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40-8968

February 9, 2000

By Hand Delivery

Mr. Thomas H. Essig, Chief
Uranium Recovery and Low-Level Waste Branch
Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C.

Re: In the Matter of Hydro Resources, Inc., Docket No. 40-8968: Navajo Nation Resolution Concerning Uranium Solution Extraction

Dear Mr. Essig:

The purpose of this letter is to inform you of a significant policy change concerning uranium mining that was recently made by the Resources Committee of the Navajo Nation Council, and urge you to bring the change to the attention of the Commission pursuant to NMSS Policy & Procedures Letter 1-7 (Dec. 28, 1979).[1] As you may know, in 1992, then Navajo Nation President Peter Zah executed an Executive Order that placed a moratorium on certain uranium mining activities on Navajo Nation lands. By resolution dated January 19, 2000, the Resources Committee approved a new Navajo Nation Policy on Uranium Solution Extraction, which supersedes the Executive Order of 1992. A copy of the policy is attached for your review. In short, the policy embraces *in situ* leach uranium mining on Navajo Nation lands and perhaps most importantly, states that the Navajo Nation Minerals Department and Navajo Nation Environmental Protection Agency "shall rely on federal regulators to protect the health, welfare, and safety of the Navajo people on uranium solution extraction activities within the Navajo Nation" which take place on "[l]ands held in trust by the United States for the Navajo Tribe." Res. ¶ g.

The resolution not only changes Navajo Nation policy generally, it directly affects the challenge brought by Intervenors Eastern Navajo Dine Against Uranium Mining and Southwest Research and Information Center to Hydro Resources, Inc.'s (HRI's) Nuclear Regulatory Commission (NRC) license (SUA-1538), to conduct *in situ* leach uranium

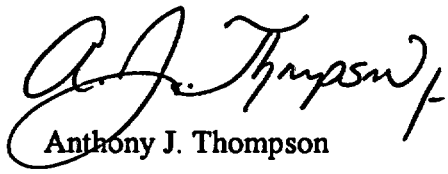
[1] A copy of NMSS Policy & Procedures Letter 1-7 (Dec. 28, 1979), is attached.

NMSS01 Public

mining. Specifically, Intervenors requested and were granted a hearing regarding HRI's proposed operations at properties designated as Section 8 of the Crownpoint Uranium Project. During the course of the hearing before the Presiding Officer, Intervenors raised the fact that the Navajo Nation banned the mining of uranium on Navajo Nation lands in support of their argument that HRI's license was improperly issued. *See e.g.*, ENDAUM and SRIC Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect to Environmental Justice Issues, Volume I at 38 (Feb. 19, 1999). While the Presiding Officer found in favor of HRI on all issues concerning Section 8, including environmental justice, Intervenors appealed the decisions of the Presiding Officer to the Commission. Because the Commission may consider the moratorium when reviewing the decisions of the Presiding Officer, the Staff should notify the Commission, pursuant to the NMSS Policy & Procedures Letter 1-7, that the moratorium, to the extent it affected *in situ* leach mining operations, is no longer in effect and that the new policy permits *in situ* leach uranium mining on Navajo Nation lands.

Thank you for your immediate attention to this matter. Should you have any questions regarding the policy or any other matter, do not hesitate to contact me.

Sincerely,



Anthony J. Thompson

Enclosures

Gallup IND FEB-02-2000

Tribe OKs 'pumping' of uranium

By Jim Maniaci
Diné Bureau

WINDOW ROCK — The Navajo Nation has a new policy about mining uranium but continues to outlaw underground and open-pit digging and milling — once a large part of the tribal economy.

The new policy allows only the "in situ" or "injection in place" method of uranium removal. This process uses a well to pump water through porous rock to extract the uranium and suck it to the surface through a second well.

The Navajo Nation Council's Resources Committee adopted the new policy Jan. 19. The committee's resolution reaffirmed two previous Navajo presidential orders against using digging methods to remove uranium.

The committee's policy, which replaces those two previous orders, is binding on the Navajo Nation.

Then-tribal Chairman Peterson Zah issued the initial moratorium in 1983 that was to remain in effect until "the Navajo people are assured that the hazards associated with uranium mining activities can be addressed and resolved."

In 1992, Zah reissued his executive order forbidding the Executive Branch divisions — which includes

See Tribe OKs 'pumping', Page 2

Tribe OKs pumping

Continued from page 1

the Division of Natural Resources — from approving any exploration, development, mining, milling or transportation of uranium ore unless proven safe.

Zah's edicts, however, were not binding on the Legislative Branch, including the Resources Committee. But the committee choose to follow his order.

In its resolution, the committee points out that the tribal code lists the requirements to explore, extract and process not only uranium but also oil, gas, coal and geothermal power. Two other portions of the code also regulate mineral development, mostly under environmental control laws. The committee said many of the eight laws were not passed when Zah issued his executive order.

The committee also wants an overall study of the uranium ore deposits on the reservation. A June 5, 1996, memo by Melvin Bautista, then director of the Division of Natural Resources, estimates there are at least 75 million mineable pounds of uranium ore within 2,500 feet of the surface of land on the reservation.

Under the new policy, the minerals department director can recommend the issuance of an extraction permit for the new method only "when a company has certified that the proposed activities will not contribute directly or indirectly to any radioactive or heavy metal contamination of Navajo air, water, soil, vegetation, wildlife or livestock."

Part of the application will be an environmental impact statement prepared jointly by the federal Nuclear Regulatory Commission and the U.S. Bureau of Indian Affairs. The U.S. Bureau of Land Management also will be part of the environmental impact statement team if its property is affected.

The Resources Committee will take up the case when it receives the impact statement.

But the application for the permit goes to the committee only when all questions about safety and health hazards are answered

If the committee approves, the application then goes to the Nuclear Regulatory Commission for its concurrence.

In the final step, uranium mining operations must obtain leases and operating agreements from the Navajo Nation Council that are required by the Indian Mineral Development Act of 1982.

With the "in situ" method, there are no tailing ponds or large waste dumps. Less heavy equipment means less dust gets stirred up. The method also requires fewer employees than conventional digging.

