication, November 25, 1991).

Representatives of the Bureau of Land Management impounded the horses after they arrived in Texas and removed them to New Mexico, but so far no legal action or action which might lead to litigation has been initiated against the National Council or its representatives. A claim for monetary damages made to the BLM by the National Council, based on the costs of the roundup and the loss of revenue from sale of the horses, has been rejected by the BLM (Raymond Yowell, personal communication, April 27, 1991, Ian Zabarte, personal communication, November 25, 1991).

6. The National Council has made verbal protests against creation of Great Basin National Park and the establishment of

wilderness areas in selected portions of what had been administered as National Forest lands, on the ground that the lands involved in these actions rightfully remain under Shoshone control. It has also protested the recent substantial expansion of gold mining in eastern Nevada, on the same ground. Likewise, it has recently protested plans to build a dam on Rock Creek, north of Battle Mountain (Sanchez 1991). While it has taken positions against the application of Clark County for water rights in several eastern Nevada counties, it has not filed formal protests against these applications, mostly for lack of personnel to take such action (Ian Zabarte, personal communication, April 30, 1991).

7. In spite of the decision by the United States Supreme Court in the Dann case and subsequent action by the Ninth Circuit Court of Appeals and the United States District Court for Nevada, the dispute involving the number of livestock which may be maintained by the Dann Band is far from over. The Nevada State Office of the BLM solicited bids for removal of cattle and horses considered to be beyond those which can be grazed in this area. The extended bid opening date was September 23, 1991. However, Billy R. Templeton, Nevada State Director, met on September 24 with Mary and Carrie Dann and Western Shoshone Chief Raymond Yowell, after which the roundup was at least temporarily delayed. According to newspaper accounts of this meeting, agreement was reached between the Western Shoshones and the BLM that the Dann band would reduce its cattle and horse herds by March 1992 to levels to be negotiated before that date (Reno Gazette Journal,

September 22, 1991: 10A, and September 25, 1991: 1A).

Before this agreement was reached, the Western Shoshone National Council had made extensive plans, in cooperation with Citizen Alert, to conduct a nonviolent "Defense" action at the Dann Ranch should contractors attempt to round up livestock without agreement of the Dann Band. While this activity was planned to be nonviolent, BLM officials were fearful that unplanned violence might nevertheless erupt (Western Shoshone National Council, "Dann Defense: Terms of Participation", Reno Gazette Journal, September 22, 1991: 10A).

In other words, many Western Shoshones, including the only political/governmental body claiming to speak for all members of the Nation, continue to make vigorous assertions in a number of different ways of the Western Shoshone traditionalist land claims in spite of the Supreme Court's decision in the Dann Case. Specifically, they still assert ownership claims to Yucca Mountain and state that they would not permit the storage of high level nuclear wastes anywhere within their territory. The next section examines the nature of the National Council.

Development of the Western Shoshone National Council. Assertion of traditionalist land claims has resulted, over several decades, in the development for the first time of an organization, the Western Shoshone National Council, which attempts to speak for all Western Shoshones. Traditionalist organizations of some sort date back to at least 1932, when a group of Western Shoshones who had testified at a Senate hearing in Elko, Nevada, signed a

contract with attorney Milton Badt to pursue their land claims (Crum 1987). In 1974 what became the Sacred Lands Association was organized to pursue these claims. Later this Association joined a Lands Federation in partnership with several Indian Reorganization Act governments, and in early 1984 the National Council was formed when five Western Shoshone groups declared their formal membership in the Council.

Since 1984, the National Council has gradually evolved toward becoming a government for all Western Shoshones for some purposes. This development fits into the basic pattern of federalism. Federal governments already exist in Indian country in Nevada in the form of the governments of the Washoe Tribe and the Te-Moak Bands of Western Shoshones. In such a structure, two or more independently constituted governments share authority over the same population in a complicated scheme which provides for some governmental functions to be handled exclusively by each level of government, while other functions are handled jointly.

While the National Council has yet to work out all the details of the new arrangement, it has established several constitutional practices which lead in that direction. For example, representation in the National Council is on the basis of equal representation for constituent units, without regard to population, it meets monthly (almost always in Austin), the Council elects a Chief and a Sub Chief, it passes ordinances (e.g., a hunting and fishing code), establishes administrative bodies to carry out its policies (e.g., a Commission to enforce the hunting and fishing

code), and so on. During the summer and fall of 1990, the National Council debated the creation of judicial institutions, but so far has taken no action along this line.

As noted above, the National Council has in fact regulated hunting and fishing by Western Shoshones within its territory since early 1988, thus assuming a function previously carried out by a department of Nevada state government. At several times over the last several years, it has administered grants from the Administration for Native Americans which were designed to complete the planning for final resolution of current land and other claims; it is currently administering the third of these grants. If it continues to evolve in the same direction, it will assume other functions as well.

While the Supreme Court's action in the Dann Case has closed off litigation as a means of continuing the assertion of Western Shoshone land claims, the National Council continues to make them. Because the Supreme Court's decision is based on a legal technicality and because their historical arguments are strong, the traditional Western Shoshones continue to assert their land claims in forums, such as before the administration and Congress, where narrow legal arguments may not be decisive. Early attempts to negotiate a settlement with the executive branch of the national government ended in failure in early 1987, but the present leadership of the National Council is still attempting to pursue this path. Moreover, the Council, working with its constituent units, is developing economic development proposals which it hopes

can form the basis of a legislative proposal about two years from now (Raymond Yowell, personal communication, April 27, 1991; Virginia Antunovich (Director of the ANA grant), personal communication, April 30, 1991).

An early Congressional resolution of Western Shoshone land claims may be forced by the circulation of a petition which asks Congress to force payment of individuals from the judgement fund begun as a result of resolution of the claims process. Salt Lake City attorney John Paul Kennedy, after requests from some individual Western Shoshones, has circulated such a petition and pushed settlement bills in Congress since early 1990.

