THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0217-21__ **SPONSOR: Mark A. Freeland**

TITLE: An Action Relating to Resources and Development Committee and Naabik'íyáti' Committee; Supporting the Eastern Navajo Diné Against Uranium Mining, and the Petition to the Inter-American Commission on Human Rights Against the United States that States the United States by its Acts and Omissions have Contaminated and Continue to Contaminate Natural Resources in the Navajo Communities of Crownpoint Chapter and Church Rock Chapter, the United States has Violated Petitioners' Human Rights and Breached its Obligations Under the American Declaration of the Rights and Duties of Man

***Date posted*: October 22, 2021 at 12:50 PM**

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0217-21

DATE: October 22, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING THE EASTERN NAVAJO DINÉ AGAINST URANIUM MINING, AND THE PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AGAINST THE UNITED STATES THAT STATES THE UNITED STATES BY ITS ACTS AND OMISSIONS HAVE CONTAMINATED AND CONTINUE TO CONTAMINATE NATURAL RESOURCES IN THE NAVAJO COMMUNITIES OF CROWNPOINT CHAPTER AND CHURCH ROCK CHAPTER, THE UNITED STATES HAS VIOLATED PETITIONERS' HUMAN RIGHTS AND BREACHED ITS OBLIGATIONS UNDER THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

PURPOSE: The purpose of this legislation to support the Eastern Navajo Diné Against Uranium Mining, and the *Petition to the Inter-American Commission on Human Rights against the United States* that states the United States by its acts and omissions have contaminated and continue to contaminate natural resources in the Navajo communities of Crownpoint Chapter and Church Rock Chapter, the United States has violated Petitioners' human rights and breached its obligations under the *American Declaration of the Rights and Duties of Man.*

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: AJohnson
Website Posting Time/Date:
Posting End Date: 10-27-21
Eligible for Action: 10-28-21

Resources & Development Committee
Thence
Naabik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL—Third Year, 2021

INTRODUCED BY

Primary Sponsor

TRACKING NO. 0217-21

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING THE EASTERN NAVAJO DINÉ AGAINST URANIUM MINING, AND THE PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AGAINST THE UNITED STATES THAT STATES THE UNITED STATES BY ITS ACTS AND OMISSIONS HAVE CONTAMINATED AND CONTINUE TO CONTAMINATE NATURAL RESOURCES IN THE NAVAJO COMMUNITIES OF CROWNPOINT CHAPTER AND CHURCH ROCK CHAPTER, THE UNITED STATES HAS VIOLATED PETITIONERS' HUMAN RIGHTS AND BREACHED ITS OBLIGATIONS UNDER THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

BE IT RESOLVED:

SECTION ONE. AUTHORITY

A. Pursuant to 2 N.N.C. §§ 164 (A)(9), 500 (C), and 501 (B)(4)(a), the Resources and Development Committee is established as a standing committee of the Navajo Nation Council with oversight of land, environmental protection and cultural resources and authority to review and recommend resolutions to the Naabik'íyáti Committee and Navajo Nation Council to accomplish or impact the Committee purpose.

B. Pursuant to 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(7), the Naabik'íyáti' Committee is established as a Navajo Nation Council standing committee with authority to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments.

SECTION TWO. FINDINGS

A. The United States began using Navajo land for uranium mining in 1944 to support the U.S. Military's Manhattan Project. Following World War II, uranium mining on Navajo lands increased due to the Cold War, and the United States Atomic Energy Commission became the sole purchaser of all U.S. mined uranium ore until 1970. The subsequent mining boom led to the creation of hundreds of mines on the Navajo Nation with the Navajo people working in those mines. [*Brugee, Doug, Timothy Benally, and Esther Yazzie, the Navajo People and Uranium Mining, Albuquerque: University of New Mexico Press, 2006]* According to the U.S. Environmental Protection Agency (EPA) approximately thirty million (30,000,000) tons of uranium ore was extracted during mining operations within the Navajo Nation from 1944 to 1986. [See *Navajo Nation: Clean Up Abandoned Uranium Mines. (2019, April 12) Retrieved July 9, 2019, from https://www.epa.gov/navajo-nation-uranium-cleanup]*