According to explanations given the committee, the method draws much less water from the aquifer. The newer method also does not need harsh chemicals, either, the committee was told.

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving the Navajo Nation Policy on Uranium Solution Extraction Activities on the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. § 695, the purpose of the Resources Committee is to insure the optimum utilization of all resources of the Navajo Nation and to protect the rights, interest and freedom of the Navajo people to such resources. Pursuant to 2 N.N.C. § 695 (A), the Resources Committee is authorized to adopt resolutions, regulations or policies that shall be necessary and proper for carrying into execution its powers and authorities; and

. Pursuant to 2 N.N.C. § 695 (B) (7), the Resources Committee is authorized to oversee and regulate all activities within the Navajo Nation lands including actions which may involve disposition or acquisition of resources, surface disturbance or alteration of the natural state of the resources. The Resources Committee is further authorized by 2 N.N.C. § 695 (B) (12) to establish the Navajo Nation policy with respect to the optimum utilization of all resources, including the authority to initiate and require studies of the natural resources for the protection and efficient utilization, management, administration and enhancement of such resources and to approve consultants for such studies; and

4. By an Executive Order in 1992, President Zah executed a moratorium on uranium mining activities on the Navajo Nation as follows:

> In 1983, the Navajo Nation announced the policy that a moratorium shall be placed on all uranium mining activities on Navajo lands until such a time that the Navajo people are assured that the hazards associated with uranium mining activities can be addressed and resolved. Uranium mining and related activities on Navajo lands have created health hazards to livestock and human beings and have contaminated ground and water to the detriment of the Navajo people. To this day, the Navajo Nation is working with the United States government to clean up the harmful residue or past uranium mining activity and to address the harmful effects caused by exposure to radiation which have created suffering and hardship for many Navajo families.

Goal 6 of the President's Energy Policy for the Navajo Nation (January 1992) states that energy development shall "Protect and enhance the quality of the environment, and respect and preserve Navajo cultural values". The President's Energy Policy further states: "The Navajo Nation shall not approve any exploration, development, mining, milling, or transportation of uranium ore within the jurisdiction of the Navajo Nation unless and until the responsible party is able to certify and prove that the proposed activities will not contribute directly or indirectly to any further radioactive or heavy metal contamination of Navajo air, water, soil, vegetation, wildlife, or livestock."

Therefore, in order to further establish and continue the policy of the Navajo Nation and in the best interests of the Navajo people, I hereby issue this Executive Order to reiterate and formally recognize that a moratorium is placed on uranium mining activity until such a time that the Navajo people can be assured that all safety and health hazards related to such activity can be addressed and resolved.

5. The Resources Committee has reviewed the methods of uranium extraction, both conventional open pit and underground mining, including the modern in-situ leach method. The Resources Committee finds that open pit and underground mining methods are not economically feasible today and that these methods caused significant waste and mill tailings that are not associated with in-situ method. It is a fact that underground uranium mining caused exposure to radiation to underground miners which created suffering and hardship for many Navajo families; and

6. The purpose of the Executive Order of 1992, which placed a moratorium on uranium extraction, was to prevent and eliminate harmful open pit and underground uranium extraction methods on the Navajo Nation. The Resources Committee will not at this time consider uranium extraction for open pit and underground mining methods. The Resources Committee will require studies of the uranium ore deposit within the Navajo Nation for the protection and efficient utilization, management, administration, and enhancement of such resources. Currently, the Navajo Nation has not adopted a policy, by a legislative body having oversight matter, about how to specifically handle uranium solution extraction methods on the Navajo Nation; and

7. Title 18 Navajo Nation Code, Sections 601-854, sets forth procedures for the exploration, extraction, processing or other development for oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources. By the adoption of environmental and health laws, the Navajo Nation has assured that

oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources production and related activities on Navajo lands protect Navajo air, water, soil, vegetation, wildlife, or livestock, as follows:

(a) The Navajo Nation Solid Waste Code, 14 N.N.C. § 101 et seq.;
(b) The Navajo Nation Pesticide Act, 14 N.N.C. § 301 et seq.;
(c) The Navajo Mine Lands Reclamation Code, 14 N.N.C. § 501 et seq.;
(d) The Navajo Energy Development Administration, 14 N.N.C. § 701 et seq.;
(e) The Navajo Nation Environmental Policy Act, 14 N.N.C. § 901 et seq.;
(f) The Navajo Nation Air Pollution Prevention and Control Act, 14 N.N.C. § 1101 et seq.;
(g) The Navajo Nation Safe Drinking Water Act, 22 N.N.C. § 2501 et seq.;
(h) The Navajo Nation Pollutant Discharge Elimination System Act, CJA-16-96, ____ N.N.C. § _____; and

8. In 1992 when the moratorium was executed, many of the laws mentioned above were not yet approved. Currently, the Navajo Nation has approved many environmental and health laws and regulation to safeguard against the contamination of Navajo air, water, soil, vegetation, wildlife or livestock. The Navajo Nation continues to approve new laws as new extraction technologies are developed. The Navajo Nation must coordinate tasks with federal regulators and state regulation to protect the health, welfare and safety of the Navajo people when dealing with oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources development and related activities on Navajo lands.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council, pursuant to its authorities delineated in 2 N.N.C. § 695 et seq., hereby approves the Navajo Nation Policy on Uranium Solution Extraction as follows:

a. A Uranium Extraction Permit shall be recommended by the Director of the Navajo Nation Minerals Department when the Minerals Department Director determines that hazards associated with uranium solution extraction activity are addressed and resolved pursuant to Navajo Nation laws and regulations.

b. The Director of the Navajo Nation Minerals Department shall recommend the issuance of a Uranium Solution Extraction Permit when a company has certified that the proposed activities will not contribute directly or

indirectly to any radioactive or heavy metal contamination of Navajo air, water, soil, vegetation, wildlife, or livestock.

c. The Resources Committee of the Navajo Nation Council shall consider a Uranium Solution Extraction Permit, upon the recommendation of the Navajo Nation Minerals Department, when all safety and health hazards related to such activity are addressed and resolved.