It is impossible to say at this time either how many Western Shoshones there are or how many support quick payment of the claims money. Under existing law, it will require an act of Congress before individuals can be paid anything. Such legislation will have to begin with the establishment of criteria for determining membership in the Western Shoshone Nation. Under the most restrictive criteria possible, some BIA officials have suggested informally that the number of Western Shoshones may be as few as 3000. By other criteria, however, there may be as many as 10,000 Western Shoshones (Raymond Yowell, personal communication, April 27, 1991; Reno Gazette Journal, June 7, 1991: B1). Attorney Kennedy asserts that approximately 1250 Western Shoshones have signed his petitions. This is less than half of even the lowest estimate of the number of members of the Nation, but it is enough to persuade Nevada Representative Barbara Vucanovich to introduce payment

legislation authorized by Kennedy.

The existence of significant numbers of Western Shoshones who want quick payment of the claims judgement funds is partially responsible for some rifts within the Western Shoshone National Council. At its height, the Council included 18 different groups, and no Western Shoshone group was outside it. But in the fall of 1990 the Te-Moak Bands withdrew from the Council and in April 1991 the Duckwater Shoshone Tribe likewise withdrew. While a new Shoshone group, the Western Band, headquartered in Winnemucca, has joined during the last few months, it represents a small number of individuals (Virginia Antunovich, personal communication, April 30, 1991). Another factor in this development is dissatisfaction with the pace of planning for a possible Congressional compromise bill; Duckwater is now asking for a separate Congressional statute to expand its land base substantially as well as make claims payments to its members. If this bill becomes law, it might force a general settlement of Western Shoshone claims, even though that is not the intent of the Duckwater Tribe. At the very least, its passage would force the creation of a Western Shoshone roll, the absence of which has been one of the factors preventing payment of claims money to individual Indians.

It is impossible at this time to predict the future of the Western Shoshone National Council, but it is likely that developments of the last few months will increase pressures for a quick resolution of differences of opinion about a settlement of the land claims. Congress is often reluctant to decide questions like this

on a piecemeal basis, but a unified request from all or most Western Shoshones might meet a favorable response.

Conclusions. Continued hostility to the Yucca Mountain repository from the National Council and other Western Shoshones can be predicted with safety, as can continued assertion of Western Shoshone land claims. Unless the traditionalists can be convinced that their claims lack merit, even the actions of the United States courts are not considered by them to be definitive. Perhaps Congress will resolve this dispute in a year or two, but predicting Congressional behavior is difficult.

II State and Local Sensitivity to Native American Viewpoints

The final section of this report deals with the question whether state and local governments would adequately represent Native American concerns regarding Yucca Mountain if there is no formal way by which Native Americans can represent themselves.

1. State and Federal Litigation. The starting point for deciding this issue is the fact that, as a recent survey of Nevada law regarding Indians put it, traditionally states have had only limited involvement with Indian affairs in the American polity. For this reason, state laws usually do not "recognize the political rights that tribes retained under federal law." Specifically, there is "very little state law dealing with Indian affairs" and tribal governments "do not exist under Nevada Law," with the corollary of this being the fact that well-established Indian rights under federal law also do not exist (Knack 1989: 121, 123,

125).

To illustrate how relatively unimportant Indian matters are in Nevada law, from 1970 to 1990 there were only five cases decided by the Nevada Supreme Court which dealt with issues of Indian law. During this time, there were at least 43 reported decisions by federal courts dealing with issues of Indian law and an undetermined number of unreported cases. Furthermore, only one of the state cases dealt with an issue of major importance; Davis v. Warden set aside convictions of two Indians for murder in a state court because this court did not have jurisdiction over the case (88 Nev. 443 (1972)).

By contrast, the federal courts in the last 20 years have dealt with many more issues of major importance to both Indians and non-Indians. For example, there have been at least 12 federal cases involving water rights of the Pyramid Lake Paiute Tribe, seven involving Indian Claims Commission actions affecting Northern Paiutes, and six dealing with the Western Shoshone traditionalist land claims. In addition, during this period the federal courts also have decided cases involving the following issues:

a. Whether the Walker River Paiute Tribe was entitled to compensation for the illegal building of a railroad through its reservation in the 19th century and whether the railway company today needs the consent of the tribal government on that reservation to operate a railroad through it (U.S. v. Southern Pacific Transportation Co. (543 F.2d. 676 (1976) and Southern

Pacific Transportation Co. v. Watt, 700 F.2d. 550 (1983));

b. Whether state hunting and fishing laws apply on the Pinenut Allotments belonging to individual members of the Washoe Tribe and the Tribe itself (Washoe Tribe of Nevada and California v. Greenley (674 F.2d. 816 (1982));

c. Whether the Western Shoshones still have hunting and fishing rights protected by the Ruby Valley Treaty (two unreported decisions by the U.S. District Court for Nevada);

d. Whether the Bureau of Indian Affairs was justified in annulling a resolution enacted by the Moapa Band of Paiute Indians which authorized the establishment of a house of prostitution on its reservation (Moapa Band of Paiute Indians v. U.S. Department of the Interior (747 F.2d. 563 (1984));

e. Whether the federal government was authorized to seize 38 eagles and eagle parts belonging to an American Indian to enforce the Eagle Protection Act, against a claim of Indian religious freedom (U.S. v. 38 Golden Eagles (649 F. Supp. 269 (1986));

f. Whether the Inter-Tribal Council of Nevada had standing to challenge a decision of the Secretary of the Interior transferring the former Stewart Indian School to the State of Nevada (Inter-Tribal Council of Nevada, Inc. v. Watt (592 F. Supp. 1297 (1984));

g. Several cases involving Indian allotments;

h. Several cases involving criminal law on reservations. These included whether a tribal judge was authorized to try and sentence a defendant after his resignation as tribal judge (Ramos

v. Pyramid Tribal Court and Bureau of Indian Affairs (626 F. Supp. 1582 (D.Nev. 1986)) and whether residents of the Walker River Indian Reservation could sue a tribal judge and tribal police officers for an arrest and search of their home (Treho and Treho v. U.S. et. al. (464 F. Sup. 113 (1978));

i. What the Winters Doctrine rights of various Indian tribes were in waters of the Colorado River (Arizona v. California, 460 E.S. 605)); and

j. Several cases involving criminal jurisdiction on reservations, including: Shuman v. Wolff, 543 F. Supp. 104 and Henry v. U.S., 432 F. 2d. 114 and 434 F.2d. 1283, cert. denied 400 U.S. 1011.