B. Once the Cold War ended and the United States no longer needed uranium ore for nuclear weapons, the uranium mines were abandoned. According to EPA there are approximately five hundred and twenty-four (524) abandoned uranium mine sites within the Navajo Nation. [See *Abandoned Uranium Mine Settlements on the Navajo Nation. (2018, April). Retrieved July 9, 2019, from https://www.epa.gov/sites/production/files/2018-05/documents/navajo_nation_settlement_fact_sheet-2018-01-19.pdf]*

C. The EPA has identified two hundred and nineteen (219) former uranium sites for clean-up and remediation efforts totaling approximately $1.7 billion. Although these sites are being address, there are another three hundred and five (305) uranium sites that have not

been address. The Navajo Nation estimates that it will cost an additional $3 to $4 billion to address the remaining three hundred and five (305) sites, which does not include the cost of long-term monitoring and maintenance of areas. *Id.*

D. Within the Navajo Nation, there are also four (4) Uranium Mill Tailings Remediation Control Act sites. These sites exist because of the uranium mill processing sites that were decommissioned by the United States. Usually, the radioactive mill tailings were merely capped with clay and rock and left at the former mill sites. As a result, the groundwater underneath these sites has been severely impacted with hazardous waste contamination. These sites are located near Mexican Hat, Utah; Shiprock, New Mexico; Tuba City, Arizona; and Monument Valley, Arizona. *Id.*

E. Within the Navajo Nation, there a well-known uranium mill processing site located immediately adjacent to the Navajo Nation in Church Rock, New Mexico that has caused severe heartache for the Navajo people living in that area. On July 16, 1979, the largest hazardous waste spill in the history of the United States occurred when the earthen dam to the pond holding the processing mill' s uranium tailings was breached. The spill, releasing over one thousand (1,000) tons of radioactive mill waste and ninety-three million (93,000,000) gallons of acidic radioactive tailings solution into the Puerco River, traveled downstream through the Navajo Nation, to the community of Sanders, AZ, located nearly sixty (60) miles west of the spill site. The effects of this spill are still being felt today and may be linked to the discovery of elevated levels of uranium in the local school's drinking water. The cleanup and management of these sites is currently being performed and monitored by the United States Department of Energy Office of Legacy Management at an annual cost of approximately of $4 million. [See *Community Involvement Plan. (2016). Retrieved July 9, 2019, from https://www.epa.gov/sites/production/files/2017-11/documents/cip_northeast_ Church Rock_kerr-mcgee_quivira.pdf]*

F. The United States continues to avoid or delay its responsibility to clean up uranium contamination within the Navajo Nation. Instead the United States through the United States Nuclear Regulatory Commission devotes resources to approving new uranium develop projects within the Navajo Nation.

G. In 1998, the United States Nuclear Regulatory Commission (NRC) approved license SUA-1580 that allows Hydro Resources, Inc. (now NuFuels, Inc.) to mine uranium on four sites within Crownpoint Chapter and Church Rock Chapter – collectively known as the Crownpoint Uranium Project using in-situ leaching method of uranium recovery. In its undisturbed state, uranium remains immobile in a water aquifer and confined to small discreet areas; uranium bearing aquifer are commonly safely used drinking water sources.

H. In 1998, the NRC granted a source and byproduct materials license to Hydro Resources, Inc. (HRI) to conduct uranium mining, using in situ leaching technology, at four (4) sites in the Navajo communities of Church Rock and Crownpoint in northwestern New Mexico. By granting a uranium mining license, the in-situ leaching process will pollute Navajo community aquifers with uranium and other heavy metals and cause contamination to air, soil, and other natural resources on lands traditionally used and occupied by the Navajo people.

