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The SHOSHONE-BANNOCK TRIBES

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**VIA OVERNIGHT
COURIER SERVICE**

September 25, 1996

Ms. Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue, S.W., Suite 695
Washington, D.C. 20024
ATTN.: Section 180(c) Comments

Re: Comments to Proposed Policy and Procedures under Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended, by the Shoshone-Bannock Tribes

Dear Ms. Macaluso:

With respect to the referenced matter, the Shoshone-Bannock Tribes (hereinafter sometimes referred to as the "Tribes") of Fort Hall Indian Reservation (the "Reservation"), Fort Hall, Idaho, have reviewed the Notice of Proposed Policy and Procedures (the "Proposed Policy Statement") to implement Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended (the "Act"), which Proposed Policy Statement was prepared by the Office of Civilian Radioactive Waste Management ("OCRWM") of the U.S. Department of Energy (the "Department"). Section 180(c) provides for technical assistance and funds to States and Indian tribes in areas through which OCRWM plans to ship spent nuclear fuel and high-level waste. Due to the location of the Reservation, the Shoshone-Bannock Tribes and their lands will likely be directly impacted by the policies and procedures adopted in connection with the implementation of Section 180(c). Accordingly, the Tribes hereby submit for the Department's consideration the following comments to the Proposed Policy Statement.

I. Assistance And Funds Should Be Provided Directly To The Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes are aware of two possible interpretations of the general

mandate of Section 180(c). Under the first interpretation, assistance and funds are provided directly to both States and Indian Tribes, with States being responsible "for training public safety officials of appropriate units of local government," and with Indian tribes being responsible for their own preparedness. Under a second interpretation, States would provide training to both local governments and Indian tribes. The Shoshone-Bannock Tribes strongly support OCRWM's rejection of the second interpretation of Section 180(c). In this respect, it is imperative that the Proposed Policy Statement provide for direct funds and assistance to the Shoshone-Bannock Tribes under Section 180(c), for the Tribes have jurisdiction over and are directly responsible for tribal members and tribal lands. The Shoshone-Bannock Tribes must be given equal status with state governments under the Proposed Policy Statement in order for the Tribes to assume and exercise their inherent governmental functions.

II. The Funding Allocation Formula Should Exclude Population As A Factor.

The Shoshone-Bannock Tribes support the exclusion of population as a factor in the funding allocation formula under Section 180(c). Because the Shoshone-Bannock Tribes have a relatively small population distributed over a relatively large geographical area, the inclusion of population in the funding allocation formula would likely result in inadequate funding and assistance to the Tribes, and inadequate protection to tribal lands and tribal members. Because of the level of spent fuel and waste transportation that may occur within the Reservation, it is essential that the Tribes be on an equal, if not even greater, level of preparation when compared to heavily populated, urban areas. Therefore, population should be excluded as a factor in determining funding allocations under Section 180(c).

III. Authority To Respond To An Emergency And Authority To Enforce Vehicle Regulations Should Be Included As Criteria For Determining Eligibility For Funds and Technical Assistance Under Section 180(c).

Under Section 180(c), the Department is directed to provide technical assistance and funds to an Indian tribe where the Department plans to transport spent fuels or wastes through the tribe's jurisdiction. The Proposed Policy Statement indicates that a tribe's jurisdiction would be determined by the borders of its lands. The Shoshone-Bannock Tribes agree that any transportation of spent fuels or wastes across the boundaries of the Reservation must qualify the Tribes for assistance under Section 180(c). In the case of the Tribes, however, the Reservation boundaries may not alone determine the Tribes' authority to respond to a transportation accident. In fact, upon request, the Tribes may indeed respond to certain off-Reservation accidents, and it is possible that future agreements may be entered into giving the Tribes specific authority to respond to off-Reservation accidents. In order to satisfy the intent of Section 180(c), the Shoshone-Bannock Tribes must be prepared to respond to all situations where the Tribes exercise response authority. Such response authority could be based upon specific response agreements, or upon general transportation authority under vehicle regulations. Accordingly, while eligibility for assistance under Section 180(c) would certainly exist where spent fuels or wastes were being transported across the boundaries of the Reservation, the Tribes contend that eligibility should also exist where spent fuels or wastes are being transported in an off-Reservation area where the Tribes exercise response authority, regardless of whether such authority is grounded upon specific

response agreements or vehicle regulations.