2. Federal and State Statutes. Of at least equal importance with the volume of state and federal litigation involving Indians (which affects how well judges, prosecutors and attorneys know the issues and facts of Indian law) is the extent to which state and federal law acknowledge Indian rights.

Federal Indian law is a complex combination of treaties and agreements, federal statutes and administrative actions, and tribal constitutions, ordinances and actions. Central to this body of law are the notions that Native American governments today are the successors to aboriginal governments which once possessed all the attributes of national sovereignty, that these governments retain elements of this aboriginal sovereignty which have not been given up voluntarily or ended by treaty or Congressional action, and that consequently Indians have rights (which are rights of

self-governing communities as well as of individuals) which cannot be denied by states (See Cohen 1982). As examples of these rights, Indian reservations have Winters Doctrine water rights which in some ways are superior to water rights established under state laws, Indian governments are not completely bound by the Bill of Rights and civil liberties against such governments can be enforced in federal courts only by use of the writ of habeas corpus, and states may not assume jurisdiction over Indian reservations without the consent of Congress or, since the Indian Civil Rights Act of 1968, tribal governments. Very few if any states have Indian laws based on similar principles; certainly Nevada does not.

During the 19th century, Nevada law actively opposed Indian rights. For example, for decades the state asserted a degree of criminal jurisdiction over Indian reservations not authorized by federal law (Rusco 1973). For the last several decades, this condition no longer exists and Nevada law does acknowledge Indian rights in a small but growing number of instances. For example, present Nevada law:

a. Recognizes the validity of Indian custom marriages, whether or not these conform with marriage laws applicable to all other persons (NRS 122.160 and 122.170);

b. Removes the criminal sanction otherwise provided in Nevada law for use of peyote "when such drug is used as the sacrament in religious rites of any bona fide religious organization" (NRS 453.541);

c. Provides an exemption from statutes protecting plants on

state or federal lands from damage, destruction or removal for Indians "native to Nevada, who gather any such article for food or medicinal use for themselves of for any other person being treated by Indian religious ceremony" NRA 527.050);

d. Prohibits the mechanical harvesting of cones or pine nuts from the single-leaf pinon, on the ground that it is the state tree and "has from time immemorial been a staple food of the Indians of Nevada" (NRS 527.240);

e. Establishes a system regulating investigation of historic Indian sites (those dating from after the middle of the 18th century) and prehistoric sites (those older than the middle of the 18th century). Before any person can "investigate, explore or excavate" such a site or "remove any object from" such a site on federal or state lands, he or she must have a permit issued by the federal or state governments (or both) and must agree to turn over fifty percent of the artifacts found at the site to the state (NRS 381.195 through 381227);

f. Establishes a system for the protection of "Indian burial sites," including graves and cairns, within the state. Although the law provides somewhat different rules for Indian burial sites on private and all other lands, in all cases a "Nevada Indian tribe recognized by the Secretary of the Interior" must be notified when such a burial site is discovered and must be permitted to inspect the site and recommend plans for the "treatment and disposition of the site" and artifacts associated with it. Burial sites on public land may be excavated by a professional archeologist. Unless the

plans proposed for the site provide otherwise, any human remains discovered at an Indian burial site must be reinterred, "under the supervision of the Indian tribe." There are criminal penalties for violation of the act and, in addition, "an Indian tribe or an enrolled member of an Indian tribe" may bring a civil action in state courts seeking an injunction and/or damages or "appropriate relief" against violators of the statute (NRS 383.150 - 383.190).

g. After Congress in 1952 passed Public Law 280, which permitted states to assume criminal jurisdiction over reservations, Nevada in 1955 passed a statute which made such assumption optional with county governments, without the consent of tribal governments. However, after Congress required the consent of tribal governments for future assumptions in the Indian Civil Rights Act of 1968, the 1973 Legislature passed a statute providing for elections on each reservation to determine this issue. Today, all reservations in the state are under federal jurisdiction. In practice, this means that law enforcement on all reservations is provided either by tribal or BIA police officers (NRS 41.430.and 194.040, Leslie Blossom, personal communication, May 7, 1991. Ely Colony became the last reservation to restore federal jurisdiction, in 1986).

h. Several statutes now recognize that tribal governments have authority over their own reservations. For example, NRS 233A.120 states that the provisions allowing state criminal jurisdiction over reservations with tribal consent (7 above)

> do not preclude Indian tribes who are recognized by the United States as possessing powers of self-government from enacting

> their own laws, regulations and ordinances, and enforcing them by their own tribal courts in accordance with their rules of procedure, but no person subject to the jurisdiction of such tribal court or governmental organization shall be denied any rights guaranteed by the constitutions of the United States or the State of Nevada.

The last part of this sentence clearly goes beyond the Indian Civil Rights Act, however; that statute applies some but not all of the Bill of Rights to Native American governments, and in other cases modifies rights stated in the United States Constitution.

In addition, NRS 233A.110 states that Indians "subject to the jurisdiction" of the State are "entitled to all services of the State of Nevada..." and NRS 233A.130 states that the state laws on jurisdiction "do not increase the power of administrative agencies of the State of Nevada" over persons living on reservations over what was the case prior to July 1, 1974. Likewise, two statutes dealing with taxation state that nothing in the respective chapters of NRS dealing with these topics "shall operate to abridge the rights of any Indian, individual or tribe, or to infringe upon the sovereignty of any Indian tribe, organized under the Indian Reorganization Act" (NRS 370.520, 372.810).