I. In-situ leaching mining recovers uranium by injecting chemicals into an aquifer to react with the uranium deposits, causing uranium and other toxic heavy metals to spread throughout the aquifer. During in-situ leaching mining operations, highly contaminated water regularly migrates beyond the mining site.

J. Once extracted, transporting the uranium yellowcake then creates a risk to contamination during transportation. HRI/NuFuels seeks to mine uranium in the Westwater Canyon aquifer, which contains high quality water in Church Rock Chapter and is the sole drinking water aquifer for Crownpoint.

K. At the time the NRC approved the HRI/NuFuels license, no in-situ leaching uranium mine had ever restored a mined aquifer to pre-mining quality

L. Since 1998, when the NRC approved SUA-1580, no aquifer with a commercial in-situ leaching mine has been restored to pre-mining quality.

M. Widespread radioactive and heavy metal contamination from in-situ leaching mining makes aquifer unsuitable for drinking water sources, agricultural use or cultural purposes. In-situ leaching uranium mines also cause radioactive air emissions, leaks and spills of radioactive and toxic liquids and displacement of individuals and

communities. In-situ leaching uranium mining deleterious effects last for thousands of years, putting future generations of the Navajo people at risk.

N. In 1994, a grassroot nonprofit organization was formed called "Eastern Navajo Diné Against Uranium Mining" to oppose the United States, NRC and the in-situ leaching uranium mining.

O. On May 13, 2011, the Eastern Navajo Diné Against Uranium Mining, on behalf of its members, and Mitchell Capitan, Rita Capitan, Christine Smith, Keithlynn Smith, Kenneth Smith, and Larry King, on their own behalf, submitted a *Petition to the Inter-American Commission on Human Rights against the United States,* attached hereto as **Exhibit A**. The Petition states the United States by its acts and omissions have contaminated and continue to contaminate natural resources in the Navajo communities of Crownpoint Chapter and Church Rock Chapter, the United States has violated Petitioners' human rights and breached its obligations under the *American Declaration of the Rights and Duties of Man.*

P. The Petition states that despite the ongoing public health and environmental crises that have resulted from the United States' failure to reasonably regulate the uranium mining and milling industry in the past, the United States continues to license uranium operations that it acknowledges will contaminate natural resources within the Navajo Nation, the State has violated the following:

1. Article 1 (Right to Life),
2. Article 3 (Right to Religious Freedom),
3. Article 11 (Right to Health),
4. Article 13 (Right to Culture)
5. Article 23 (Right to Property)

of the *American Declaration of the Rights and Duties of Man.* The Petition was submitted pursuant to Article 23 of the *Rules of Procedure for the Inter-American Commission on Human Rights.*

Q. In the Petition, the Petitioners seek remedies for the violation of their human rights and respectfully request that the Inter-American Commission on Human Rights, pursuant to

human rights laws and standards, recommend to the United States that it take the following measures:

1. The NRC is currently reviewing HRI's materials license for renewal. The NRC should stay consideration of renewing HRI's materials license until such time as:
   (a) HRI has remediated the radioactive surface contamination on Section 17; and
   (b) the United States has taken significant and meaningful steps to remediate the abandoned uranium mines within the boundaries of the Church Rock Chapter and to address the groundwater contamination from the UNC uranium mill; and
   (c) the United States has taken significant and meaningful steps to determine and record existing environmental conditions, including existing regional groundwater, surface water, soil and air conditions, and establish existing public health conditions within Church Rock and Crownpoint Chapters.
2. If, by the time the Commission has reviewed this Petition, the NRC has completed renewal review of HRI's materials license, recommend that the NRC impose a license condition on HRI's license prohibiting commencement of mining activities until the requirements of 1(a), (b), and (c), above, have been met;
3. That the NRC require HRI to submit comprehensive baseline groundwater quality and other hydrological, geological, and geochemical data, subject to a public hearing and in accordance with internationally accepted sampling methods and statistical analyses, by license amendment if necessary, before HRI is allowed to conduct any mining operations;
4. That the NRC rescind HRI's license for the Church Rock Section 17 and Unit 1 sites which are subject to the Navajo Nation's ban on uranium mining and processing;

