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November 16, 2011

Blue Ribbon Commission
c/o Glenn Paulson, Ph.D., Senior Consultant
BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE
1000 Independence Ave., S.W.
Washington, DC 20585

Re: Response to Comments from the State of Utah on Tribal Issues Paper

Dear Blue Ribbon Commission,

Chestnut Law Offices want to respond to statements made by the state of Utah regarding the tribal white paper prepared by our office for the Blue Ribbon Commission on America's Nuclear Future. While we do not disagree with the spokesperson for the state of Utah that the state has legitimate concerns regarding the potential siting of a nuclear waste facility on tribal land within its borders, we stand by our paper and the inclusion of the section entitled "How States can Affect the Federal-Tribal Relationship: a Cautionary Example".

The purpose of our paper, *The Role of Indian Tribes in America's Nuclear Future*, was to educate the reader on the interplay of tribal, state and federal laws and how this interplay could affect decisions by the federal government regarding nuclear waste storage on tribal land. The point of the Cautionary Example was that even though the Nuclear Waste Policy Act provides that a state does not have veto power over the choice of an Indian tribal government to accept nuclear waste on its lands (see 42 USC §10136(b)(3)), the state of Utah and the Federal government were able to thwart the Goshute Tribe's choice to locate a nuclear waste facility on tribal lands.

This example was so compelling because the Goshute Tribe's reservation is surrounded by the Dugway Proving Grounds, where the federal government stores nerve agents and operates a weapons testing and training range for air to surface, surface to air and air to air weapons; Intermountain Power Project's coal-powered electricity generating facility which creates a substantial amount of air pollution; the Tooele Army Depot, which is the site of one of the world's largest nerve gas incinerators and a weapons testing and storage facility; the Envirocare disposal site for low-level radioactive waste; two other waste facilities; and MagCorp, a magnesium production plant which generates chlorine gas. Because of these neighbors, the Goshute tribe has limited opportunity for business development on its land.

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Environmental Justice addresses the disproportionately high and adverse human health or environmental effects of programs, policies and activities on minority populations and low-income populations. That is, society should not use the lands and neighborhoods of its poorest and least powerful members as a dumping ground for unwanted environmental waste against their wishes. A group called Ohngo Guadedah Devia (OGD) raised environmental justice issues against the Goshute's attempt to locate a nuclear waste facility on its lands. The OGD is not a tribal entity but an independent entity, some of whose members were also members of the Goshute Tribe. The point we were making was that OGD used environmental justice as a weapon against a tribal choice for economic development rather than as the weapon of the tribe against more powerful governments that want to use tribal land for environmental waste against the tribe's wishes. This is one way of looking at this particular issue. Another is that OGD represented members the Goshute Tribe fighting the choice of the federally-recognized and duly-elected tribal government.

The state of Utah cites to internal governmental disputes within the Goshute tribe as an indication that the tribe's decision was illegitimate. Internal tribal issues are matters for the tribe to decide. The Bureau of Indian Affairs and the United States District Court in Utah treated the tribal leaders promoting the nuclear waste facility on tribal land as the legitimate government of the tribe. This did not change the fact that the state of Utah through influence on parts of the Federal government was able to stop the Goshute's nuclear facility even where federal law provides that the state cannot do so. That was our point regarding the effect of state action on the decision of an Indian tribe acting through its recognized government.

The State of Utah effectively exercised a veto power over the decision of a tribe located within its boundaries to host a temporary or permanent nuclear waste facility. As we said before, we recognized that Utah has legitimate concerns regarding such a tribal decision. However, we note the Goshute Tribe had no veto power over the state of Utah and the federal government when they decided to surround the tribe's reservation with hazardous materials.

Nuclear waste exists in the United States and a solution for long term storage is needed. Our hope is that Indian tribal governments will be treated fairly in accordance with federal law when any decision is made.

Sincerely,



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