Finally, state law in recent decades has extended privileges or recognition to Indians or Indian societies, in various ways. For example,

a. Although since the 1960s and the early 1970s state law has made illegal most kinds of racial discrimination in employment, public accommodations and housing, a provision of these civil rights laws allows a business "on or near a reservation" to practice "preferential treatment" of Indians in its employment

practices, provided that this treatment is "publicly announced" (NRS 613.390);

b. Surplus property of the state Transportation Department must be sold at a public sale at which bids from counties, cities, volunteer fire departments or Indian tribes have preference over bids received from the general public. If surplus property remains after this public sale, it is transferred to the Nevada Indian Commission (provided that the property does not exceed a value of $40,000 in any one year), which may transfer it at no cost to Indian tribes in the state (NRS 333.462 - 333.466);

c. An Indian tribe may acquire without cost to itself "Indian land which is allotted to members of the tribe" when taxes on it become delinquent (NRS 361.604);

d. Two statutes permit Indian governments to escape collecting state taxes if the tribe levies its own taxes. (NRS 370.0751, 370.110, 370.280, 370.295, 370.301 and 370.520 apply to taxes levied on cigarettes while NRS 372.600, 372.805, 374.800, 374.805 and 374.810 apply to sales taxes on goods sold at retail on reservations). These are very important statutes, since the United States Supreme Court has authorized states to collect such taxes on sales to non-Indians and since a number of "smoke shops" established on various reservations in the state provide significant income to tribal governments for welfare, educational and other purposes. The cigarette tax law was extended to other tobacco produces in 1991 and the Tax Commission has allowed refunds of motor vehicle fuels (see below).

e. Any pupil who lives on an Indian reservation located in two or more counties may attend the public school "nearest to the pupil's residence," even if this school is not in the school district in which the pupil's residence is located. Additional costs of transporting such students are to be paid for out of the state distributive school account (NRSA 392.015).

f. "All resident Indians of the State of Nevada are exempt from the payment of fees for fishing and hunting licenses" (NRS 502.280).

g. The sale of "imitation Indian arts or crafts articles" within the state is prohibited unless the items have an "imitation" label (NRS 598.050).

h. "Any Indian tribe, band or community" which operates a "recreational activity" or makes "recreational use of land or water" has the protection of a statute which caps civil damages at $50,000 and prohibits "exemplary or punitive damages." (NRS 41.035) (This statute applies basically to public or quasi-municipal corporations and persons leasing land or water for recreational purposes to public agencies). The statute also states explicitly that it does not "impair or modify" the immunity from suit which Indian tribes might otherwise have.

i. Officers or agents of the Bureau of Indian Affairs or tribal police officers may make arrests off reservations if the officer is in "fresh pursuit" of a suspect (NRS 171.1255).

j. "Any Indian tribe, group of tribes, organized segment of a tribe, or any organization representing two or more such

entities" is recognized as a "Public agency" for purposes of the Interlocal Cooperation Act (NRS 277.100). This statute authorizes public agencies to enter into cooperative agreements to provide governmental services with other public agencies in a manner which will "best accord with geographic, economic, population and other factors influencing the needs and development of local communities." (NRS 277.090) Such agreements may relate to law enforcement but are not limited to this area of public policy (NRS 277.110). Such an agreement involving the Duckwater Shoshone Tribe and Nye County, for example, authorizes the tribal police of that reservation to enforce state laws in a wide area around the reservation.

k. "The superintendent of public instruction, working with the American Indian tribes, shall establish programs and curricula designed to meet the special educational needs of American Indians in this state" (NRS 389.150).

l. Since 1971 the Governor has been mandated to proclaim the third week of July as "Nevada All-Indian Stampede Days", a reference to an annual Indian rodeo held in Fallon, and since 1989 has been mandated to proclaim the fourth Friday of September as "Nevada Indian Day, in commemoration of the Indian people and their efforts to maintain their culture, customs and traditions." (NRS 236.040)

The piecemeal character of state recognition of Indian governments and rights is obvious, but it is also obvious that the trend is toward more recognition of the unique status of Indians.

However, it is also clear that Nevada is a long way from accepting the pattern of Indian law which has developed at the national level. If the national government were suddenly to withdraw from all activities involving Indians, Indian sovereignty and rights would experience a sharp decline.

3. Administration and Indian Affairs at the State Level. Another factor is that administratively there is a big difference between federal and state levels. The Bureau of Indian Affairs is an operational agency, charged with duties ranging from protecting trust property to building roads and operating schools, even though the trend is toward devolution of many of these activities to Indian governments. (There is also a trend toward inclusion of Native American concerns in legislation and administrative agencies which are not concerned specifically with Indians).

In 1965, the Nevada Legislature created the Indian Affairs Commission, which for the first time has provided an institutional means by which Native Americans can make their needs known to state government. The statutorily-stated purpose of the Commission is to:

> study matters affecting the social and economic welfare and well-being of American Indians residing in Nevada, including, but not limited to, matters and problems relating to Indian affairs and to federal and state control, responsibility, policy and operations affecting such Indians. The commission shall recommend necessary or appropriate action, policy and legislation or revision of legislation and administrative agency regulations pertaining to such Indians. The commission shall make and report from time to time its findings and recommendations to the legislature, to the governor and to the public and shall so report at least biennially (NRS 233A.090).

The Commission's Narrative Statement for the state budget for 1991-1992 says that its current goals are:

> to assist Indians to develop their local governments by providing through its studies, accurate data and documentation to enhance and assist in developing economic security, the community quality of life, and growth of Indian municipal functions, the expansion of community consciousness and the protection of Indian tribal members' rights.

The Commission consists of five persons appointed by the Governor; three must be Indians and two must be "representatives of the general public." (NRS 233A.030) The Commission must meet at least four times a year. It is served by an Executive Director, who is appointed by the Governor on recommendation of the Commission; no term of office is specified for this position (NRS 233A.055). The Executive Director appoints other employees of the Commission and carries out the administrative duties of the agency (NRS 233A.065).

The Indian Affairs Commission has never had a large staff. At the present, it consists of the Executive Director, another professional, and a half-time administrative assistant. It has no operational responsibilities. The Commission provides information about state and federal laws and programs to Indians and others who approach it with questions or complaints, and, reciprocally, it provides information to state government about Indian needs and desires.

The Commission handles requests for information which come from the Governor's office and other state agencies or directly to it. Since Indian law and policy are very complex, few state

agencies are equipped to deal adequately with many of the questions which arise. For example, the question of who is an Indian has no single, unambiguous answer; different laws define Indian differently and each Indian society adopts its own definition of tribal or reservation membership. Indian status is important for a number of reasons, including exemption from paying the state fees for hunting and fishing licenses, eligibility for federal services, etc. (Leslie Blossom [Executive Director of the Indian Affairs Commission], personal communication, May 7, 1991).