5. That the NRC or other appropriate administrative agency prohibit forced removal of Petitioner Larry King or his family from Church Rock Section or forced disruption of his subsistence grazing practices or cultural activities;
6. That if HRI is permitted to commence mining operations as planned, the State provide or require HRI to provide adequate financial and non-financial redress to the Petitioners, the affected communities, and the Navajo Nation, including, as appropriate, providing potable water supplies in perpetuity;
7. That the NRC not issue any further source and byproduct materials licenses within the boundaries of the Church Rock and Crownpoint Chapters until comprehensive environmental and public health surveys and environmental remediation have been accomplished; and
8. The Commission hold a Special Hearing on the issues presented in this Petition.

R. In July 2021, the Eastern Navajo Diné Against Uranium Mining was informed that the Inter-American Commission on Human Rights has decided to hear the case, attached hereto as **Exhibit B**.

S. On June 5, 2021, the Eastern Navajo Agency Council by Resolution ENAC-08/2021-044 supported the Eastern Navajo Diné Against Uranium Mining allegations of human rights violations against the United States Nuclear Regulatory Commission, attached hereto as **Exhibit C**.

T. It is in the best interest of the Navajo Nation, Navajo people, Church Rock Chapter, Crownpoint Chapter, and surrounding communities and Chapters that the Navajo Nation support the Petition filed against the United States for violations of human rights for continued uranium development, and the in-situ leaching uranium mining operations within the Navajo Nation.

SECTION THREE. APPROVAL

The Navajo Nation hereby supports the Eastern Navajo Diné Against Uranium Mining, and the *Petition to the Inter-American Commission on Human Rights against the United States* that states the United States by its acts and omissions have contaminated and continue to contaminate natural resources in the Navajo communities of Crownpoint Chapter and

Church Rock Chapter, the United States has violated Petitioners' human rights and breached its obligations under the *American Declaration of the Rights and Duties of Man.*

EXHIBIT
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New Mexico Environmental Law Center
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For Immediate Release
July 19, 2021

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International Human Rights Body to Hear Case Alleging U.S. Violated Human Rights of Navajo Communities When Licensing Uranium Mine in Church Rock & Crownpoint, New Mexico

Crownpoint and Church Rock, NM (Navajo Nation)—Eastern Navajo Diné Against Uranium Mining (ENDAUM) announced today that their petition to the Inter-American Commision on Human Rights against the United States has been declared "admissible." In admitting all ENDAUM's allegations, the Commission stated that: "if proven, the facts of the petition could characterize violations of the right protected in Articles I (life and personal security) and XI (preservation of health and well-being, XIII (benefits of culture), XVIII (fair trial) and XXIII (property) of the American Declaration." The IACHR Report on Admissibility can be found at this link: http://www.oas.org/en/iachr/decisions/2021/USAD654-11EN.pdf

The petition alleges that the United States, "by its acts and omissions that have contaminated and will continue to contaminate natural resources in the Diné communities of Crownpoint and Church Rock... has violated Petitioners' human rights and breached its obligations under the American Declaration of the Rights and Duties of Man." The petition can be accessed at this link https://nmelc.org/wp-content/uploads/2021/07/endaum_final_petition_with_figures-1.pdf.

The petition was filed by ENDAUM, a grassroots nonprofit organization formed in 1994 in response to concerns in the Crownpoint and Church Rock communities about the proposed in situ leach (ISL) uranium mines by Hydro Resources, Inc. (HRI), now owned by Canadian mining company Laramide Resources, Inc.. The NRC granted a source and byproduct materials license to HRI (now Laramide) to conduct uranium mining using ISL technology at four sites in the Navajo communities of Church Rock and Crownpoint in northwestern New Mexico.

