

UPDATE TO

**COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION**

ON THE

**EARLY WARNING AND URGENT ACTION PROCEDURE
DECISION 1(68)**

IN RELATION TO THE UNITED STATES OF AMERICA

**SUBMITTED BY THE WESTERN SHOSHONE NATIONAL COUNCIL,
THE TIMBISHA SHOSHONE TRIBE, THE YOMBA SHOSHONE
TRIBE, THE WELLS BAND OF WESTERN SHOSHONE &
THE TE-MOAK TRIBE OF WESTERN SHOSHONE**

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February 7, 2007

I. INTRODUCTION

1. This communication provides an update on the United States' non-compliance with the Early Warning and Urgent Action Procedure Decision 1(68)¹ issued by the Committee on the Elimination of Racial Discrimination ("CERD" or "the Committee") during its 68th session in March 2006 and respectfully requests the Committee to consider this matter at its 70th session. The authors of this communication are the Western Shoshone National Council, the traditional governmental body of the Western Shoshone Nation and constituent self-governing communities within Western Shoshone territory including the Timbisha Shoshone Tribe, the Yomba Shoshone Tribe, the Wells Band of Western Shoshone and the Te-Moak Tribe of Western Shoshone.²
2. This report provides an account of what has occurred since our last update to the Committee submitted in August 2006. It will demonstrate that the United States has failed to respond, let alone comply with the recommendations set forth in Decision 1(68) and in fact, continues to proceed with highly threatening activities against the Western Shoshone peoples in violation of the Convention on the Elimination of All Forms of Racial Discrimination ("ICERD" or "Convention").

II. THE U.S. HAS NOT COMPLIED WITH THE CERD DECISION AND INSTEAD, HAS INCREASED ACTIONS THAT THREATEN IMMEDIATE AND IRREPARABLE HARM TO WESTERN SHOSHONE PEOPLES

3. Since Decision 1(68) was issued in March of last year, the United States has failed to respond or comply with the Committee's recommendations and has in fact increased the threats against Western Shoshone peoples. The Committee gave the U.S. until July 15, 2006 to submit a written response addressing compliance and issued a follow-up letter³ in August requesting information on implementation. No communication has been received from the U.S. to date.⁴

¹ Committee for the Elimination of Racial Discrimination, Early Warning and Urgent Action Procedure Decision 1(68), United States of America, 68th Session, Geneva, 20 February – 10 March 2006 ("CERD Decision" or "Decision 1(68)").

² See Resolution of the Governing Body of the Wells Band Council #-02-WBC-2007 (Jan. 25, 2007). See also Resolution of the Governing Body of the Te-Moak Tribe of Western Shoshone Indians of Nevada # 07-TM-01 (Jan. 3, 2007). (App. 1) Both resolutions authorize the University of Arizona to provide communications to any other relevant human rights bodies.

³ Ltr from Régis de Gouttes, Chairman of the Committee on the Elimination of Racial Discrimination to Kevin E. Moley, Permanent Representative of the United States of America to the United Nations (Aug. 16, 2006).

⁴ The U.S. State Department recently announced that they are in the process of preparing a compliance report to CERD. If the US addresses the Western Shoshone's concerns in this report, it does not negate their responsibility to also respond fully and separately to Decision 68(1) given that the Urgent Action/Early Warning measures are a distinct procedure independent from the consideration of country reports or s.14 complaints.

4. The remainder of this report describes new and ongoing threats carried on or sanctioned by the United States and its agencies. These recent actions demonstrate the United States' clear disregard of the Committee's recommendations to "[d]esist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples".⁵

A) United States Department of Energy ("DOE")

5. The U.S. continues with plans to carry out military activities at the Nevada Test Site ("NTS") in clear violation of Decision 1 (68), despite Western Shoshone protests.
6. The National Nuclear Security Administration ("NNSA") of the DOE recently released a revised Environmental Assessment ("EA")⁶ for the nuclear simulation test called 'Divine Strake'⁷ and a schedule of 3 public information sessions. One session was held in Las Vegas, Nevada and the other two in the state of Utah.⁸ No meetings were scheduled in Western Shoshone territory.
7. The DOE also continues with plans to store nuclear waste at Yucca Mountain, on the western border of the NTS, an issue over which the Committee expressed particular concern in its Decision 68(1).⁹ Since the last update to the Committee, the DOE issued a Notice of Intent to construct a rail line to connect the Yucca Mountain waste repository with an existing rail line in the State of Nevada in order to ship up to 70,000 tons of spent nuclear fuel and high-level radioactive to the repository.¹⁰ The routes being considered are the Caliente and Mina rail corridors which run through Western Shoshone territory. The Western Shoshone

⁵ CERD Decision, *supra* note 1 at para. 10(b).