The Commission has the important duty to transmit opinions from Indian governments to the Governor, the Legislature, and other state agencies. For example, the Executive Director kept the Governor informed of events leading to the recent negotiated water settlement in northwestern Nevada, contacted the Governor's Office on behalf of the Duckwater Shoshone Tribe's request for affected tribe status under the nuclear repository legislation, and has brought together representatives of the Western Shoshone National Council and the Governor's office to discuss issues of concern to the National Council. The Executive Director has held joint meetings with the Bureau of Indian Affairs and the Department of Energy on transportation issues affecting plans for the repository and has discussed this issue with several tribal governments, including governments at Duck Valley, Walker River and Fort McDermitt (Leslie Blossom, personal communication, May 7, 1991).

Another function of the staff of the Indian Affairs Commission is to monitor legislative developments affecting Indians and, on

occasion, coordinate and/or express Indian views to the committees and/or members of the Legislature. Only a few bills each session deal with Indian issues, however, and this task is normally not large.

The 1991 Session of the Legislature dealt with several issues affecting Nevada Indians, with mixed results largely fitting the recent statutory pattern of partial recognition of Indian rights.

a. Four bills relating to the negotiated settlement of northwestern Nevada water conflicts, a matter of crucial importance to the Pyramid Lake Paiute Tribe and the Fallon Paiute-Shoshone Tribe, were introduced.

One of the strongest legal positions won by the Pyramid Lake Tribe in recent years has been a result of designation of the Lahontan Cutthroat Trout in Pyramid Lake as a threatened species under federal law. Assembly Joint Resolution 12, introduced by Assemblyman Marvel and five other members of that body (including the Speaker) proposed a resolution urging the Secretary of the Interior to remove the Lahontan Cutthroat Trout from the list of threatened species. No action was taken on this bill. Instead, Senate Joint Resolution 23, introduced by that body's Committee on Natural Resources, was enacted, with minor amendments. This resolution urges the Secretary of the Interior and the Secretary of Agriculture to establish a state-federal interagency task force to study ways to remove the Lahontan Cutthroat Trout populations in all of the river basins where they are now found from the threatened list by developing recovery plans similar to the one

mandated for Pyramid Lake and the lower Truckee River by the negotiated settlement act.

A related bill sought to carry out one of the optional provisions of the negotiated settlement bill. This was to withdraw the claim by the State of Nevada that it has jurisdiction over the bed and banks of Pyramid Lake and the portion of the Truckee River within the Pyramid Lake Indian Reservation. (The courts have ruled that Nevada cannot sue the United States to determine this issue, but the state continues to assert the claim). When a private landowner within the Reservation appeared at a legislative hearing to oppose this bill and was supported by a state official, the committee postponed action on AB 813 to see if a post-session agreement could be reached between the parties involved. Consequently, there was no legislative action on this issue during the session.

A fourth bill related to the settlement was introduced by senator Virgil Getto and adopted, as Senate Concurrent Resolution 58. The federal negotiated settlement act provided for transfer of the Indian Lakes area of the Stillwater National Wildlife Refuge and Management Area to control by the state or Churchill County. This resolution asked the state Division of Lands to study, in consultation with the Division of State Parks and the state Department of Wildlife, the various options for completing this transfer and report its conclusions to the 1993 Legislature. (An earlier version of this bill, Senate Bill 437, was left in committee).

2. Two bills, neither of which got out of committee, dealt with intergovernmental cooperation involving Indian tribes. Assembly Joint Resolution 27 urged federal, state and tribal governments "to cooperate in enforcing the laws relating to alcohol and controlled substances on Indian reservations and in Indian colonies" and Assembly Bill 610 proposed to amend the statute on intergovernmental cooperation to provide specifically that adopting and enforcing codes for "hunting, fishing and water-based recreation" were authorized by this statute.

3. Assembly Joint Resolution 30, which was adopted, thanks Congress for passing a 1990 statute temporarily reversing the effect of the Supreme Court decision in Duro v. Reina and memorializing it to make this statute permanent. In this case, the Supreme Court had ruled that Indian governments on reservations did not have criminal misdemeanor jurisdiction over Indians living on reservations who were not members of the tribe with jurisdiction over such reservations. The resolution asserted that Duro v. Reina had created a "void" in law enforcement which the state of Nevada did not have the resources or jurisdiction to address.

4. Several measures involving taxation contained provisions relating to Indian governments. Assembly Bill 698, which did not get out of committee, proposed state licensing and taxing of for-profit places of "amusement, entertainment, or recreation" but provided that the state would not collect such taxes on Indian reservations whose governing bodies had levied the same or a higher tax (Sections 89-91).

Assembly Bill 507, introduced by that body's Committee on Taxation, became law. It extended the authority of tribal governments to be exempt from state taxation of cigarettes if they levied the same or a greater tax to "any product made from tobacco."

Two Assembly bills proposed extension of the provisions for tobacco products and the sales tax to taxes on motor vehicle fuel and "special fuel." Assembly Bill 604, which did not emerge from committee, provided that the proceeds of such taxes should be used exclusively for construction, maintenance and repair of public highways within the reservation. Assembly Bill 777, proposed by the Committee on Taxation on May 23, 1991 did not include this restriction on the use to which fuel taxes could be put. AB 777 was amended to specify that fuel taxes had to be used to provide "essential governmental and municipal services" (including related facilities) but was then held in committee. Newspaper accounts indicated that the bill was proposed particularly by the leadership of the Walker River Reservation.

Prior to the legislative session, the Nevada Tax Commission had adopted a temporary regulation, citing NRS 365.110 as its authority, providing for a refund to tribes of motor vehicle fuel taxes collected on reservations whose governing bodies request such a refund. After the session, the Tax Commission reauthorized the regulation but set an expiration date of June 1993, which will give the next Legislature an opportunity to consider the issue again (Nevada Tax Commission 1991, Reno Gazette Journal, October 4, 1991:

1B and October 8, 1991: 3B, representative of Tax Commission, personal communication, October 21, 1991).