d. Prior to the issuance of a Uranium Solution Extraction Permit, the Director of the Navajo Nation Minerals Department and the Director of the Navajo Environmental Protection Agency shall obtain a concurrent recommendation on the application for uranium solution extraction activity from the United States Nuclear Regulatory Commission.

e. The applicant or responsible party shall certify that exploration, development, solution extraction or transportation of uranium ore will not contribute to contamination of Navajo air, water, soil, vegetation or livestock.

f. An Environmental Impact Statement shall be required for a Uranium Solution Extraction Permit within the Navajo Nation. The Environmental Impact Statement shall consider the effects on the environment such as: Air quality, geology and soils, hydrology (ground water and surface water), ecology, land use, socioeconomic risk, health physics, radiological impacts, cost/benefit analysis, and transportation. The Environmental Impact Statement shall be prepared by an inter-agency from the Nuclear Regulatory Commission and the Bureau of Indian Affairs. The Bureau of Land Management shall be a part of the inter-agency if it has applicable jurisdictional matters. The Resources Committee of the Navajo Nation Council shall review and approve Environmental Impact Statements that deal with oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources production and related activities on Navajo lands.

g. The Navajo Nation Minerals Department and the Navajo Environmental Protection Agency shall rely on federal regulators to protect the health, welfare and safety of the Navajo people on uranium solution extraction activities within the Navajo Nation as follows: Lands held in trust by the United States for the Navajo Tribe.

h. The Resources Committee of the Navajo Nation Council and the Navajo Nation Minerals Department may request review and assistance from the United States Nuclear Regulatory Commission on matters of uranium solution extraction activities.

i. The Resources Committee of the Navajo Nation Council shall consider and recommend to the Navajo Nation Council mineral agreements (such as: Mineral leases, operating agreements and any other agreements authorized by the Indian Mineral Development Act of 1982), upon the recommendation of the Navajo Nation Minerals Department, when all safety and health hazards related to such activity are addressed and resolved.

j. The Resources Committee of the Navajo Nation Council shall, pursuant to 2 N.N.C. § 695 (A), maintain the necessary and proper authorities to carry out the policy on uranium solution extraction activities and to promulgate rules and regulations thereto.

2. The Navajo Nation Policy on Uranium Solution Extraction activities shall hereafter supersede the Executive Order of 1992 which placed a moratorium on uranium mining on the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 1 opposed and 0 abstained, this 19th day of January, 2000.

Robert B. Whitehorse
Vice Chairperson
Resources Committee

Motion: Elmer L. Milford
Second: Jones Begay

THE NAVAJO NATION

ALBERT A. HALE
PRESIDENT

June 05, 1996

THOMAS E. ATCITTY
VICE PRESIDENT

RECEIVED
JUN - 8 1995
OFFICE OF THE VICE PRESIDENT

MEMORANDUM

TO: Albert A. Hale, President
The Navajo Nation

FROM: Melvin F. Bautista, Executive Director
Division of Natural Resources

SUBJECT: Moratorium on Uranium Mining

This is in reference to the EXECUTIVE ORDER proclaiming a moratorium on uranium mining issued by President Peterson Zah in 1992. At a time when the Navajo Nation is seeking additional revenues, Navajo employment and economic development projects, it does not seem practical to prohibit outright any potential mineral development projects. Naturally, we recognize and are also very concerned over the numerous environmental and health-related problems that have resulted from past uranium development practices and which prompted to issue the moratorium. However, most of these problems resulted from inadequate and unregulated mining and milling practices of decades past.

Since the Nation owns proven uranium resources of at least 75 million pounds of U_3O_8, grading from .05% to .25% at depths of less than 2500 feet, we should consider the potential benefits to the Nation if favorable market conditions and safe and environmentally sound uranium extraction techniques make it feasible to develop the resource. Moreover, the Nation might be eligible in the future for Federal grants to participate in pilot projects to extract uranium safely.

Because any uranium exploration or development projects that might be proposed by industry will be subject not only to the scrutiny of all technical and regulatory departments of the Navajo Nation, but to that of other Federal and State agencies, placing a blanket moratorium on uranium mining may be too extreme a measure. We would hope that the Executive Branch would have confidence enough in the Resources Committee of the Navajo Nation Council and in the technical abilities of the Historic Preservation Department, the Navajo Environmental Protection Agency, the Minerals Department, and the Navajo Water Resources Department to allow them to appropriately evaluate any uranium related proposals that might be presented to the Nation. The merits of any uranium exploration or development proposals on Navajo land should be analyzed by the Nation with full consideration of protecting public health and the environment in mind.

The Navajo Nation depends on revenues and Navajo employment generated from minerals development. For this reason, the Division of Natural Resources urges you to rescind the Executive Order placing a Moratorium on Uranium Mining and allow Navajo Nation evaluation of any uranium exploration or development proposal.

Please advise if you have any questions.

xc: Thomas E. Atcitty, Vice President, The Navajo Nation

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
HERB YAZZIE
ATTORNEY GENERAL

HRI

MEMORANDUM

TO: Elmer Milford, Chairperson
Resources Committee of the Navajo Nation Council
: Albert Deschine, Legislative Advisor
Office of Legislative Services

FROM: James R. Bellis, Asst. Attorney General
Natural Resources Unit, Dept. of Justice

DATE: May 13, 1997

SUBJECT: Uranium Moratorium

By letter dated January 2, 1997, you requested an evaluation of the President's 1996 Executive Order regarding Uranium Development within the Navajo Nation. I apologize for the long delay in responding to your concerns: staffing shortages here are now severe, and the press of day-to-day statutory SAS processing as well as a heavy litigation load have prevented an earlier response.

I will attempt to answer your questions in the order you originally asked them.

1. When does the moratorium expire?

The Executive Order is open-ended. It applies to each and every proposed uranium related development within the Nation, and each separate project must meet the stated terms and conditions relating to the ability of the "responsible party . . . to certify and prove that exploration, development, mining, milling or transportation of uranium ore will not contribute to contamination of Navajo air, water, soil, vegetation, or livestock." Until a responsible party can prove these factors, and until the United States Government concurs in the Nation's "formal review," I interpret the Moratorium to be in continuous effect.