⁶ See HOME *et al.*, "Groups Demand Real Hearings and an EIS on Divine Strake (Nuclear Simulation Blast) Joint Press Release (Jan. 9, 2007) (App. 2). Based on the information provided in the EA, decision makers will either require an EIS or issue a Finding of No Significant Impact ("FONSI"). Congressional members and the former Governor of Nevada have requested an Environmental Impact Statement ("EIS") which would allow for more public involvement and input into the development of the scope of the study.

⁷ See National Security Technologies, LLC. "Potential Offsite Radiological Doses Estimated for the Proposed Divine Strake Experiment, Nevada Test Site" Prepared for: U.S. Department of Energy, National Nuclear Security Administration, Nevada Site Office, DOE/NV/25946—092 (Dec. 2006) at 106 available at: <http://www.nv.doe.gov/library/publications/Environmental/AppendixF.pdf>

"Divine Strake" will result in the detonation of 700 tons of ammonium nitrate fuel oil-emulsion above the tunnel complex of the NTS. The test threatens to stir up radioactive material in the ground deposited from over four decades of nuclear weapons testing at the NTS. This concern was echoed in a study released by the DOE which confirmed that "both natural radionuclides suspended, and historic fallout radionuclides resuspended from the detonation, have potential to be transported outside the NTS boundary by wind. They may, therefore, contribute radiological dose to the public." (at p. iii) After concerns were raised about possible re-suspension of radioactive particles, naturally occurring radioactive material, and global fallout, the NNSA withdrew its June 9, 2006 authorization to conduct Divine Strake and prepared a revised EA.

⁸ *Id.*

⁹ CERD Decision, *supra* note 1 at para. 7(b).

¹⁰ See Federal Register/Vol. 71, No. 198/Friday, October 13, 2006/Notices at 60484 (App. 3).

have expressed their opposition to this proposal by providing comments on the EISs prepared by the Department of Energy. The Western Shoshone stressed that the proposal is in violation of CERD's recommendations, the Treaty of Ruby Valley which remains intact and Shoshone traditional ways - and that the project threatens the surrounding environment and human life.¹¹

8. The NTS is also one of five locations being considered for the establishment of a consolidated plutonium center and a special nuclear material consolidation site under the Complex 2030 plan. Complex 2030 is the name given to the plan to overhaul the United States' nuclear weapons complex which consists of 8 facilities including the NTS.¹² Storing all U.S plutonium in one location would require transporting radiologically hazardous plutonium on trucks creating a dangerous risk of exposure to the Western Shoshone people. This, in combination with the proposed shipment of spent nuclear fuel and high level radioactive waste to nearby Yucca Mountain, poses an even more dangerous threat. In addition to the cumulative impacts of existing operations at the NTS and future activities at the Yucca Mountain repository, other risks include existing radiological contamination of surface, subsurface and groundwater from past nuclear tests, and seismic activity.¹³

B) Congressional Action and United States Department of the Interior (DOI) activities

Privatization of Western Shoshone Land

9. Even more recently, in direct violation of CERD's recommendations, the U.S. Congress passed legislation, in December 2006, to allow up to 45,000 acres of Western Shoshone lands to be privatized.¹⁴
10. As noted in our previous updates to the Commission, the DOI, Bureau of Land Management ("BLM") is engaged in an ongoing process to sell off Western Shoshone land to energy developers. On March 13, 2007, the BLM will be conducting their quarterly competitive oil and gas lease sale, further privatizing Western Shoshone land. There are 23 nominations of interest for leases of parcels ranging in size from 1280 to 2560 acres.¹⁵ Once a lease is acquired, an oil and gas company has the right to develop oil and gas resources.¹⁶

¹¹ Ltrs from Larson R. Bill to Mr. M. Lee Bishop & Dr. Jan Summerson (Dec. 11, 2006) (App. 4).

