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For us, warriors are not what you think of as warriors. The warrior is not someone who fights, because no one has the right to take another's life. The warrior, for us, is one who sacrifices himself for the good of others. His task is to take care of the elderly, the defenseless, those who can not provide for themselves, and above all, the children, the future of humanity.' —Sitting Bull

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September 9, 2008

Chief, Rulemaking, Directives and Editing Branch
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-0001

Re: Report No. NUREG-1919 draft, *Generic Environmental Impact Statement for In-Situ Leach Uranium Facilities*

Dear Branch Chief:

These are the comments of the Dooda Desert Rock Committee on the draft environmental impact statement indicated above. These comments will:

1. Identify the interests of this organization in the issue;
2. Outline the scope of comments;
3. Identify issues under Presidential Executive Order No. 12898 (February 11, 1994);
4. Critique the environmental justice sections of the draft EIS;
5. Discuss general issues and principles under United Nations General Assembly Resolution No. A/61/L.67 (7 September 2007) as they relate to Indian Country in general;
6. Discuss applications of such principles in the "New Mexico Region," as identified in Figure 3.5-2, "Map Showing Outline of the Northwestern New Mexico Region and the Location of the Grants Uranium District Along the Southern Margin of the San Juan Basin;" and
7. Offer conclusions on the overall thrust of the draft EIS.

Interests of Dooda Desert Rock Committee

Dooda Desert Rock Committee is an unincorporated organization of grassroots Navajos and their supporters. It was originally organized in late 2006 as a focal point of resistance against the proposed Desert Rock Power Plant. It is a destructive mine-mouth, coal-fired power plant that, combined with two other dirty coal-fired plants in the Four Corners Area, would have severe destructive adverse impacts on the areas' health, economy, and the Navajo culture.

Members of the Committee quickly recognized that there are other threats to the Navajo People and their lands — coal mining on Black Mesa; tapping the “C” aquifer for coal slurry pipelines; the exploitation of water for industry when the People do not have water; transmitting electricity to far-away urban areas when the People do not have electricity; and the like.

The draft report is part of contemporary energy policy in that rather than deal with specific adverse environmental impacts, it seeks to clear the way in general (as with energy power corridor clearance). Impacts on individual communities and specific Indian nations should be studied separately. Dooda Desert Rock Committee joins the Navajo Nation and specific Navajo groups (and their supporters) that oppose the reopening of the uranium industry in the Grants Uranium District, and it joins the Indigenous Peoples of the world who join resist the unilateral exploitation of their lands and resources in violation of the Declaration on the Rights of Indigenous Peoples (2007).

Scope of Comments

These comments address the draft EIS as it applies throughout “Indian Country” as a whole. “Indian Country” is a term that comes from the Royal Proclamation of 1763, and it has evolved into a legalistic definition. The draft recognizes pending litigation over the term at Church Rock in the Navajo Nation and reserves the right of the NRC to determine its own jurisdiction. “Indian Country” is used in the sense of the aboriginal lands and territories of American Indians generally, and specifically to aboriginal rights to lands and land use in the Grants Uranium District.

These comments will identify environmental justice issues under Executive Order 12898 and show the weakness of this draft EIS in satisfying its requirements.

Many of these comments are based on the United Nations Resolution A/6/L.67, the Declaration on the Rights of Indigenous Peoples. While the United States is in denial on the application of the rights stated in that document, we assert them because that document states international human rights law and we claim the protection of that law.

Dooda Desert Rock Committee asserts the aboriginal rights of the Navajo residents of the “Grants Uranium District” and puts the United States on notice that Navajos may need to take recourse with various bodies of the Inter-American and United Nations human rights systems if those rights are not honored.

The conclusion is that there must be no in-situ uranium milling or milling facilities in Indian Country or in the Grants Uranium District.

Executive Order No. 12898 (February 11, 1994)

This agency, as it is with other federal agencies, must, to the greatest extent practicable, make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations in the United States. As implemented, the Executive Order requires special attention to American Indian issues, including the adverse human health impacts of in-situ leach uranium mining and other adverse impacts on the “environment.” That includes issues such as cultural impacts, sacred sites, and the Indian way of life.

Environmental Justice in the Draft EIS

American Indians have not participated in the development of environmental justice approaches in Indian Country to a great extent. Current federal environmental justice approaches are weak, and this report (as with others) repeats the same mistake. While non-Indians think there is a tradeoff of dollars for human values that is permissible, that is not the case. Discussions of Indian environmental justice most often establish Indian ethnicity in population groupings and then relate the poor economic and social data. That is the “those poor Indians” portion of the analysis. It then goes on to indicate the prospective economic benefits of the given energy plan and concludes that the money will make up for any harm.

The environmental justice portions of the draft EIS do not tell of the harm caused by rapid industrialization and boom town economies; of the influx of marginal populations whose men will rape and injure Native women;¹ or of economies that will attract Indians but leave little for them. For example, economic development is being touted for the Navajo Nation, but given the lack of housing in the Nation, its workers are leaving the reservation and taking their pay to border towns. There is little net benefit to the Navajo Nation itself.

As with other draft EIS documents, the environmental justice provisions do not address culture and tradition. Outreach into Indian Country is ineffective, and the opportunity to speak is not being taken to small communities such as Pinedale in the Navajo Nation (in the midst of uranium mining victimization).

The draft EIS does not *do* environmental justice because its authors do not know what it means in Indian Country.

¹ See AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007).