5. The 1991 Legislature passed a statute requiring curbside recycling of certain materials in cities and counties within the state. Section 5(7) of this act provided that "Persons residing on an Indian reservation or colony" might participate in the recycling program of a municipality in which it is located if its governing body adopts an ordinance requesting such participation. Presumably this applies to several colonies in the state, including those in Reno and Las Vegas. However, participation by municipalities is optional. It is therefore not possible to say at this time precisely the colonies that may be covered by this provision.

6. A bill to make various changes in the statute providing protection for Indian burial sites, Senate Bill 634, was introduced on June 6 by the Committee on Human Resources and Facilities. When a hearing on this bill revealed that the archeological community was divided on these proposals and that there was not time enough to consult adequately with Indian governments, the bill was kept in committee. However, representatives of the archeological community have subsequently formed a committee to consider proposed changes in the statute and plan extensive consultations with Native Americans before deciding on possible changes to propose to the 1993 legislative session.

7. According to the Reno Gazette Journal, a bill adopted by the 1991 Legislature setting a minimun size for casinoes which can be licensed by the state may have had as one of its objectives the

blocking of plans to build a casino on the portion of the Mojave Reservation which extends into southern Nevada. There has been no opportunity yet to investigate this situation and so nothing will be said about it here.

The precise role of the Indian Affairs Commission on all of these proposals has not yet been determined. Until the last few weeks of the session, few bills affecting Indians had been introduced but the Commission had monitored these (Leslie Blossom, personal communication, May 7, 1991). In past years, the Commission has played important roles in resolving conflicts over taxation by reservation governments.

Outside the Indian Affairs Commission, there is very little involvement with Indian affairs at the state level, and not much coordination. The Attorney General, for example, is independently elected and may be a member of a different political party from the Governor. There can be no assurance that these two officials will agree on issues facing the state.

In the Governor's Office, most Indian matters are referred to a single staff member. However, this person - currently Mike Campbell - is primarily the Governor's press secretary and also deals with matters involving the Department of Agriculture and the commission which deals with wild horses and burros. Obviously, he is unable to develop extensive knowledge of Indian affairs; for the most part, he refers inquiries that reach the Governor's office to the Indian Affairs Commission. On issues dealing specifically with legal questions, he calls the Attorney General's office, and on

matters involving Yucca Mountain he calls the Nevada Nuclear Waste Project Office (Mike Capmbell, personal communication, May 28, 1991). Overall, the Governor's staff is still relatively small; there are only four or five positions at the professional level.

The Governor is the executive head of most state agencies, although several state officers are separately elected. How closely the Governor's office follows and controls issues which involve Indian affairs is not clear, but probably most of the agencies have effective day-to-day control of most of the decisions they take, except for decisions embodied in the biennial budget. On these matters, the Department of Administration exercises close supervision and ultimately the Governor makes final decisions.

The Attorney General's Office is the state agency which devotes the most time to Indian affairs, after the Indian Affairs Commission. Indian cases are not typically handled primarily by a single Deputy Attorney General, but are assigned according to the agency which a specific Deputy Attorney General is representing or according to the knowledge of Indian law possessed by the attorney. For some years, Harry Swainston was the Deputy Attorney General most likely to handle Indian cases. For the last year, he has been joined by C. Wayne Howle (Harry Swainston, personal communication, May 29, 1919, C. Wayne Howle, personal communication, June 6, 1991). Again, however, there is little opportunity for extensive involvement with Indian affairs. Howle, for instance, has been presenting the state's case in the Western Shoshone hunting/fishing case because he represents the Department

of Wildlife; he also works for the Department of Minerals. In other words, while he has an interest in Indian law, he does not spend much of his professional time on matters involving Indians (C. Wayne Howles, personal communication, June 6, 1991).

In the recent past, the Attorney General's office has not infrequently been involved in cases in opposition to Indian interests. For example, in much of the litigation involving Pyramid Lake, the State of Nevada has opposed positions taken by the Pyramid Lake Paiute Tribe and the United States government. At the present, the state is contesting the efforts of the Western Shoshone National Council to gain the right to regulate hunting and fishing for the members of the Western Shoshone Nation. The specific status of the Western Shoshone National Council has so far not been raised in this litigation, but the state has opposed the positions taken by the National Council.

It would be inaccurate to say, however, that the official position of the Governor or the Attorney General has always been or always will be in opposition to Indian interests. Something of a tendency toward greater support of Indian viewpoints is apparent from these officers, as it is in the review of legislation presented above. For example, the State of Nevada participated in the recent negotiated settlement of northwestern Nevada water disputes which was embodied in legislation approved by the last Congress. This statute resolved amicably a number of issues which had been litigated or otherwise contested for decades.

4. Local Involvement with Indian affairs. Involvement with or

concern for Indian interests is even less apparent at the local than the state level. Apparently there are no county or city agencies equivalent to the Indian Affairs Commission and little indication of awareness of the unique status of Indians.

5. State and local governments and Native American concerns about the repository proposal. Specifically, at the moment the following conclusions about state and local awareness and/or advocacy of Native American concerns about the Yucca Mountain repository are justified:

The state Nuclear Waste Project Office has been very receptive to Native American concerns. For several years, it has funded a position - occupied by Ian Zabarte - which is designed to provide the Western Shoshone National Council with a mechanism for expressing its wide range of concerns. Zabarte has served as an active member of the State and Local Government Planning Group and has made presentations to various agencies, ranging from the federal Department of Energy to county commissions, about Western Shoshone concerns (State of Nevada Commission on Nuclear Projects 1990: 64).

Likewise, the state Project Office has provided funding to the Moapa Paiute Tribe so that their government can be informed about repository plans and present its views on the several issues raised by these plans (Ibid.: 64-65).

Federal funding to study the impacts of the Yucca Mountain repository has been available to Clark, Lincoln and Nye Counties. Lincoln County contains no Indian reservations and has a small

number of non-reservation Indians. Clark County contains both the Moapa Paiute Reservation and the Las Vegas Indian Colony; in addition, it is the home of the largest number of non-reservation-based ("urban") Indians. Nye County contains both the Duckwater and Yomba Reservations. While the program in Lincoln County was not contacted for this study, none of the current programs carried on by these local units of government (including the City of Caliente, which cooperates with Lincoln County) presently involves any significant Indian component (State of Nevada Commission on Nuclear Projects 1990: 52-58).