¹² See Federal Register/ Vol. 71, No. 202/ Thursday, October 19, 2006/Notices (App. 5). The NNSA is in the process of preparing a Supplemental Environmental Impact Assessment for Complex 2030.

¹³ Ltr from Robert R. Loux to Theodore A. Wyka (Dec. 15, 2006) (App. 6).

¹⁴ White Pine County Conservation, Recreation and Development Act, H.R. 6111-107 109th Cong s.311 (2006). (App. 15) The Act also transferred a meager 3,526 acres of land to the Ely Shoshone Tribe (s.361), a woefully inadequate gesture considering that over 550,000 acres of White Pine County were designated as protected wilderness areas (s.323). The land is to be held in trust by the United States for the Ely Shoshone Tribe (s.361(2)).

¹⁵ Ltr from Thomas J. Seley to Carrie Dann (Dec. 12, 2006) (App. 16).

¹⁶ *Id.*

Gold Mining

11. Not only is the United States continuing to permit open pit cyanide heap leach gold mining on Western Shoshone lands, but it is now considering expansion of corporate operations, actions which are in clear violation of CERD's recommendation to desist from such activities. The Round Mountain Gold Corporation recently announced plans to expand its existing boundary by 3,122 acres and double the current production capacity from 11,000 tons to 22,000 tons per day.¹⁷
12. The expansion of mining operations will mean higher levels of mercury emissions and greater exposure to toxic contamination for Western Shoshone peoples who already live in the state with the highest levels of mercury pollution in the country.¹⁸ The Environmental Protection Agency reports that northern Nevada gold mines release over 4,600 pounds of mercury into the air each year. A recent independent study found mercury concentrations in fish collected from Wild Horse Reservoir to be at levels the U.S. Environmental Protection Agency considers a public health risk.¹⁹ The levels were roughly twice that which triggered a fish consumption advisory in the state of Idaho, making it unsafe for pregnant women and children under 12 to eat any fish from the reservoir.²⁰

Water Appropriation

13. In the August 2006 update to the Committee, we advised CERD of the threats to groundwater in Western Shoshone territory from a proposed pipeline construction project take hundreds of millions of gallons of water from rural Nevada to the rapidly increasing population in the Las Vegas valley. The Western Shoshone firmly oppose this project and have notified the U.S. government of their position.²¹ Despite the protests of the Western Shoshone and in complete disregard of CERD's recommendations, the U.S. Department of the Interior, who previously opposed the water diversion plan, has now agreed to support the

¹⁷ See Federal Register/Vol. 71, No. 247/Tuesday December 26, 2006/Notices 77408-77410 (App. 7). On December 26, 2006 Round Mountain Gold Corporation issued a Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Round Mountain Expansion Project in Nye County, Nevada.

¹⁸ See Great Basin Mine Watch et al, "Glamis Gold Caught Under-Reporting Mercury Releases" Press Release (Nov. 15, 2006) (App. 8). See also Nevada Nurse's Assoc. et al "Fish Testing Reveals High Mercury Levels in Wild Horse Reservoir: Public Health, Sportsmen and Native Groups Call for Investigation." Press Release (Dec. 14, 2006) (App. 9).

¹⁹ Scott Sonner, "Groups Push Mining Mercury Waste Probe" RENO GAZETTE JOURNAL (Dec. 14, 2006) (App. 10).

²⁰ See Sonner *id.* See also Ltr from Dan Rudolph et al. to Alex Haartz (Dec. 13, 2006) (App. 11). The Nevada Division of Health has been asked to investigate whether mercury emissions from gold mines warrant a fish consumption advisory for Wild Horse Reservoir and other water bodies in northern Nevada.

²¹ Ltr from Dallas Smales to Penny Woods (Oct. 16, 2006) (App. 12).

project.²² The National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management and Bureau of Indian Affairs have all signed on to the agreement with the Southern Nevada Water Authority (“SNWA”).²³ A state hearing on the water project was held in September 2006 and the SNWA is awaiting a decision on its application from the state engineer.