P.O. Box 2010 • Window Rock, AZ 86515 • (520) 871-6931 - 6934 • FAX No. (520) 871-6177

2. Under what conditions will it be appropriate for the moratorium to be suspended?

As noted above, when the United States Government, and the responsible party can prove that the effects of the proposed activity meet the conditions set out in the Executive Order.

3. Which entity has the authority to suspend the moratorium?

Executive Orders of the President may be modified by the President, or rescinded in their entirety. The power to control the actions of the Executive Branch rests with the President pursuant to Title II, and to that extent, the Executive Order is binding on the Executive Branch until further notice from the Executive Branch. The Legislative Branch is not bound by any statute to concur in an Executive Order, but may choose to do so based on the facts and the circumstances of the Order.

By the same token, the Legislative Branch develops legislative policy for the Nation, and does not, pursuant to Title II, involve itself in the day-to-day operations of the government. Therefore, absent a change in the Executive Branch's authority pursuant to Title II, I would conclude that the Executive Order would be binding on Division of Natural Resources, NN Environmental Protection Administration (NNEPA), and other executive Branch divisions and agencies to the extent it is not inconsistent with Navajo law. Navajo law does not require that the Executive Branch pursue all development options presented to it, nor does the law require that the Executive Branch proceed with development options which have been determined to be contrary to the Nation's best interests.

4. What Navajo Nation Laws have been enacted which address Navajo air, water, soil, vegetation, and livestock?

A review of the Navajo Nation Code reveals that a multitude of laws touch on these areas, including the Environmental Laws found in Title 4; certain provisions on Health and Welfare in Title 13; Mining and Mineral provisions in Title 18, Conservation and Wildlife in Title 23; Agriculture and Livestock in Title 3; and certain criminal provisions in Title 17. Without knowing more about your question, it is difficult to answer this question with more specificity.

The Nation also runs, under contract to the federal government, a number of environmental programs. These programs administer federal environmental law on the Navajo Nation, and are staffed by persons within the NNEPA.

The Navajo Nation does not currently fund or exercise jurisdiction over any programs related solely to atomic energy or uranium production. However, NNEPA, USEPA, Navajo Minerals Department, Division of Economic Development and many other Navajo regulatory bodies have jurisdiction over various aspects of activities related to uranium mining, production, and development. The federal government exercises exclusive control over certain aspects of Nuclear regulation, including plant licensing authority, transportation rules, and weapons grade plutonium production.

Finally, to answer your question, the Nation must rely on both Navajo and federal regulators, as well as certain aspects of state regulation to protect the health welfare and safety of the Navajo people.

7. **How would a Navajo policy which requires review by the United States government on matters pertaining to Navajo Nation lands affect the sovereignty of the Navajo Nation?**

By definition, a sovereign may choose to consult with other sovereigns on matters of importance to the sovereign. The Navajo Nation, because it is "a domestic dependant Nation," under federal law, is required by the trust relationship to the United States to submit each and every contract, lease and grant which conveys an interest in Navajo trust assets to another party to the United States for review and approval by the United States. In simple fact, the request by the Nation for review and assistance from the United States on matters of nuclear policy will have virtually no impact on the sovereign status of the Nation.

Should you have additional questions, please call me at extension 6933.

xc: Gerri Harrison, Legal Counsel, Office of the President and Vice-President
: Bennie Cohoe, Executive Director, NN Environmental Protection Adminis.
: Melvin Bautista, Executive Director, Division of Natural Resources
: Thomas W. Christie, Asst. Attorney General, Human Services & Government Unit, Dept. of Justice

[illegible]

5. Which United States governmental and regulatory agency might be referred to in the Executive Order that the Navajo Nation is to work in conjunction with for review of uranium mining on the Navajo Nation?

I would conclude that the Executive Order intends that the two primary agencies of the federal government to be involved are the Nuclear Regulatory Commission (NRC) and the United States Environmental Protection Agency (USEPA). However, because the United States also has a trust responsibility to the Nation to protect the trust assets of the Nation, including the land, water, and subsurface resources, I believe it would be wise to include BIA/Interior on the list of responsible agencies.

6. Has the Navajo Nation enacted regulations for the protection of human and animal health, and the environment, or is it still necessary to relied on the laws and regulations of the Nuclear Regulatory Commission and the USEPA?

The Nation continues to adopt and implement environmental and health laws and regulations, but I would not by any means say that those laws are complete or adequate to independently protect the health and welfare of the Navajo people. The reason the Nation has not, to date, enacted comprehensive environmental and public health laws is that the Nation lacks stable sources of funding to staff and implement such programs.

The focus of the Nation over the past six or more years has been to implement environmental codes, for example, which are funded wholly or in part by USEPA, or which, like the Air Code, contain sufficient self-funding mechanisms to make the program viable.

The same can be said for other codes impacting on health and human welfare: in general the Nation implements codes and regulations when there are adequate 638 or other contract or grant monies available to successfully run the code program. Where the Nation has failed to provide funding mechanisms within any given code, the programmatic success of the division responsible for administering that code has been notably lacking. See for example, the Navajo Nation grazing laws and programs. These programs are grossly understaffed and under-funded, and the codes that create the programs do not contain adequate independent funding mechanisms.

MEMORANDUM

TO : James Bellis, Deputy Attorney General
Navajo Department of Justice
Natural Resource Unit

FROM : Elmer L. Milford, Chairperson
Resources Committee

DATE : January 2, 1997

SUBJECT : Moratorium on Uranium Exploration and Mining on the Navajo Nation

I am requesting clarifications on the Executive Order and the Moratorium on uranium exploration and mining on the Navajo Nation.

Resources Committee Authority:

The authority of the Committee covering this area is codified at 2 N.N.C. §§ 695 (B)(6) - (12). The Committee has authority to:

-Oversee and regulate all activities within Navajo Nation lands, including actions which may involve disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resource;
-Approve an overall Resource Management Plan of the Navajo Nation, including regulations governing the designation and use of resources;
-Approve all water development projects utilizing Navajo water resources;
-Oversee the enforcement and administration of applicable Navajo and federal laws, regulations, guidelines, laws and administrative procedures in the development and utilization of resources;
-Establish the Navajo Nation policy with respect to the optimum utilization of all resources, including the authority to initiate and require studies of the natural resources for the protection and efficient utilization, management, administration and enhancement of such resources and to approve consultants for such studies. The Resources Committee shall report to the Navajo Nation Council the findings and recommendations of committee studies of such resources;
-Represent the Navajo Nation at local, state and federal levels, in cooperation and coordination with the President of the Navajo Nation and the Intergovernmental Relations Committee of the Navajo Nation Council, on proposed legislation or actions affecting resource issues, natural resources development and research and energy resources.