In Clark County, a steering committee has been created to identify areas of study. A slot was created on this committee for a representative of the Moapa Band, but the Band has yet to participate in steering committee activities. The Clark County Coordinator or another staff member have made at least two visits to the Moapa Reservation to solicit participation, but with little success. Representation from the Las Vegas Colony and the Indian Center has not been solicited (Dennis Bechtel [Coordinator of Clark County affected local government program], personal communication, June 13, 1991). None of the projects underway or planned in Clark County involves Indians specifically (State of Nevada Commission on Nuclear Projects 1990: 55-56, Dennis Bechtel, personal communication, June 13, 1991).

In Nye County, there has been no formal participation by tribal leaders from either Duckwater or Yomba in the county's extensive program. The Director of the Nye County program said

that Nye County has the "typical ... not very positive" relationship with Indian tribes for local governments in the state. Indian tribes regard themselves as separate nations, and local governments assume that their needs are being met by the BIA. Consequently, there has been no formal consultation to date between the county and these two tribal governments. Several Indians have been included in Nye County's large oral history program, which will eventually produce at least 73 publications (Steve Bradhurst [Director of Nye County program], personal communication, June 12, 1991). As of August 1991 interviews with Indians Mayme Williams Hooper, Steve P. Brown and Rosie B. Arnold and Ted "Bombo" Cottonwood had been completed (perusal of interviews at Central Nevada Museum, August 5, 1991).

Congress may this year increase the number of local governments which will be accorded affected local government status to 10 (Steve Bradhurst, personal communication, June 12, 1991). Because of the problems which may arise in transporting high level nuclear waste to Yucca Mountain, this wider representation may be highly desirable. If this happens, it seems apparent that the number of Indian reservations whose views should be sought should be extended to at least those reservations in these counties.

Conclusions

In general, federal and state government policies and programs for dealing with Indians are very different. Indian law at the national level is very elaborate and is founded on fundamental propositions recognizing that Native American governments still

retain important portions of their aboriginal sovereignty and rights. State law seldom recognizes the basic principles of federal Indian law and is sparse in comparison. Furthermore, at the national level an important administrative agency is concerned with Indian matters to a substantial extent, while state administrative involvement with Indians is usually slight.

This general situation prevails for Nevada, although the situation is changing slowly. Almost all important litigation involving Indians for the last two decades has taken place in the federal courts. While the number of statutes dealing with Indians is increasing in Nevada, state law in this area can still be described briefly. Over the last two decades, Nevada has moved in the direction of acknowledging the basic principles of federal Indian law and the Legislature has extended privileges to Indians in several important respects. There are also increasing signs that such important state officials as the Governor and the Attorney General are becoming increasingly responsive to Indian needs.

From an administrative standpoint, Indian affairs are still largely unimportant in Nevada. While there has been a statutorily-based Indian Affairs Commission since 1965, this body has no operational duties and is concerned chiefly with providing information - to citizens and administrators and to the policy-making branches of state government - from Indian tribes. Occasionally it has in effect lobbied for Indian interests, and occasionally it passes on surplus state property to tribes, but

chiefly it is a body which can make recommendations only. Neither the Governor's office nor the Attorney General's office goes so far as to have a single position devoted exclusively to Indian affairs.

In short, while the situation is changing somewhat, the State of Nevada is not equipped, as a general proposition, to represent Indian interests. Under present conditions, the presentation of the viewpoints of Native Americans should be made by Indians themselves, through their own governments. These governments should not be thought of only as those "recognized" by the federal government. Particularly, the Western Shoshone National Council is a new political/administrative body which seems to be on its way toward creating a governing structure for the entire Western Shoshone Nation; its views should be considered, along with those of reservation-based tribal governments. There is little likelihood that the main units of Nevada state government are prepared at this time, however, to present the views of the National Council if they are not allowed to do so themselves.

The situation at the local level in Nevada -- although a full picture of the situation would require substantial effort -- is similar. Local governments in the state have been even less likely to recognize Indian interests and grant them legitimacy than the state. Perhaps for this reason, neither of the Yucca Mountain programs in counties with a significant Indian presence has yet undertaken any steps which involve Native Americans to any significant extent.

The state Nuclear Waste Project Office has been very willing

to seek involvement of Native Americans in issues arising out of the Yucca Mountain repository project, at both the state and local levels. Particularly, it has provided funds so that the Western Shoshone National Council and the Moapa Band of Paiutes can be part of the process of evaluating impacts of the repository. However, there are other tribal governments, within the three counties now given affected local government status and outside the present list of such local governments, which could be affected by the repository. It would be desirable to continue present programs and seek ways of expanding them to include other Native American groups.

