

## Clouded Vision: The Mescalero Apache and the Nuclear Legacy

by Conrad L. Huygen

The Mescalero Apache believe the world begins and ends in the mountains of South Central New Mexico. The detonation of the first nuclear bomb near this spiritual center half a century ago shattered all creation's calm. Today, only 40 miles east of the original ground zero, the Tribal Council of the Mescalero Apache Indian Reservation is actively pursuing the siting of the first privately owned and operated monitored retrievable storage (MRS) nuclear waste facility ever to be located on indigenous ground.<sup>1</sup> By the year 2002 this pristine section of New Mexico may become the nuclear waste Mecca for most of the operating reactors in the United States.<sup>2</sup>

To unravel what is intuitively the unlikely juxtaposition of spent nuclear fuel rods and Native American lands requires a lesson in history, geography, politics and science. The Mescaleros are making critical decisions in a fictional arena created by money and power that will reach across both borders and generations. As of this writing, the contract that will transform their 460,000 acre reservation into the temporary home of up to 30,000 tons of fuel rods is in the final stage of negotiations.<sup>3</sup> For all the wrong reasons Native American rights are at odds with environmental integrity.

### A Question of Time

The events leading up to the tribal council's quest for an MRS facility can be boiled down to a single sentence: radioactive material does not go away. Period. Nuclear reactors grew in number under the promise of "clean" and inexpensive power--the answer to our energy prayers. No one seemed to be thinking much about the questions posed by long-term waste storage; the greater concern has always been nonproliferation accountability. The single stone that killed (or at least maimed for a time) both of these birds was the practice of keeping spent fuel rods at their respective plants in pools of circulating water.<sup>4</sup> The consequences of this policy hiccup threatened to come to a head in the 1970s when utilities projected massive reactor shut-downs by the early 1980s due to a lack of on-site storage.<sup>5</sup>

An OPEC-weary Congress finally addressed the issue in 1982 by enacting the Nuclear Waste Policy Act (NWPA), under which the federal government agreed to open a permanent waste burial site in 1998 and thereby assume responsibility for the nation's spent fuel rods.<sup>6</sup> But it wasn't until 1987 that Congress designated Yucca Mountain, 90 miles northeast of Las Vegas, as the site's location.<sup>7</sup> Not surprisingly, the 10,000 year monument to nuclear waste is not on schedule. After a multitude of delays (and \$4 billion later<sup>8</sup>), only basic geologic tests will have been completed by the 1998 target date;

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Yucca Mountain will not be operational until 2010 at the earliest.<sup>9</sup> In an echo from the Seventies, utilities are again saying that over half of the country's 109 reactors will have to be shut down if the repository does not open on time.<sup>10</sup>

### Reality Check

A critical question to consider at this point is why the original claims of on-site storage shortages from the Seventies never came to fruition. Any answer must first be placed in a national framework: fully one third of U.S. electricity has nuclear origins.<sup>11</sup> We, liberals and conservatives alike, have made energy consumption an addiction and a multi-billion dollar industry; companies will avoid plant closings by any economical means possible. The storage crisis predicted 20 years ago was sidestepped by innovating more efficient stacking techniques within the existing holding pools.<sup>12</sup> In light of such technological advances, should we really believe our very own Pacific Gas & Electric when it says its Diablo Canyon facility will be at capacity by 2007?<sup>13</sup>

While it may be tempting, and even prudent, not to trust corporate projections, the fact remains that holding pools are of a finite volume. Fuel rods can only be stacked so many ways before there truly is no more space. Regardless of if or when Yucca Mountain opens, our appetite for energy makes reactor shut-downs a policy pipe dream. In other words, spent fuel rods will eventually come out of their pools even though there may be no permanent place to put them. For the nuclear power industry the entire issue becomes how to store tons of waste until a larger site is available without losing any revenue. It all comes down to simple economics: the collective cost of adding storage space at individual reactors is about \$4 billion more than a single centralized MRS facility.<sup>14</sup> If you were in charge of this mess, which option would you rabidly push for?

### Monitored Retrievable Storage

Unlike Yucca Mountain, which will be a deep geologic repository, an MRS facility is completely above ground. Monitored retrievable storage differs from underwater stacking in that the fuel rods are at a post-reaction point where they are less volatile, emit less heat and can therefore be air-cooled.<sup>15</sup> "Dry" MRS basically involves material sealed in a cask or vault constructed of concrete, metal, or both. The casks are then arranged in a large storage yard along with receiving, transfer, maintenance, and radiation inspection facilities.<sup>16</sup> The industry bills MRS as safe and passive--who wouldn't want this cuddly solution to our nuclear waste problem in their backyard?