Coal Fired Electric Power Generation

14. The U.S. DOI is also moving forward on approval of a plan to construct and operate the “Ely Energy Centre” on Western Shoshone territory in White Pine County, Nevada, in complete disregard of the Committee’s recommendations. The plan involves construction of a 2,500 MW coal-fired electric power generation complex, transmission lines linking Nevada’s northern and southern regions, use of up to 30,000 gallons of water per minute and a several hundred mile rail line.²⁴ The first phase of the plant is expected to become operational in 2011 with air emissions of mercury, sulfur dioxide, nitrogen oxide and carbon monoxide.²⁵

Federal Grazing on Western Shoshone Lands

15. In further violation of the CERD decision, the U.S. DOI, BLM department, is allowing cattle grazing on Magruder Mountain Allotment, an area of spiritual and cultural significance to the Western Shoshone. These grazing activities will further degrade the land and threaten spiritual and cultural springs, medicinal plants and wildlife in the area.
16. The U.S. has not complied with its obligation to consult with and obtain the consent of the Western Shoshone when planning or conducting activities on their land. The Western Shoshone have firmly opposed this activity to no avail. In response to a letter submitted by the Timbisha Shoshone Tribe, the U.S. refused to acknowledge Western Shoshone rights to the area by asserting that the area in question is federal “public” land.²⁶

²² Henry Brean, “\$2 Billion Project: Water Authority Gets Deal: Federal Agency Ends Protest of Plan to Tap Rural County” LAS VEGAS REVIEW JOURNAL (Sept. 12, 2006) (App. 13).

²³ Brean *id.*

²⁴ See LCG Consulting, “Sierra Pacific Resources Receives Approval to Build New Coal Units” ENERGY ONLINE (Nov. 9, 2006) available at:

http://www.energyonline.com/Industry/News.aspx?NewsID=7097&Sierra_Pacific_Resources_Receives_A_pproval_to_Build_New_Coal_Units; See also U.S. Department of the Interior Ltr to the Public (Jan. 19, 2007) and enclosure “Ely Environmental Center, Environmental Impact Statement, Project Description.” (App. 14)

²⁵ See Sierra Pacific Resources, “Ely Energy Center” available at:

<http://www.sierrapacificresources.com/projects/ely/> last visited Jan. 26, 2007.

²⁶ See Ltr from Joe Kennedy to Gerald M. Smith (Jan 1, 2007) & Ltr from Gerald M. Smith to Joe Kennedy (Jan. 23, 2007) (App. 17).

Pinyon Burn

17. In addition to the grazing, the BLM, along with the U.S. Forest Service, is increasing its threats to Western Shoshone lands with its plans to conduct a controlled burn of 69,300 acres of Western Shoshone land called the “Seven Mile Hazardous Fuels Reduction Project” in Nye County, Nevada, along with previously proposed burns.²⁷ This massive fire will destroy many of the plants and animals upon which the Western Shoshone depend for their sustenance, livelihoods and spiritual ceremonies, such as the nuts collected from the pinyon tree. There has also been questions raised regarding the burns’ potential to disburse radionuclides from NTS testing which have settled in the area.²⁸
18. The Western Shoshone are well aware of the threat of wildfires to this arid region and use their own customary practices to prevent wildfires. Traditional methods of fuel reduction have been passed down through the generations and are still practiced today, such as the regular clearing of flammable undergrowth during trips to gather pinyon-nuts.²⁹ Traditional teachings also instruct the Shoshone that with depletion of the Pinyon forest and other vegetation growth which hold water in the soil and their root systems, there is subsequent depletion of incoming water, causing desertification.³⁰ By failing to consult with the Western Shoshone, the BLM is imposing its own land management practices thereby threatening the Western Shoshone’s customary ways and the natural environment upon which they depend.
19. In August 2006, the government released an EA of the proposed action. The EA recognizes that the Western Shoshone have traditionally occupied the area, that they continue to maintain a spiritual connection to the land, and that the area may contain locations of religious and spiritual importance or concern.³¹ The U.S.

²⁷ See Ltrs from Johnnie Bobb and Dr. Bonnie Bobb to BLM (Oct. 12, 2006 & Jan. 25, 2001) (App. 17)

²⁸ *Id.*

²⁹ See Affidavit of Joe Kennedy, Western Shoshone and Timbisha Shoshone Chairperson (Feb. 6, 2007). (App. 18)