The Commission's decision to hear the case, ENDAUM et al. v. United States of America, is only the second time that the human rights body, the autonomous organ of the Organization of

American States (OAS) based in Washington, D.C., has found admissible a case of environmental justice against the United States. The first case was Mossville Environmental Action Now's petition for failure to address continuing environmental racism in Louisiana's "Cancer Alley."

"The petition marks the first time the NRC has been forced to account for its decades of human rights violations," said attorney Eric Jantz, of the New Mexico Environmental Law Center.

The proposed uranium mining project threatens life, health, water, cultural practices and property. Larry King, a resident of Church Rock, is a former uranium miner and ENDAUM member. Mr. King and his family live on one of the proposed mine sites; if the mining proceeds as the NRC has licensed it, Mr. King, his family and his livestock will be forcibly removed from his land for the duration of the mining operation.

The NRC's decision to license HRI/Laramide's project is particularly egregious because Church Rock has already suffered disproportionate damage from historic uranium development. Church Rock is a low-income community of color and also the site of the largest nuclear disaster in U.S. history. On July 16, 1979 the tailings dam at the United Nuclear Corporation uranium mill broke and released 93 million gallons of radioactive liquid into the Puerco River, a river which runs through Church Rock. The flood of radioactive and toxic liquid killed livestock and destroyed crops. It also left a wake of radioactive waste and heavy metals in the Puerco River's bed and banks that has yet to be remediated.

The Navajo Nation hosts 520 abandoned uranium mine sites and three uranium mill sites that are Superfund sites. These sites are the source of contamination for tens of millions of gallons of groundwater and countless acres of land.

There are 13 sites within 6 miles of the proposed mine in Church Rock where uranium was mined and processed, all of which still have radiation levels much higher than undeveloped areas. The proposed site is above the Westwater Canyon Aquifer that is used by 15,000 people. Hundreds of people live within 5 miles of HRI's Church Rock sites, and many are exposed to radon up to 42 times higher than background. The proposed sites in Crownpoint are located extremely close to schools, municipal drinking water supply wells, and homes.

According to recent research, residents living within half a mile of abandoned uranium mines experience a significantly increased risk for kidney disease, diabetes, hypertension, auto-immune disease.

The ISL mine also threatens the Diné's distinct cultural and spiritual ties to the land and environment within their traditional homeland. Contamination from the HRI/Laramide mine would render the land unsuitable for plant gathering, food cultivation, and ceremonial purposes.

"This is a major step bringing forth accountability of the federal government in terms of their policies toward Indigenous People," said Jonathan Perry, ENDAUM Director. "We, the Diné, will continue to stand our ground against any uranium mining activities on or near the Navajo Nation."

"The priority of the U.S. government should always be adequately addressing the 523 clustered contaminated sites on the Navajo Nation, not licensing any new extraction projects," said Perry.

"Especially any ISL mining proposals that threaten the well-being of our people, aquifers, and homelands," Perry added.

The ISL industry has a poor track record of spills and leaks that even the NRC acknowledges. The industry also has a very poor record of remediating groundwater contaminated by the ISL process. In fact, the US Geological Survey said, after 30 years of ISL mining in Texas, that no ISL uranium mine restored groundwater to pre-mining conditions. NRC admits that "restoration to background water quality ...has proven to be not practically achievable."

Written arguments are due in August, with a possible 60-day extension, and then a hearing in Washington, D.C. will be scheduled likely in the Spring of 2022.