The Legislative Branch : Post Office Box 3390 / Window Rock, Arizona / 86515 / Telephone (520) 871-7254/6380/6381/6382/6383

Policy on Uranium Mining and the Moratorium:

In 1992 the President Hale restated the policy on uranium mining on Navajo lands by imposing a moratorium on uranium mining. (Copy attached)

Questions:

I am requesting clarification on the following questions:

1. When does the moratorium expires; or
2. Under what condition will it be appropriate for the moratorium to be suspended?
3. Which entity has authority to suspend the moratorium?
4. What Navajo Nation laws have been enacted which address Navajo air, water, soil, vegetation or livestock?
5. Which United Stated governmental and regulatory agency might be referred to in the Executive Order that the Navajo Nation is to work in conjunction with for review of uranium mining on the Navajo Nation?
6. Has the Navajo Nation enacted regulations for the protection of human and animal health and the environment or it is still necessary to relied on the laws and regulations of the Nuclear Regulator Commission and the US EPA?
7. How would a Navajo Nation policy which requires a review by the United States government on matter pertaining to Navajo Nation lands affect the sovereignty of the Navajo Nation?

Attachment:

THE
NAVAJO
NATION

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-53

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

RECEIVED
DEC 11 1992

EXECUTIVE ORDER
of President Peterson Zah

Moratorium on Uranium Mining

In 1983, the Navajo Nation announced the policy that a moratorium shall be placed on all uranium mining activity on Navajo lands until such a time that the Navajo people are assured that the hazards associated with uranium mining activity can be addressed and resolved. Uranium mining and related activities on Navajo lands have created health hazards to livestock and human beings and have contaminated ground and water to the detriment of the Navajo people. To this day, the Navajo Nation is working with the United States government to clean up the harmful residue of past uranium mining activity and to address the harmful effects caused by exposure to radiation which have created suffering and hardship for many Navajo families.

Goal 6 of the President's Energy Policy for the Navajo Nation (January, 1992) states that energy development shall "Protect and enhance the quality of the environment, and respect and preserve Navajo cultural values." The President's Energy Policy further states: "The Navajo Nation shall not approve any exploration, development, mining, milling, or transportation of uranium ore within the jurisdiction of the Navajo Nation unless and until the responsible party is able to certify and prove that the proposed activities will not contribute directly or indirectly to any further radioactive or heavy metal contamination of Navajo air, water, soil, vegetation, wildlife, or livestock." (Objective 4, Goal 6, President's Energy Policy for the Navajo Nation)

Therefore, in order to further establish and continue the policy of the Navajo Nation and in the best interests of the Navajo people, I hereby issue this Executive Order to reiterate and formally recognize that a moratorium is placed on uranium mining activity until such a time that the Navajo people can be assured that all safety and health hazards related to such activity can be addressed and resolved.

Sincerely,
THE NAVAJO NATION

Peterson Zah
President

EXECUTIVE ORDER
OF PRESIDENT ALBERT HALE

Policy on Uranium Exploration and Mining

In 1992, the President of the Navajo Nation restated the policy of Uranium Mining on Navajo lands by imposing a moratorium on uranium mining, until the Navajo people can be assured that all safety and health hazards related to such activity can be addressed and resolved.

As was stated in the January, 1992 Energy Policy (Goal 6): energy development shall "Protect and enhance the quality of the environment, and respect and preserve Navajo cultural values." The Energy Policy further states: "until the responsible party is able to certify and prove that exploration, development, mining, milling or transportation of uranium ore will not contribute to contamination of Navajo air, water, soil, vegetation, or livestock," the Navajo Nation shall not approve of these activities.

The Navajo Nation is working in conjunction with the United States governmentland other regulatory agencies to review the criteria for future uranium mining in order that the abundant uranium resources on the Navajo Nation lands can be safely produced bringing good clean sustainable economic development on the Nation. The United States government, through its federal agencies, including the Nuclear Regulatory commission, and the U. S. Environmental Protection Agency have established stringent criteria for the protection of human and animal health and the environment, such that if all the conditions are met, uranium mining will meet the goal of the Navajo Nation President's Energy Policy for the Navajo Nation. These criteria are given special opportunity for review and comments in the process embodied in detailed environmental assessments and environmental impact statements prepared by the United States government and energy companies.

Therefore, with careful consideration of the foregoing conditions, the President's office declares the policy of the Navajo Nation with regard to uranium exploration and development on Nation lands requires a formal review by the United States government in conjunction with the responsible Navajo departments and the Navajo people in order to meet the goals of this policy.

This Executive Order supersedes any prior Executive Order issued by the Navajo Nation President's Office on uranium exploration and mining including moritorium imposed on uranium mining in1992.

NRC POLICY AND PROCEDURE FOR CONVEYING NEW INFORMATION TO LICENSING BOARDS

The Commission has approved an agencywide policy regarding staff notification to Licensing Boards, Appeal Boards or the Commission of new and potentially important information which the staff believes to be relevant to one or more proceedings pending before the Boards or the Commission. This paper sets forth the basic provisions of the new policy as it affects this Office and the procedures to be observed within the Office in meeting the requirements of the policy. The roles of other Offices in processing information recommended for forwarding to the Boards or Commission are also discussed.

The subject is treated under the following headings:

(1) PURPOSE--some background to and reasons for the policy.
(2) CRITERIA--the tests by which to determine whether information should be recommended for forwarding to the Boards.
(3) PROCEDURAL RESPONSIBILITIES--steps to be taken and responsibilities at each level for processing a recommended notification to the Boards.
(4) FINAL DISPOSITION--notification to originator of final disposition of information.
(5) APPENDICES--sample letters of transmittal.