IV. A Needs Assessment Component Should Be Added To The Incremental Assistance Policy.

The Shoshone-Bannock Tribes believe that, while it may be appropriate to provide a minimum amount of fixed incremental assistance to all eligible Indian tribes, a needs assessment component must also be added to the Proposed Policy Statement in order to satisfy the overall intent of Section 180(c). The Tribes contend that the Department has a trust responsibility to ensure that the unique requirements of Indian tribes are addressed and met with respect to spent fuel or waste transportation. In the case of the Shoshone-Bannock Tribes, the Department must recognize that the Reservation is unique, and that its preservation is essential to the continued existence of the Tribes and their members. Therefore, due to the unique character of the Reservation lands, a needs assessment must be performed to ensure that the Department meets its overall trust responsibility to the Tribes. To treat Reservation lands in the same manner as all other lands impacted by spent fuel or waste transportation would be to ignore the very essence of Shoshone-Bannock culture and values.

The Shoshone-Bannock Tribes further believe that a needs assessment component is necessary in order to achieve true preparation for spent fuel or waste shipments. The feelings of the Tribes and their members toward fuel and waste transportation will likely be influenced by the degree to which they believe that true preparedness has been achieved. Further, it is the Tribes' position that because of the consequences involved in spent fuel or waste shipments, true preparation must not only be a goal, it must become reality. Accordingly, the Tribes strongly suggest that the Department's Proposed Policy Statement not only focus on meeting the requirements for technical compliance with Section 180(c), but also address whether the Department's actions will result in true preparedness. In order to assess true preparedness, some level of needs assessment will be required under Section 180(c).

V. Drills And Exercises Must Be Included Within The Scope of Section 180(c).

The Shoshone-Bannock Tribes object to the Department's position that Section 180(c) funds will not be available for conducting drills and exercises. The Tribes fail to see the logic in the assertion that drills and exercises are a means to measure preparedness, as opposed to an integral part of preparedness itself. In developing its own response program, the Tribes have found that drills and exercises are essential, and that they are the means by which to transfer the "classroom" to the "field". This view appears to have been adopted by nearly all other forms of emergency response, as police, fire and ambulance personnel regularly engage in drills and exercises as part of their regular training program. The Tribes urge the Department to change its position on this issue, and to qualify drills and exercises as available for funding under Section 180(c).

VI. Section 180(c) Funds Should Be Available For Equipment Purchases And Other Emergency Response Infrastructure.

The Shoshone-Bannock Tribes disagree with the Department's position that only up to ten percent (10%) of funds allocated under Section 180(c) may be used for equipment purchases. Any reliance upon the word "training" as used in Section 180(c) to justify this position appears misplaced in light of the interpretation of Section 180(c) discussed in item I above. Under such an interpretation, there is no "training" limitation on the Department's award of funds to Indian tribes under Section 180(c). Because infrastructure may well represent the greatest obstacle to effective emergency response, the Tribes request that the Department revise the Proposed Policy Statement to delete the ten percent (10%) equipment limitation with respect to Indian tribes, and to permit additional funding for tribal infrastructure under Section 180(c).

The Shoshone-Bannock Tribes greatly appreciate the opportunity to comment to the Proposed Policy Statement, and the Tribes thank the Department and OCRWM in advance for their consideration of our comments. We request that you acknowledge receipt of the Tribes' comments, and we have enclosed a stamped, self-addressed envelope for such purpose. Should you have any questions relative to the foregoing, please call Mr. Chris A. Rule, our Tribal Attorney, at 208-238-3820, or the undersigned at 208-238-3805.

Yours truly,



Delbert Farmer
Chairman
Fort Hall Business Council
The Shoshone-Bannock Tribes

cc: Fort Hall Business Council
Mr. Bill Moore
Mr. Chris A. Rule