Since no utility CEO or member of Congress volunteered their own home, the Office of the U.S. Nuclear Waste Negotiator (USNWN) asked Native American tribes in 1991 if they might like our nuclear garbage.<sup>17</sup> Brilliant! Lured by thousands of dollars worth of grants just to "study" the idea, tribes such as the Tonkawa of Oklahoma and the Shoshone of Oregon seriously considered the project.<sup>18</sup> One group, however, pursued the MRS option with unparalleled vigor and business savvy.

### Mescalero, Inc.

The Mescalero Apache are an impressive tribe. Successive waves of the European invasion could not vanquish the people who once moved like the wind across the vast and formidable plains east of the Southern Rockies.<sup>19</sup> Even when confined to the bounds of a reservation and subjected to the systematic neglect of the federal government, the spirit of Cochise and Geronimo did not die--the term "Conquest" does not apply to the Mescaleros. Over the past few decades they have transformed this legacy of poverty into one of relative profit through a series of smart business moves under their long-time CEO, President Wendell Chino. The 3,200 member tribe runs a ski resort, a casino, a luxury hotel, a sawmill, and a plant that makes canisters for low-level radioactive waste.<sup>20</sup> As Mr. Chino is fond of saying, "the Navajos make rugs, the Pueblos make pots, the Mescaleros make money."<sup>21</sup>

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The tribal council saw the U.S. invitation to host an MRS site as another great business opportunity. A \$100,000 grant up front and the prospect of \$25 million a year would tempt anyone.<sup>22</sup> Negotiations with the government, however, turned sour when Senators Pete Dominici (R-NM), and Jeff Bingaman (D-NM), who vehemently oppose the idea, persuaded Congress to kill the USNWN's grant program.<sup>23</sup> Undaunted, tribal leaders in April 1994 began negotiating directly with 33 utilities, led by Northern States Power of Minnesota, about the possibility of a private nuclear waste facility.<sup>24</sup> If no one raises a finger, the Mescaleros need only obtain a license from the Nuclear Regulatory Commission (NRC) to add a radioactive depot to their business pedigree.<sup>25</sup>

### Breach of Contract

Subject matter aside, the tribe will probably sign what appears to be a reasonable contract: beginning in 2002 they could host (i.e. the utilities maintain ownership and liability) spent fuel rods for 20 years with the option to renew for another 20.<sup>26</sup> With a history of broken promises dating back to the Spaniards, the Mescaleros have gone to great lengths to ensure good faith and fair dealing on all sides.<sup>27</sup> What they don't realize is that the intricacies of the nuclear game make good faith a mere life boat on the *Titanic* of energy consumption--it won't make any difference.

The same policy considerations that created a need for MRS could work to keep the waste on the reservation once it gets there; we refuse to cut off our nuclear fix. Even if Yucca Mountain opens before the MRS contract expires, its 70,000 ton capacity will immediately be inadequate.<sup>28</sup> Compound this by the additional 2,000 tons that reactors produce every year and we're putting Charles Barkley's feet into size 11 shoes.<sup>29</sup> In this scenario, what happens if, at the end of the contract's run, a utility is liable for more waste than it can store

on-site? No court on earth can order a company to take back its fuel rods if it has no place to put them. The Mescaleros may get monetary compensation and our sympathy, but specific performance would take years to enforce--they'd be stuck. And so would their neighbors.

### Beyond the Reservation

Ruidoso is the closest town outside reservation lands to the proposed waste site. Until MRS, the geographic symbiosis between village and tribe had been mutually beneficial. The shared lifeblood of tourism has nourished steady development. According to Ms. Lisa Storey, Ruidoso's Visitor Coordinator, this community of 6,000 is currently enjoying an economic boom. It was named the fastest growing non-metropolitan area in New Mexico and is a top-ranked ski destination.<sup>30</sup> Vacationers, retirees, and businesses come to Ruidoso from Texas, Arizona, and California to partake in the promise of clean alpine living<sup>31</sup>--an image easily stained by the impetus of a national nuclear dumping ground.

The Ruidoso village council, like many nearby towns, voted against the MRS site.<sup>32</sup> While the November 1994 elections may have given the Mescalero initiative some potential allies, such as newly elected Governor Gary "I will keep the door open" Johnson,<sup>33</sup> New Mexico's state and federal political establishment is fairly unified in its opposition to the project.<sup>34</sup> The possibility of actions ranging from multiple lawsuits to stiffened regulations on intrastate hazardous materials transportation seems to have little effect on a tribe that knows how to fight and win.<sup>35</sup>

### Nation Within a Nation

Regardless of how New Mexico residents and politicians line up on the MRS issue, the Mescaleros know that the real battle will take place on the uneven playing field that is Washington, DC. The rules of the federal game make their trump card of Indian sovereignty virtually untouchable. Tribal spokesmen have used the current climate of political correctness to turn any criticism of the MRS proposal into an attack on Native American rights.