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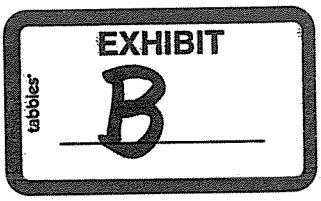

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES

PETITION

by

EASTERN NAVAJO DINÉ AGAINST URANIUM MINING and
MITCHELL CAPITAN, RITA CAPITAN, CHRISTINE SMITH, KEITHLYNN SMITH,
KENNETH SMITH and LARRY KING on their own behalf

against

THE UNITED STATES OF AMERICA

I. INTRODUCTION

Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), on behalf of its members, and Mitchell Capitan, Rita Capitan, Christine Smith, Keithlynn Smith, Kenneth Smith, and Larry King, on their own behalf, hereby submit this petition to the Inter-American Commission on Human Rights ("IACHR") against the United States ("the State"). By its acts and omissions that have contaminated and will continue to contaminate natural resources in the Diné communities of Crownpoint and Church Rock, the State has violated Petitioners' human rights and breached its obligations under the American Declaration of the Rights and Duties of Man.

In Diné[1] Indian Country in northwestern New Mexico, suffering is measured in milligrams per liter, millirems, and picocuries. These are the units that measure radiation exposures for the residents who live near the proposed *in situ* leach ("ISL" or "solution") uranium mines that have been licensed by the State through its constituent administrative agency the United States Nuclear Regulatory Commission ("NRC"), despite an ongoing sixty-year legacy of environmental contamination and public health disasters from past uranium mining.

The Navajo Nation hosts 520 abandoned uranium mine sites and three uranium mill sites that are Superfund[2] sites.[3] These sites are the source of contamination for tens of millions of gallons of groundwater and countless acres of land.

These sites are also the cause of significant illnesses and death in the indigenous communities located nearby. Exposure to uranium and its decay products causes an array of

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[1] The indigenous people of the Navajo Nation refer to themselves as Diné.

[2] "Superfund" is the fund created by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 41 U.S.C. § 9601 *et. seq*. It is also the name given to the U.S. Environmental Protection Agency ("EPA") program that oversees abandoned hazardous waste sites. *See*, http://www.epa.gov/superfund/about.htm.

[3] United States Environmental Protection Agency ("EPA"), Abandoned Uranium Mines on the Navajo Nation, http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/ ViewByEPAID/NNN000906087?OpenDocument#descr.

adverse health effects, from kidney disease to birth defects to cancer. In New Mexico, a disproportionate number of unremediated uranium mine sites are located on lands traditionally used and occupied by the Navajo. Additionally, a disproportionate amount of pollution from uranium mill sites occurs in Navajo communities. Consequently, the Navajo bear a disproportionate number of health problems that are a direct result of the State's past and ongoing acts and omissions.

Despite the ongoing public health and environmental crises that have resulted from the State's failure to reasonably regulate the uranium mining and milling industry in the past, the State continues to license uranium operations that it acknowledges will contaminate natural resources within the Navajo Nation. In 1998, the NRC granted a source and byproduct materials license to Hydro Resources, Inc. ("HRI") to conduct uranium mining, using *in situ* leach technology, at four sites in the Navajo communities of Church Rock and Crownpoint in northwestern New Mexico.

By granting a uranium mining license it concedes will pollute Navajo community aquifers with uranium and other heavy metals and cause contamination to air, soil, and other natural resources on lands traditionally used and occupied by the Diné, the State has violated Articles 1 (Right to Life), 3 (Right to Religious Freedom), 11 (Right to Health), 13 (Right to Culture) 23 (Right to Property) of the American Declaration of the Rights and Duties of Man ("Declaration"). The Petition is submitted pursuant to Article 23 of the Rules of Procedure for the Inter-American Commission on Human Rights. Petitioners do not require their identities to remain confidential. This complaint has not been submitted to any other international settlement proceeding.

II. COMPETENCY

ENDAUM is competent to bring this Petition on behalf of its members, including the individual Petitioners. The Inter-American Commission's Rules of Procedure, Article 23 provides that "any ... nongovernmental entity legally recognized in one or more of the Member States of the OAS ... [may] submit petitions to the Commission ... on behalf of third persons ...". ENDAUM is a non-profit corporation incorporated and organized under the laws of the Navajo Nation and is tax-exempt under § 501(c)(3) of the Federal Tax Code of the United States, 26 U.S.C. § 501(c)(3). Therefore, ENDAUM is legally recognized by the United States of America.