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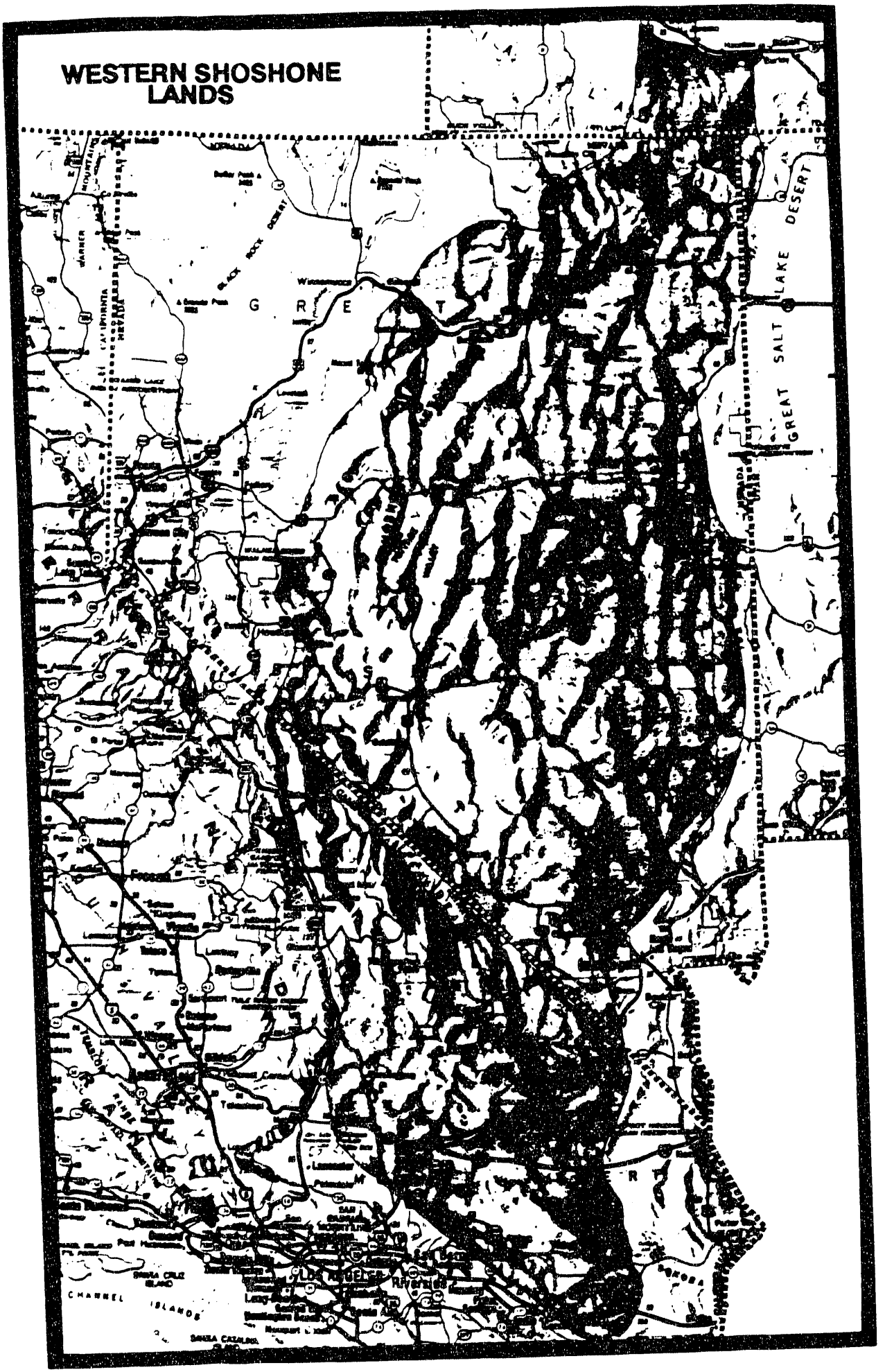
WESTERN SHOSHONE
LANDS
GREAT SALT LAKE DESERT
CHANNEL ISLANDS

MAJOR CONCERNS OF THE WESTERN SHOSHONE NATION

1. 1863 Treaty of Ruby Valley is still valid.

2. Management and control of Western Shoshone resources:

   - Trapping
   - Hunting
   - Fishing
   - Gathering Rights
   - Mustangs
   - Wildlife Refuges
   - Water Rights/Water Use
   - Land
   - Plants
   - Other

3. Western Shoshone interests:

   - Maximum Land Retention
   - Ranching Operations/ Livestock Grazing
   - Farming Operations
   - Mining
   - Oil & Gas Exploration
   - Geothermal
   - Water Rights/Water Use
   - Leasing
   - Jurisdiction
   - Other
   - Smoke Shops/Truck Stops
   - Private Enterprises
   - Tribal Enterprises
   - Royalties
   - Taxation
   - Monetary Distribution
   - Culture/Language/Traditions
   - Religious & Sacred Areas (Protection and Control)
   - Education
   - Passports

4. Environmental issues:

   - High level nuclear waste dump/transportation routes
   - Nuclear testing
   - Rights-of-way for railroads and roads
   - Contamination of water and air
   - Hazardous waste and products
   - Air space/overflights
   - Telephone/telegraph
   - Transmission lines
   - Other

5. Since time immemorial, the Western Shoshone People continue to live on their nation's homelands.

6. Western Shoshone issues require Western Shoshone participation and determination to put together our best possible comprehensive legislative package.

PEOPLE'S *COMPREHENSIVE* TEST BAN TREATY

We the People do hereby agree:

ARTICLE ONE: All nuclear states shall agree to end the conducting of or participation in any nuclear weapons test or other nuclear explosion. Any government that does not sign such an international agreement shall be condemned as a criminal violator of existing international agreements prohibiting crimes against humanity.

ARTICLE TWO: All nuclear testing facilities shall be closed and dismantled and control of the lands encompassing such facilities shall be returned to the indigenous people for peaceful purposes. Resources spent on testing shall be redirected to clean up and restore the land damaged by testing and to treat and compensate the people who have suffered health effects.

ARTICLE THREE: All information about the environmental and health effects of nuclear weapons testing and production shall be made public. An international non-governmental commission shall be formed to investigate the impact of nuclear weapons testing and production on health and the environment, to monitor nuclear waste sites and to identify contaminated regions in the world.

ARTICLE FOUR: All peoples are responsible for taking such nonviolent action necessary to enforce the terms and conditions of this treaty. All peoples are further urged to organize coordinated nonviolent actions and demonstrations against nuclear weapons testing prior to and during the January 7-18, 1991 International Comprehensive Test Ban Treaty Conference in New York.

Signed on March 31, 1990, in Newe Segobia (Western Shoshone Nation) Nevada Test Site by:
Raymond D. Yowell—Western Shoshone National Council, Newe Segobia (Western Shoshone Nation)
Kairat E. Umarov—Nevada-Semipalatinsk Anti-Nuclear Movement, Kazakhstan, USSR
Jacqueline Cabasso—American Peace Test, U.S.A.
Diane Van Leuvaven—Women for Peace, Holland
Masa Takubo—Japan Congress Against the A and H Bombs, Japan
Susan Sowadt—East Germany (GDR)
Uwe Painke—Peace Test Campaign, West Germany (FRG)

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Please return signed petitions to:
AMERICAN PEACE TEST (702) 731-9644 *P.O. BOX 26725 LAS VEGAS, NV. 89126*

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9/10/92