³⁰ *Id.*

³¹ See U.S. Department of the Interior, Bureau of Land Management, Battle Mountain Field Office, Seven Mile Hazardous Fuels Reduction Project, Phase II, Nye County, Nevada, Environmental Assessment NV-064-EA06-017, RIPS #002523 (Aug. 2006) at p. 3-16 available at: <http://budget.state.nv.us/clearinghouse/Notice/2007/E2007-077.pdf> The study identifies sites of importance as including: existing antelope traps; certain mountain tops used for prayer, guidance, and reflection; medicinal and edible plant gathering locations; prehistoric and historic village sites and gravesites; sites associated with creation stories; hot and cold springs; material used for basketry and cradle board making; locations of stone tools such as points and grinding stones (mono and matate); chert and obsidian quarries; hunting sites; sweat lodge locations; locations of pine nut ceremonies, traditional gathering, and camping; rocks or boulders used for offerings and medicine gathering; tribally identified Traditional Cultural Properties (TCPs); TCPs found eligible to the NRHP [National Register of Historic Places]; rock shelters; "rock art" locations; lands that are near, within, or bordering current reservation boundaries; lands that conflict with tribal land acquisition efforts that involve the Nevada Congressional Delegation; water sources in general, which are often considered the "life blood of the Earth and all who dwell upon it."

government is therefore proceeding with its plans despite having knowledge that the burn could significantly impact Western Shoshone health and culture.

III. REQUEST FOR CERD TO ENCOURAGE U.S. COMPLIANCE WITH DECISION 1(68).

20. In order to further encourage U.S. compliance with Decision 1(68), the petitioners respectfully request that:

- a) The Committee consider this matter at its 70th Session and reiterate its recommendations contained in Decision 1(68) emphasizing the new threats such as Divine Strake and the water appropriation proposal; and
- b) Member(s) of the UN CERD Working Group on Early Warning/Urgent Action make a site-visit of Western Shoshone ancestral territory prior to the 71st Session of CERD (Summer 2007) hosted by the Western Shoshone Nation to observe, first hand, the harm being inflicted and further threatened on their land, resources and people.

IV. LIST OF APPENDICES

1. Resolution of the Governing Body of the Wells Band Council #-02-WBC-2007 (Jan. 25, 2007) and Resolution of the Governing Body of the Te-Moak Tribe of Western Shoshone Indians of Nevada # 07-TM-01 (Jan. 3, 2007).
2. HOME et al, "Groups Demand Real Hearings and an EIS on Divine Strake (Nuclear Simulation Blast) Joint Press Release (Jan. 9, 2007).
3. Federal Register/Vol. 71, No. 198/Friday, October 13, 2006/Notices at 60484.
4. Ltrs from Larson R. Bill to Mr. M. Lee Bishop & Dr. Jan Summerson (Dec. 11, 2006).
5. Federal Register/ Vol. 71, No. 202/ Thursday, October 19, 2006/Notices.
6. Ltr from Robert R. Loux to Theodore A. Wyka (Dec. 15, 2006).
7. Federal Register/Vol. 71, No. 247/Tuesday December 26, 2006/Notices 77408-77410 at 77408.
8. Great Basin Mine Watch et al, "Glamis Gold Caught Under-Reporting Mercury Releases" Press Release (Nov. 15, 2006).
9. Nevada Nurse's Assoc. et al "Fish Testing Reveals High Mercury Levels in Wild Horse Reservoir: Public Health, Sportsmen and Native Groups Call for Investigation." Press Release (Dec. 14, 2006).
10. Scott Sonner, "Groups Push Mining Mercury Waste Probe" RENO GAZETTE JOURNAL (Dec. 14, 2006).
11. Ltr from Dan Rudolph et al. to Alex Haartz (Dec. 13, 2006).
12. Ltr from Dallas Smales to Penny Woods (Oct. 16, 2006).
13. Henry Brean, "\$2 Billion Project: Water Authority Gets Deal: Federal Agency Ends Protest of Plan to Tap Rural County" LAS VEGAS REVIEW JOURNAL (Sept. 12, 2006).
14. U.S. Department of the Interior Ltr to the Public (Jan. 19, 2007) and enclosure "Ely Environmental Centre, Environmental Impact Statement, Project Description."
15. *White Pine County Conservation, Recreation and Development Act*, H.R. 6111-107 109th Cong s.311 (2006).
16. Ltr from Thomas J. Seley to Carrie Dann (Dec. 12, 2006).
17. Ltrs from Johnnie Bobb and Dr. Bonnie Bobb to BLM (Oct. 12, 2006 and Jan. 25, 2001).
18. Affidavit of Joe Kennedy (February 6, 2007).