The Inter-American Commission is likewise competent to review this Petition[4]. The Inter-American Commission has stated:

> While the majority of the OAS Member States are also Parties to the American Convention on Human Rights, in the case of those States . . . that have yet to ratify that treaty, the OAS Charter and the American Declaration provide the source of legal obligation.[5]

Furthermore, in its recent decision regarding the admissibility of Mossville Environmental Action Now's Petition alleging that the United States breached its obligations under the American Declaration for failure to address continuing environmental racism in Louisiana, the IACHR found:

> [T]he Inter-American Commission finds that it is competent *ratione personae* to analyze under the American Declaration the claims raised in the petition.... The State is bound to respect the provisions of the American Declaration and the IACHR is competent to receive petitions alleging violations of that instrument by the State by virtue of its ratification of the OAS Charter on June 19, 1951 and in

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[4] Statute of the Inter-American Commission on Human Rights, Articles 1, 2(b), 18 and 20, O.A.S Res. 447 (IX-0/79).

[5] *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., ¶ 30 (2000) (citations omitted).

conformity with Article 20 of the IACHR's Statute and Article 52 of its Rules of Procedure.[6]

For the same reasons, the Inter-American Commission is competent to review this Petition.

III. TIMELINESS AND EXHAUSTION OF DOMESTIC REMEDIES

Petitioners have exhausted their domestic remedies and submit this Petition within the Statute of Limitations provided by Article 32 of the Commission's Rules of Procedure.[7] On February 15, 1995, Petitioners ENDAUM and its individual members requested to intervene in a proceeding before the NRC to challenge the validity of the license granted by the State to HRI. After eleven years of litigation before the State's adjudicatory administrative bodies, the NRC made the last in a series of decisions upholding HRI's license. Petitioners then requested that the United States Court of Appeals for the Tenth Circuit[8] review the NRC's decision. A panel of three Federal judges declined to review the NRC's decision.[9] Petitioners subsequently petitioned the United States Supreme Court to review the NRC decision, but that request was likewise denied. [10] There are no further domestic legal processes available to Petitioners to challenge the NRC license.[11] Petitioners file this Petition within six months of the November 15, 2010 ruling of the Supreme Court denying Petitioners' request for review the NRC decision.

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[6] Report No. 43/10, Admissibility, *Mossville Environmental Action Now v. United States* (March 17, 2010).

[7] Article 32(1), Rules of Procedure for the Inter-American Commission on Human Rights.

[8] ENDAUM sought review under the Hobbs Act, 28 U.S.C § 2342(4).

[9] *Morris, et. al. v. U.S. Nuclear Regulatory Commission*, 598 F.3d 677 (10th Cir., 2010) (Lucero, J., dissenting).

[10] *Morris, et. al. v. United States Nuclear Regulatory Commission*, 131 S.Ct. 602 (Nov. 15, 2010).

[11] In addition to the NRC license, HRI must also receive an aquifer exemption, or the state equivalent, under the Federal Safe Drinking Water Act, 42 U.S.C § 300f et. *seq*. HRI received the necessary permit in 1989, which is still valid. A copy of the letter from the United States Environmental Protection Agency ("EPA") approving the state of New Mexico's permit issued to HRI under the Safe Drinking Water Act is attached hereto as Addendum 1.

IV. DESCRIPTION OF PETITIONERS

Petitioner ENDAUM was formed by Petitioners Mitchell and Rita Capitan in 1994 in response to concerns in the Crownpoint and Church Rock communities about the proposed HRI mines. ENDAUM represents community members in Crownpoint and Church Rock.