Most broadly stated, the new policy calls for every member of the NRC staff to be alert to the emergence of information--from outside sources or within the staff--which is new, potentially important, and potentially relevant to one or more pending proceedings. Such information should be channeled, together with the recommendation that it go to the Board(s) and with the rationale for that recommendation, to NRR or NMSS for further assessment and final determination on notifying the Board(s).

I. PURPOSE

The purpose of this new policy is to ensure that Licensing Boards, Appeal Boards, and the Commission promptly receive copies of any new information which is relevant and material to their consideration of applications pending before them in an adjudicatory hearing for construction and/or operation of commerical nuclear facilities.

Applications for construction, operation, license renewal, and major license amendment for commercial nuclear facilities are first subjected to extensive safety, environmental and safeguard reviews. Once the staff has completed its reviews and adopted a position on the application, it issues final staff evidentiary documents, e.g., the Final Environmental Statement (FES), Environmental Impact Appraisal (EIA) and Safety Evaluation Report (SER), as appropriate.

*Supersedes NMSS Policy and Procedures Letter 1-7 dated July 19, 1978.

In the event that hearings are to be held, the issuance of these final staff evidentiary documents marks the completion of the staff's review of the application to that point in time and these documents constitute the staff's direct case/testimony on its review of the application. It is intended that all relevant and material matters should be discussed in the application and amendments thereto, the staff FES, EIA, or SER, if appropriate, and supplements thereto. It is presumed by the Board, therefore, that these final documents properly inform the Board of all information available to and considered by the staff up until the time of issuance, including the staff's evaluation of the technical merits of the information.

With the issuance of the final staff documents, it is essential that new information subsequently developed or received by the staff which is relevant and material to the consideration of the Board or Commission be provided to the Board or Commission in a prompt and orderly fashion, to ensure that the decision is based upon all known and available information.

II. CRITERIA

The basic test for providing information to Boards or the Commission is that of relevancy and materiality, i.e., whether the new information could reasonably be regarded as putting a new or different light upon an issue before the Board or Commission, or as raising a new issue which it might inquire into.

Relevant information is not limited to substantive issues, but may deal with secondary issues such as credibility of other information before the Board.

It is intended that the standard for determining what is relevant and material should be liberally construed in favor of supplying information to the Board or Commission, but with the exercise of sound discretion at all levels. If there is some uncertainty as to the relevance or materiality of a piece of information, or if the staff is not able to make a determination as to relevancy and materiality, the information should be sent to the Board or the Commission for it to make the determination. If, however, it is clear to a reasonable certainty that the information is <u>not</u> relevant or material, then it should <u>not</u> be forwarded to the Board.

There is an understandable tendency to try to protect against later criticism for "withholding information" by forwarding every scrap of information that might appear to have even the most remote connection with a case. It is the intention of this Policy Letter to foster in staff members the assumption of responsibility for screening out material which is obviously irrelevant. A deluge of useless and irrelevant information would serve only to further tax the already strained resources of Boards and the Commission and would be obviously counterproductive to informed decisionmaking.

III. PROCEDURAL RESPONSIBILITIES

A. General

1. Each month ELD will provide to NMSS and other offices a list of active proceedings pending before Licensing Boards, Appeal Boards, and the Commission. This list will be provided to Division Board Notification Coordinators for appropriate distribution to ensure that staff personnel are made aware of ongoing proceedings which may properly be a focus for information received or generated by the staff. Service lists for all proceedings will be maintained by ELD.

2. Transmittal of a document to a Board or the Commission should be handled through the NMSS Board Notification Coordinator. When the staff has determined that a document should be transmitted to a specific Board or Boards, the NMSS Board Notification Coordinator will transmit the document to Steve Scott, Division of Technical Information and Document Control (DDC), with a memorandum (see Appendix 4) indicating the name of the board(s) to which the material should be sent. DDC will then obtain from ELD the appropriate service lists and mailing labels for the designated boards, will duplicate the board notification documents, and will transmit them to the designated boards and parties. A copy of all transmittals to DDC should be sent to ELD.

3. If a matter is to be heard by a Board or the Commission, ELD will place the Board or the Commission on the service list for that proceeding. After publication of final staff evidentiary documents precedent to a licensing determination (e.g., FES, EIA, SER) in a pending proceeding, NRR or NMSS will transmit to the presiding board and service list copies of all incoming and outgoing correspondence in the case. For those documents which are not self-explanatory, an assessment of the significance of the information contained in the correspondence will also be transmitted. A copy will also be provided to ELD for information.

4. Information developed within NMSS, received from other NRC offices, or received from sources outside NRC will be screened for relevance and materiality to any pending proceedings. Material determined to be relevant and material will be forwarded to the Board or the Commission, with an assessment of its significance if appropriate. A copy of all material sent to the Board or Commission is also to be distributed to the service list for that proceeding. A copy will also be transmitted to ELD for information. In general, internally generated information would be provided to the Board at the point at which the staff determines that it is necessary to get more information from a source external to the staff about the problem. That is, if such new information is deemed to be of sufficient importance to seek further information, analyses, tests, etc., from licensees, vendors, NRC contractors, or others outside the NRC staff, then the

issue has developed to the point at which concerned Boards should be informed. ELD should be consulted in those instances in which there are any questions regarding the information.

5. Information determined to be relevant and material to one proceeding will be screened for a determination as to whether or not it should also appropriately be forwarded to other Boards or the Commission.

6. RES, SD, and other NRC offices, upon developing or receiving information that could be relevant and material to a proceeding, will send such information to NRR or NMSS with an assessment as to relevancy and materiality. In general, however, comments received in the course of development of regulations, codes, standards, guides, etc., need not be provided to the Boards.

7. I&E routinely provides incoming Part 21 reports, Part 50.55(e) reports, LER/AOR reports, and outgoing I&E Bulletins to NRR or NMSS. I&E will identify those documents which are potentially relevant and material to ongoing proceedings, and will advise NRR or NMSS. I&E will also review its "Morning Reports" for information that should be provided to Boards, and will inform NMSS or NRR.

