

UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35106

**UNITED STATES DEPARTMENT OF ENERGY – RAIL
CONSTRUCTION AND OPERATION – CALIENTE LINE IN
LINCOLN, NYE, AND ESMERALDA COUNTIES, NEVADA**

**COMMENTS OF PARTIES OF RECORD
TIMBISHA-SHOSHONE TRIBE**

July 8, 2008

Hon. Charles D. Nottingham, Chairman
Hon. Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-001

RE: Comments to Department of Energy (DOE) Application for a Certificate of
Public Convenience and Necessity for the Caliente Line, Finance Docket No.
35106.

Dear Chairman Nottingham and Secretary Quinlan:

The Timbisha-Shoshone tribe (the Tribe) has previously filed with the Board their Notice to Participate as Parties of Record in the matter of DOE's application (Application), above referenced. The Tribe appreciates this opportunity to provide their comments in response to the Application.

The Tribe owns land in the vicinity of Yucca Mountain and has historical claims to the Yucca Mountain location. In addition, Yucca Mountain, known as Snake Mountain to the tribe is a site of religious significance to the tribe. Yucca Mountain is not only in close proximity to the Tribe's reservation lands but is also close to the Tribe's special use lands as stipulated in the Timbisha Shoshone Homeland Act ("Homeland Act"), Public Law 106-423, enacted on November 1, 2000. In addition to the special use areas and the establishment of reservation lands, the Homeland Act makes specific references to ground water associated with the reservation lands. With the high-level radioactive waste and spent nuclear fuel in close proximity to the Tribe's reservation lands, there is a potential of significant

groundwater contamination as a result of the high-level radioactive disposal. There is also a possibility that transportation routes will impact activity on or around the special use lands. The potential for adverse impacts remains due to the proximity of the facility.

1. Need for a Repository. The Draft Rail Alignment EIS fails to discuss the overall implications of rail construction costs for program decisions, such as the selection of the preferred corridor or the preferred shipment mode. The estimated construction cost of the Caliente Rail Alignment (CRA) increased from \$800 million in 2002, to \$2 billion in 2005, to more than \$2 billion in 2007. Additional cost increases could occur when the Final EIS is published. Is there some cost threshold where construction cost would become the major factor in selecting the preferred rail corridor? Is there some cost threshold for rail access that would trigger a reconsideration of the preferred transportation mode?

The DOE has not demonstrated a need for a repository. The reasons cited as requirements by the DOE can be fulfilled without the repository. The DOE cites national security as a requirement for a repository (p.21). However, naval spent nuclear fuel can be met with dual purpose casks, continued storage at a federal facility. Requirements for non-proliferation do not require a repository. Energy security is also an inadequate reason because at-reactor storage (p.22) can be maintained for 20 or more years. The need to protect the environment is inadequate, (p.23) Yucca Mtn has not yet been shown to be environmentally sound, will not be until NRC license is issued.

2. Oral Hearing. DOE's proposed action, the constructions and operation of a railroad for the transportation of high-level radioactive waste (referred to hereafter as HLRW) would potentially impact the tribe and potentially place residents within a "radiological region of influence". The national rail system used to transport the HLRW would traverses 836 counties, 2,605 Census designated places and 193 central cities. Millions of businesses and residents will be placed within DOE's radiological region of influence. The vast majority of this impacted population has been given no reasonable notice of the CRA and no practical opportunity to appear and speak, or to comment otherwise, on DOE's CRA plans, filings and applications.

3. State of Nevada Motion. The Tribe supports Nevada's motion to reject the Application and, in the alternative, to require responsive comments after the Application has been fully completed by proper supplement.

4. No Public Convenience or Necessity. The existing Union Pacific Railroad mainline connects Salt Lake City to Los Angeles. There is no private commercial development underway that creates a public convenience or necessity for the proposed railroad. Indeed, the use of the Union Pacific railway for shipping High-level nuclear waste will expose people on either side of the railway.