United Nations General Assembly Resolution No. A/61/L.67

The Declaration on the Rights of Indigenous Peoples is formally cited to make it clear that it is a formal declaration of rights by the United Nations General Assembly. It can now be pointed to as a source of rights because it correctly states principles of binding international customary law. The primary principle that applies here is that of free, prior and informed consent before lands or territories can be taken for development — for in-situ uranium leach mining in this instance. The principles are stated in Articles 19 (free, prior and informed consent before adopting and implementing “administrative” measure that affect Indigenous Peoples); 25 (respecting the spiritual relationship of Indigenous Peoples to the land); 26 (land use rights, including traditional ownership); and 32 (land development in general). We do not invoke Article 28 on redress, because sacred lands cannot be bought after the fact.

The American West is a national sacrifice area and it is apparent that contemporary energy policy is ignoring tribal needs. There are instances where a given tribe may wish this kind of development. That tribe may or may not reflect the feelings of its grassroots communities. However the general principle is that before in-situ leach uranium “milling” can take place, the Nuclear Regulatory Committee just have the free, prior and informed consent of the Indigenous Peoples in the given locality.

Application to the Grants Uranium District

We use the definition in Figure 3.5-2, a map of the “Grants Uranium District” because it coincides with the interior of both the Navajo Nation *Dinetah* and *Dine bi Keya*. Navajo lands are framed by four primary sacred mountains, and the mountain that is called Mount Taylor is the southern Navajo Sacred mountain. It lies in the area between Grants and edge of the map. Several of the communities named in the lower left of the map lie to the south of Mount Taylor. *Dinetah* refers to an area of settlement that is centered at approximately Huerfano Mountain (Dzilh-Na-O-Dith-Hle), while *Dine bi Keya* (“the People, the land belongs to them”)² reflects contemporary settlement patterns.

In any event the area is aboriginal Navajo land. There is an important distinction that must be made: The “legal” argument is that Navajos surrendered most of the Grants Uranium District in various treaties with the United States, and most notably the Treaty of June 1, 1868 that was concluded at Fort Sumner on the Pecos River of New Mexico. The treaty was a document of adhesion that was negotiated at gunpoint — under the guns of a military fort.

It might be argued that the Navajo Nation gave up any claim to the area in its Indian Claims Commission settlement, but that is not what we are talking about.

² See David M. Brugge, *Navajo Prehistory and History to 1850*, Figure 1 “Approximate Navajo Settlement areas,” in 10 HANDBOOK OF AMERICAN INDIANS 489, 490 (Alfonso Ortiz, ed. 1983).

The key figure that gives the example of the rights we are talking about is Grace Tsosie.³ She has consistently claimed individual aboriginal title to her land just outside Crownpoint in the New Mexico portion of the Navajo Nation. The ability to assert her right has been sustained by the Tenth Circuit Court of Appeals. The right is easy to explain.

There were up to 7,500 Navajos present when the Treaty of 1868 was negotiated. General William S. Sherman and Colonel Samuel F. Tappan negotiated with all of them on the first day of treaty negotiations. The treaty was negotiated in Navajo, Spanish and English and the oral understandings that Navajos have of the treaty are vital. While Navajos got only a small portion of their aboriginal lands in the treaty, they heard General Sherman clearly when he said — “Go home!”

A lot of Navajos were from the Grants Uranium District and the area to the east of the Mountain — Cebolleta. They simply went home and resumed life as before. General William T. Sherman visited Fort Wingate, a fort outside Gallup, New Mexico, at one point and officers told him that a lot of Navajos refused to live on reservation. Instead they chose to live in the area south and east of reservation boundaries. The treaty provided that Navajos who did not live on reservation would not get the benefits stated in the treaty. When Sherman was asked by the officers what they should do, he told them, “Do nothing.”⁴

The lands within the Grants Uranium District are aboriginal lands — they belong collectively to the Navajos in the area, separate and apart from their central government, and they belong to Navajos as individuals.

One of the contentious issues is money for land, and the HRI mining company has promised \$10 million in future pay-offs to Navajos.⁵ There are many who want that money.⁶ The big picture is that the land is not for sale. Dine Natural Law applies, and it tells us several things: First, that the earth must be respected, honored and protected because it sustains life. 1 N.N.C. § 205(A) (Fundamental Laws of the Dine). Mount Taylor, one of six sacred mountains, must be respected,

³ Pete Peterson, *Victim of “Another B.I.A. Blunder:” Individual Indian Title and The General Allotment Act* (University of New Mexico, June 28, 1999).

⁴ John L. Kessell, *General Sherman and the Navajo Treaty of 1868: A Basic and Expedient Misunderstanding*, 12(3) THE WESTERN HISTORICAL QUARTERLY 251-272 (July 1981).

⁵ Arthur Jones, *Navajo split on Uranium plan*, NATIONAL CATHOLIC REPORTER (November 19, 1999).

⁶ It is unlikely, given the nature of the mineral estate and the fractionation of allotments, that the real value to landowners will be much.

honored and protected because it is one of the foundations of the Navajo Nation. 1 N.N.C. § 205(B). Mother Earth has its own laws and it and those who live on her are entitled to the right and freedom to exist — free of the likely harm that will be caused by the revival of uranium mining. 1 N.N.C. § 205(C). The Navajos who live in the Grants Uranium District are the stewards of the land and must use the sacred gifts of language and thinking to protect it. 1 N.N.C. § 205(D). We cannot — and must not — assert dominance over the land with this kind of mining because we do not own Mother Earth and Father Sky. 1 N.N.C. § 205(F). Finally, “It is the duty and responsibility of the Dine to protect and preserve the beauty of the natural world for future generations.” 1 N.N.C. § 205(G).

We cannot sell the land. We cannot give our rights to the land. The Nuclear Regulatory Commission must get the free, prior and informed consent of the Navajo People to undertake in-situ leach mining. For the reasons indicated above, they cannot give that consent. Accordingly, Navajos have the international human right to tell the in-situ mining companies to simply go away.

Sincerely,

Elouise Brown