8. An NMSS accounting and follow-up system will be maintained to track all specific Board notifications to assure that the Boards are informed of the staff's assessment of the significance of the information provided, and that information proposed for Board notification receives prompt and efficient handling.

9. Staff members sending notifications to Boards must ensure that the documents transmitted are accompanied by enough explanation to permit the Board to make an intelligent evaluation of the significance of the issue in the context of the particular proceeding. Although it is not necessary to treat the subject at encyclopedic length, in order for the notification to serve its intended purpose, the Board shall be supplied with an exposition adequate to allow a ready appreciation of (1) the precise nature of the addressed issue and (2) the extent to which the issue might have a bearing upon the particular facility before the Board. In addition, in those cases in which the adjudication of some issues has become final and only a limited number of issues remain open, the notification must also spell out (unless readily apparent) the possible relationship between the subject matter of the notification and one or more of the open issues. In the event that a conclusion with regard to the safety or environmental significance of the board notification matter is presented, the reasoning underlying that conclusion sufficient to allow the board to make an informed judgment on the validity of the conclusion must also be provided. If the Board no longer has any jurisdiction over the issue(s) addressed by the new information, then Board notification as to that information is not appropriate. [See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC _____ (1979)].

B. Board Notification Coordinator

1. The Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety (FCAF) is assigned duties as Board Notification Coordinator for NMSS. The Special Assistant to the Director for Licensing, Division of Safeguards (SGL), is assigned duties as First Alternate Board Notification Coordinator, and may be assigned principal coordination functions for matters primarily within Safeguards purview. The Chief, High-level Waste Management Branch, Division of Waste Management (WMHL), is assigned duties as Second Alternate Board Notification Coordinator, and may be assigned principal coordination functions for matters primarily within Waste Management purview.

2. The Board Notification Coordinator shall:

   a. ensure that an NMSS accounting and follow-up system is maintained to assure the prompt and efficient handling of Board notification proposals, staff assessments and follow-up reports.

   b. ensure that information received is referred to the appropriate Assistant Division Director or Branch Chief for a determination as to relevancy and materiality to a pending adjudicatory proceeding within three days of receipt of the information in NMSS.

   c. coordinate the assessment of significance prepared by the appropriate A/D or Branch Chief for forwarding to the Board within five days of receipt of the information in NMSS.

   d. ensure that a copy of all material sent to the Board is also sent to the service list and to ELD.

   e. ensure appropriate distribution of the ELD monthly list of pending proceedings and the current service lists.

   f. effect necessary liaison with DDC to ensure proper service of documents and information to the Boards and the service list.

3. FCAF will maintain an NMSS accounting and follow-up system to track all Board notification transmittals, to assure that the Boards are provided with the staff's assessment of the significance of the information provided, and that information proposed for Board notification receives prompt and efficient handling.

4. Normally all Board notification information will be transmitted for accounting and coordination purposes through FCAF. In those instances in which information or correspondence is transmitted directly from other NMSS branches to a Board, FCAF will be kept informed by copy so that accounting and recordkeeping systems may be maintained.

C. Assistant Division Directors and Branch Chiefs

All Assistant Division Directors and Branch Chiefs shall:

1. ensure that all technical staff members under their supervision are made aware of these Board notification procedures and of their individual responsibility for initiating notification action for information received by or generated by them which appears relevant and material to a pending proceeding.

2. ensure availability of the monthly ELD list of pending proceedings to the technical staff.

3. after publication of final staff documents precedent to a licensing determination (e.g., FES, EIA, SER), if the matter is to be heard by a Board or the Commission, ensure that the Board or the Commission is placed on the service list to receive all incoming and outgoing correspondence in the case.

4. in cases in which correspondence is forwarded to a Board or the Commission via the service list per (3) above, for those documents which are not self-explanatory and which are relevant and material to the Board's determination, provide an assessment of the significance of the information contained therein for transmittal to the Board.

5. review information received from applicants, licensees, outside sources or other NRC offices to determine whether it is directly related to considerations in the licensing process.

6. refer information which is potentially relevant and material to the appropriate branch for determination of applicability to specific adjudicatory proceedings.

7. if the information is determined to be relevant and material to a specific pending adjudicatory proceeding (after final staff evidentiary documents have been issued), prepare a transmittal to the appropriate Board, along with an assessment of the significance of the information. Appendices 1 and 2 provide sample transmittal letters.

8. if the information is determined to be relevant and material to one proceeding, ensure that the information is screened for a determination as to whether it should also be provided to other Boards.

9. forward information for a Board or the Commisson, together with assessments, to the NMSS Board Notification Coordinator for accounting and coordination. The coordinator will then forward the material to DDC for transmittal to the Board or the Commission and the service list.

10. notify the originator of any Board Notification proposal of the disposition of the information.

11. if information proposed for notification to Boards or the Commission is deemed not relevant or material to a pending adjudicatory proceeding, and hence is not forwarded, provide a written notification of such determination to the originator of the proposal, with copies to FCAF, Division Director, and Office Director.

12. if information is received or generated which may be relevant and material to a reactor licensing proceeding, forward it promptly to the Assistant Director for Light Water Reactors, NRR, for determination of applicability to NRR proceedings. Appendix 3 provides a sample transmittal letter.

D. Individual Responsibilities

Each member of the technical staff shall:

1. acquaint himself with these procedures for reporting new relevant and material information to Licensing Boards, Appeal Boards, and the Commission.

2. screen all information which he may receive or generate to identify information that may be relevant and material to pending adjudicatory proceedings before Boards or the Commission.

3. review the monthly ELD list of pending proceedings as necessary to identify any proceedings which might be concerned with information he may receive or generate.

4. if he receives or generates any information which to him appears potentially relevant and material to a pending proceeding, forward the information in writing through his branch chief for evaluation and possible forwarding to the Board or the Commission.

IV. FINAL DISPOSITION

It is the prerogative of supervisory staff at each level of this procedure to return the document(s) recommended for Board notification to the originator on the ground that the relevance or materiality of the information to one or more pending hearings has not been adequately established. If such a determination is made and the originator continues to believe that the information should be forwarded to the Board(s) or to the Commission, the information will go forward through the above-noted channels, with the negative assessment of relevance duly noted. The coordinator for the Office will keep records of the processing of each recommendation and inform the originator of the disposition of recommendation as soon as that is communicated.