Further, there is no public convenience and necessity for DOE to construct and operate a railroad into downtown Caliente, since DOE proposes the Eccles Alternative Segment,

which will serve all convenience and necessity of the public, DOE and any other potential shared use users of rail along the CRA.

5. Pre-construction Notice. DOE has filed no pre-construction notice concerning the Caliente Line.

6. Application Premature. Extensive litigation regarding the repository license is just beginning. The license for the repository has only just been filed and may not be accepted-in which case there is no need for the STB to act. The legal review process will take years, if not decades, to resolve.

7. Noncompliance with NEPA. DOE has not complied with requirements of the National Environmental Protection Act (NEPA). The DOE has just recently filed the FSEIS and FEIS concerning the proposed Caliente rail alignment. DOE has failed to adequately address socioeconomic costs or implications associated with the Caliente rail line. The DOE's environmental documents do not specify how the CRA was selected instead of other alignments. The Caliente Line is not the real "preferred alternative" identified by DOE. In numerous places, DOE states in its FSEIS and FEIS that the Mina Route is "preferable" to the Caliente Route. For example, in the middle of page S-11 of the FSEIS and FEIS Summary, DOE states:

... the Mina rail corridor would be environmentally preferable because, in general, it would present fewer private-land conflicts, less surface disturbance, and similar impacts to wetlands and air quality than the Caliente rail corridor would. In addition, based on preliminary estimates, the total cost to construct the railroad along the Mina rail corridor would be approximately 20 percent less than to construct along the Caliente rail corridor.

In other places in the FSEIS and the FEIS, DOE admits that it considers the Mina Route to be "nonpreferred" only because the Walker River Paiute Tribe has told DOE that it will object to shipment of nuclear materials across its Reservation.

Additionally, the DOE has simply discarded the "Mostly Truck" alternative that was described in the 2002 Final EIS. The DOE appears to simply prefer rail to truck shipments for unspecified reasons. It should be noted that all of this waste can be transported in truck casks (or modified to fit into truck casks) without the need for constructing a rail line. DOE's analysis does not address this obvious point.

8. Second Repository. The DOE has indicated that the current limit of 77,000 tons of HLRW may need to be raised. The DOE fails to assess the increase in rail traffic.

9. Consequences of a shared use line. DOE states that the CRA may be used for multiple uses by other parties and agencies, making this a "shared use" line. However, the DOE does not analyze the implications of these shared uses. There is no indication of what agencies will be using the rail line. If other federal agencies will use the rail line, these agencies should have a role in the NEPA proceedings.

10. Induced traffic and development. The DOE has opened the possibility of opening the CRA for use by commercial rail traffic. The expectation is that increased access to the region will create “induced traffic.” That is traffic that is created by the increased access. If the CRA rail line is to be a shared use line, then the DOE should assess all of the implications of the shared use line. This should include the environmental impacts of shared uses on the CRA.

11. Radiation Hazard. The FEIS indicates that the radiological region of influence for non accident radiation extends 800 meters on either side of the route. It also the “latent cancer fatalities” (LCF) that would result. Further, plans for the Caliente Alternative Segment include an interchange yards at the Yucca Mountain site. The interchange (and staging) yard would also have a one-half mile radius radiological region of influence. The DOE fails to documents why imposing this burden serves the public interest when there is no risk associated with leaving the waste in its current location.

The FEIS describes how workers will have their radiation exposure limited to 2,000 hours per year on the railroad. The DOE describes how they will mitigate exposures to employees On the other hand; the DOE does not describe how the radiation emitted to the population living along the rail line will be mitigated.

12. Water rights and sources. The Tribe relies on well water for its subsistence. An accident involving a HLRW shipment along the CRA poses the potential to impact these groundwater resources. The DOE should have specified how it will immediately remediate an accident and what steps will be taken to ensure the integrity of the groundwater.