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The remarks of Mr. Fred Peso, tribal Vice President, before the New Mexico Legislature reflect this strategy: "To us, sovereignty means the right to recover from the wrongs the past have inflicted on our people, and to chart our own destiny. Sovereignty means the right of the Mescaleros to protect our modest reservation and the rights of our people."<sup>36</sup> While Mr. Peso may speak with the best of intentions, the crux of the matter is this: the council does

not have the full weight of the tribe behind it.<sup>37</sup>

### Silent Majority

The most overlooked ingredient in this convoluted stew is the will of the Mescalero people. All analyses of the MRS initiative have been based on the assumption that the council

speaks for the majority of the tribe. The truth is nobody really knows what the heirs of the plains collectively want. A referendum on the issue has been put off time and again because of "incomplete contract terms."<sup>38</sup> Why not have a ballot to see if the tribe wants negotiations in the first place? Tribal leaders probably fear the outcome of a fairly run vote: the silent majority would finally be heard.

Many Mescaleros found it laughable when Miller Hudson, project spokesman, testified before Congress that MRS would "assure long term prosperity for generations yet unborn."<sup>39</sup> How can a "temporary" waste site have long-term benefits if it threatens to curtail the tribe's profitable tourist-based businesses? There is warranted pessimism when even these multi-million dollar ventures fail to raise the median Mescalero family income above \$13,900 and unemployment runs at 30%.<sup>40</sup> Acts of intimidation ranging from disturbing phone calls to vandalism serve to keep voices of discontent to a mere whisper.<sup>41,42</sup>

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### A Voice and a Vision

Rufina Laws is an opposition leader who refuses to be silent. She is a woman of strength and clarity working non-stop to spread a vision rooted in the essence of her tribe--a view long lost by the tribal council. According to Ms. Laws, every time we release the energy locked within the building blocks of creation we intertwine the spiritual with the physical.  $E=mc^2$ , which suggests great power tolls an equally great price, fits rather nicely into the Mescalero *Gestalt*. Knowingly ignoring the true costs of nuclear fission for momentary gain has been our greatest transgression; our hubris will haunt us for the next 10,000 years in the form of radioactive waste. This is not the legacy Rufina Laws wants to leave her or anybody's children.<sup>43</sup>

Despite allegations of election fraud on the reservation,<sup>44</sup> a MRS referendum scheduled for December 1994 is a ray of hope for those who oppose the facility. Yet even if this coalition wins a fairly run vote, the results won't be worth the paper they're written on. You see there is a neat little clause within Article XIV of the Mescalero Constitution that states contracts with non-tribal third parties are not subject to the people's approval;<sup>45</sup> the council can do as it sees fit. The tribe that could not be conquered is about to be bought.

### Environmental Injustice

Perhaps the most bothersome aspect of this entire scenario is the conditions that put the Mescaleros in the predicament of deciding between tradition and the lure of relatively easy money. USNWN committed a sin when it solicited tribes to consider MRS--it should have known the same autonomy that would make approval expedient also has a history of poverty and neglect. Can a tribe with 30% unemployment easily say "no" to jobs and \$25 million a year? The conflict created by this dichotomy screams out for safeguards against waste storage solicitation.

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An advisory committee to the US Commission on Civil Rights defined environmental racism as "the deliberate targeting of communities of people of color for toxic waste facilities."<sup>46</sup> The actions detailed within this article clearly fall into that category. It is shocking to see the

federal government discriminate so blatantly under the guise of letting tribes "choose their own destiny." To frame the issue of self-determination as the freedom to take poison is shameful.

### Coming Full Circle

The nuclear age was born only miles from the Mescalero Apache Indian Reservation. This region is also the source of over half of the uranium used to feed our energy addiction.<sup>47</sup> Our wanton use of electricity is today manifesting itself in a strain of environmental discrimination that puts Native American tribes in the dilemma of choosing between the integrity of their land and the prospect of immediate economic improvement. The cradle of nuclear power may soon become its not-so-temporary grave.

The Mescaleros have a symbolic metaphor for the entire universe: a simple circle bisected on both the vertical and horizontal axes--the epitome of balance.<sup>48</sup> It resembles the cross hairs used to give Hiroshima one last look before she disappeared from the map. It is ground zero--beginning and end. The metaphor tells a valuable tale to those who will listen: our indiscretions will always come back to us. To think the events on the Mescalero Reservation are somehow separate from our own lives is linear thought in its most dangerous form.

### Author's Note

This article is dedicated to Rufina Laws and the silent majority who want to honor the spirit of the land and their proud heritage. I urge you to call or write your representative and ask that they make the nuclear desecration of native lands illegal. Even if a private MRS facility does not come to the Mescaleros, government negotiators are working hard to bring a waste site to the Goshute Tribe of Utah.<sup>49</sup> Remember them the next time you turn off the lights.

*Conrad L. Huygen is a IL at King Hall*

### NOTES

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