V. APPENDICES

Transmittal of information and assessment of significance should conform generally to the appended sample transmittal letters:

1. Sample transmittal of information to Licensing Board, Appeal Board, or Commission.

2. Sample transmittal of assessment of significance to Licensing Board, Appeal Board, or Commission.

3. Sample transmittal of information to NRR.

4. Sample memorandum forwarding document to DDC for transmittal to Board

William J. Dircks, Director
Office of Nuclear Material
Safety and Safeguards

Appendix 1

Sample Transmittal of Information to
Licensing Board, Appeal Board, or Commission

Docket No. _____

MEMORANDUM FOR: Chairman
Atomic Safety and Licensing Board
[OR]
Atomic Safety and Licensing Appeal Board
[OR]
U.S. Nuclear Regulatory Commission

FROM: [e.g.] John J. Regulator, Chief
Advanced Fuel and Spent Fuel Licensing Branch
Division of Fuel Cycle and Material Safety
Office of Nuclear Material Safety
and Safeguards

SUBJECT: NEW INFORMATION POTENTIALLY RELEVANT AND MATERIAL TO LICENSING BOARD [or APPEAL BOARD, or COMMISSION] PROCEEDING IN THE MATTER OF _____
[Indicate Title of Proceeding]

Pursuant to the Commission Policy on Notification to Licensing Boards, Appeal Boards, or the Commission of new relevant and material information, the attached document is considered potentially relevant and material to [identify particular proceeding before Board] and is forwarded herewith as enclosure 1.

The nature of the information is as follows: [abstract or summarize the document or information].

The information is considered potentially relevant and material to the above proceeding because [briefly state reasons].

[Note: Ensure compliance with paragraph III.A.9.]

A staff assessment of the significance of the information [is forwarded herewith as enclosure 2] <u>or</u> [will be forwarded within two days]. [If document is self-explanatory and no assessment of significance is necessary, omit this paragraph.]

[e.g.] John J. Regulator, Chief
Advanced Fuel and Spent Fuel
Licensing Branch

Enclosures:
1.
2.

cc: Service List
ELD - Chief Hearing Counsel

Concurrence: Originator // Branch Chief // A/D

Signature: Cognizant A/D or Branch Chief

Transmittal: Via Board Notification Coordinator (FCAF)

Distribution: Office Director/Division Director/Dep. Dir./Board Notification Coordinator (FCAF)/A/D/Branch Chief/Originator of Proposal

Appendix 2

Sample Transmittal of Assessment of Significance

Docket No. _____

MEMORANDUM FOR: Chairman
Atomic Safety and Licensing Board
[or]
Atomic Safety and Licensing Appeal Board
[or]
U.S. Nuclear Regulatory Commission

FROM: [e.g.] John J. Regulator, Chief
Advanced Fuel and Spent Fuel Licensing Branch
Division of Fuel Cycle and Material Safety

SUBJECT: STAFF ASSESSMENT OF NEW INFORMATION FORWARDED TO BOARD [or COMMISSION] IN THE MATTER OF _____
_____ [Indicate Title of Proceeding] _____

By memorandum dated _____, the following potentially relevant and material new information was sent to the Board [or Commission] in this proceeding: [briefly identify information or document previously forwarded].

OR

The following document was sent on [date] to the Board [or Commission] in this proceeding via the Service List: [briefly identify document].

The assessment by the staff of the significance of the above information [or document] is forwarded herewith as enclosure 1.

[e.g.] John J. Regulator, Chief
Advanced Fuel and Spent Fuel
Licensing Branch

Enclosure:

cc: Service List
ELD - Chief Hearing Counsel

Concurrence: Originator // Branch Chief // A/D

Signature: Cognizant A/D or Branch Chief

Transmittal: Via Board Notification Coordinator (FCAF)

Distribution: Office Director/Division Director/Dep. Dir./Board Notification Coordinator (FCAF)/A/D/Branch/Originator of Proposal

Appendix 3

Sample Transmittal of Information to NRR

MEMORANDUM FOR: Domenic B. Vassalo
Assistant Director
for Light Water Reactors
Office of Nuclear Reactor Regulation

FROM [e.g.] John J. Regulator, Assistant Director
Fuel Cycle Safety and Licensing
Office of Nuclear Material Safety
and Safeguards

SUBJECT: NEW INFORMATION POTENTIALLY RELEVANT AND MATERIAL TO LICENSING BOARD, APPEAL BOARD, OR COMMISSION PROCEEDINGS

The attached document [or information] may be relevant and material to an NRR licensing proceeding [specify proceeding if possible] and is forwarded for your determination in accordance with the NRC Policy and Procedure for conveying New Information to Licensing Boards.

The nature of the information is as follows: [abstract or summarize the document or information].

The information is considered potentially relevant and material because [briefly state reasons].

[e.g.] John J. Regulator, Chief
Advanced Fuel and Spent Fuel
Licensing Branch

Enclosure:

Concurrence: Originator // Branch Chief // A/D

Signature: Cognizant A/D or Branch Chief

Transmittal: Via Board Notification Coordinator (FCAF)

Distribution: Office Director/Division Director/Dep. Dir./Board Notification Coordinator (FCAF)/A/D/Branch Chief/Originator of Proposal

Appendix 4

Sample Memorandum Forwarding Document
to DDC for Transmittal to Board

MEMORANDUM FOR: Steve Scott
Division of Technical Information
and Document Control

FROM: _____
Board Notification Coordinator
Office of Nuclear Material Safety and Safeguards

SUBJECT: TRANSMITTAL OF INFORMATION TO LICENSING BOARD
[or APPEAL BOARD, or COMMISSION]

Pursuant to the Commission Policy on Notification to Licensing Boards, Appeal Boards, or the Commission of new relevant and material information, please transmit the attached document to the Board[s] and Service List[s] in the following proceeding[s]:

Docket No.	Title of Proceeding
_____	_____
_____	_____
_____	_____

Enclosure:

cc: ELD - Chief Hearing Counsel