13. Aesthetics. The CRA will negatively impact the aesthetics of the region. Induced traffic and additional use by other federal agencies of the CRA will increase these impacts.

14. Federal Railroad Administration (FRA) Rule Requiring Safest, Most Secure Route. Chapter II, subtitle B of title 49 of the Code of Federal requires that the carriers use the safest, most secure route. The DOE documentation relating to the proposed Caliente Line, including the Application, fail to establish that the Caliente Line is the safest and most secure route for shipping HLRW materials to the proposed Yucca Mountain Repository.

15. Cost of the Proposed Action. The Draft Rail Alignment EIS' do not provide detailed information on the construction costs of the Caliente and Mina preferred rail alignments. The cost estimates provided (Vol. I, page 2-5), \$ 2.2 billion (2005 \$) for Caliente and \$1.7 billion (2005\$) for Mina, differ from the cost estimates in the July 2007 Draft of the DOE National Transportation Plan (NTP).

THEREFORE, the Tribe respectfully requests that the Board:

1. Require the DOE to prepare an adequate statement of Purpose and Need that persuasively demonstrates a requirement for the repository.

2. Notice and hold oral hearings on the Application in Washington, DC, in all major cities throughout the lower 48 States that would be affected by DOE's proposed action. We also request an oral hearing in Death Valley.
3. Grant the motion filed in this matter by the State of Nevada.
4. Deny/dismiss the application because it does not serve the public interest.
5. Grant the tribe and other stakeholders the ability to add comments when more is known or knowable about the NCR Line.
6. Dismiss the application until the DOE's repository license application has been reviewed and adopted by the Nuclear Regulatory Commission.
7. Deny/dismiss the application unless the DOE can produce evidence to support its selection of the CRA as the alternative that fulfills the requirements of NEPA.
8. Deny/dismiss the application until the DOE has examined the implications of additional shipments to the repository.
9. Deny/dismiss the Application as insufficient because it fails to consider:
 - a. the "shared use" of the CRA will result in an increase in other kinds of traffic that have not been studied or reported in the FSEIS or FEIS and
 - b. there has been no opportunity for public comment on the potential proposed expansion of federal use of the CRA by the DOD or other federal agencies.
10. Deny/dismiss the application because it has failed to examine the implications of a shared use line.
11. Deny/dismiss the application because the DOE has failed to provide a persuasive analysis of the reasons why imposing a radiological burden on the public serves the public interest. The DOE must document the implications of a potential shared use rail line.
12. Deny/dismiss the application because of an inadequate discussion of potential degradation of water in the region as well as an inadequate analysis of how water will be managed and protected should the proposed action be implemented.
13. Deny/dismiss the application because the DOE has failed to consider the aesthetic effect of shared use and induced traffic caused by the proposed action.
14. Deny/dismiss the Application on the basis of DOE's failure to comply with the requirements of relevant provisions of federal law which require study, analysis and report on safety and security of the Caliente Line.

15. Deny/dismiss the application because of the inadequate analysis of the cost of the proposed action, which makes it difficult to comprehend the full cost implications of the proposed action.

Respectfully,

TIMBISHA SHOSHONE TRIBE

By _____
Joe Kennedy, Chairperson

Certificate of Service

I, Joe Kennedy, hereby certify that this 9th day of July 2008: (i) the original and ten (10) true and correct copies of the attached COMMENTS OF PARTIES OF RECORD TIMBISHA SHOSHONE TRIBE (Comments) were delivered to the Surface Transportation Board by deposit in first-class U.S. mail, postage prepaid, addressed to:

Hon. Charles D. Nottingham, Chairman
Hon. Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-001

and, (ii) one (1) true and correct copy of the attached Comments was delivered to each of the counsel of record.

And others identified below, by (a) deposit in first-class U.S. mail, postage prepaid, addressed as shown below, or (b) e-mail addressed as shown below:

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