Petitioner Mitchell W. Capitan is a member of the Navajo Nation and resides in Crownpoint in the Eastern Navajo Agency. Mr. Capitan also owns land near the proposed Unit 1 mine site. Mr. Capitan is fluent in Navajo and engages in traditional cultural practices. Mr. Capitan is the former President of Crownpoint Chapter[12] of the Navajo Nation. Mr. Capitan is currently a manager at the Navajo Tribal Utility Authority[13] ("NTUA").

In the late 1970s and early 1980s, Mr. Capitan worked at an ISL mine operated by Mobil Oil and known as the Section 9 Pilot Project. During his employment as a lab technician, Mr. Capitan was responsible for compiling groundwater restoration data for the operator. Mr. Capitan knew that Mobil was unable to restore groundwater at the Section 9 Pilot Project and is concerned that HRI will likewise be unable to restore groundwater at its mines to pre-mining conditions once its mining has contaminated the local aquifer. Mr. Capitan is currently a member of ENDAUM's Board of Directors.

Petitioner Rita Capitan is a member of the Navajo Nation and resides in Crownpoint. Mrs. Capitan is fluent in Navajo and engages in traditional cultural practices. She currently works as an administrator at the local elementary school and is the Vice President of the Crownpoint Chapter of the Navajo Nation. Mrs. Capitan is currently an ENDAUM member.

Petitioner Christine R. Smith is a member of the Navajo Nation, has resided the past 18

[12] A Chapter is a subdivision of Navajo tribal government, roughly equivalent to a county or municipality.

[13] NTUA is the tribally owned and operated utility. *See*, http://www.ntua.com/aboutus.html.

years approximately 300 feet (91.4 m) from HRI's processing plant fence line and within one quarter mile (400 m) from the processing plant itself. Ms. Smith is currently an ENDAUM member. Ms. Smith is employed with Crownpoint Elementary School as a first grade teacher and has many family members who reside in Crownpoint.

Petitioner Keithlynn Smith is a member of the Navajo Nation. Ms. Smith is 21 years old and the daughter of Christine Smith. She is currently a student at Northern Arizona University. Ms. Smith's permanent residence is with her mother, approximately one quarter mile from the HRI processing plant. During the summer months Ms. Smith returns to her home in Crownpoint, often working with the Navajo Nation.

Petitioner Kenneth Smith is 18 years old and a member of the Navajo Nation. Mr. Smith currently attends Crownpoint High School and resides with his family approximately one quarter mile from the HRI processing plant. Mr. Smith is currently seeking to enroll in Ft. Lewis College, in Durango, Colorado, but intends to return to his family residence during breaks and to seek summer employment with the Navajo Nation in Crownpoint.

Petitioner Larry J. King is a member of the Navajo Nation and resides in Church Rock in the Eastern Navajo Agency. Mr. King speaks fluent Navajo and engages in traditional cultural practices. Mr. King is employed with the Federal Public Health Service. Mr. King formerly worked as a uranium miner in the Old Church Rock mine near his current residence. Mr. King suffers from various illnesses he attributes to his time as a miner. Mr. King is currently a member of ENDAUM's Board of Directors.

For the purposes of this petition and all related proceedings, the legal representative of ENDAUM and the individual Petitioners is the New Mexico Environmental Law Center ("NMELC"), a non-profit legal organization incorporated under the laws of New Mexico. The

NMELC is located at 1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505. The Petitioners' counsel of record, to whom all notices and correspondence should be sent, is Eric Jantz, Staff Attorney, New Mexico Environmental Law Center. Mr. Jantz is an attorney licensed to practice law in the State of New Mexico and the Navajo Nation.

V. BACKGROUND

A. Description of the Affected Communities and Proposed Project

1. *History of the Diné Territory*

Both the Crownpoint and Church Rock communities lie within the area of northwestern New Mexico traditionally used and occupied by the Diné. According to Navajo cosmology, the Diné emerged from a series of worlds into the current world.[14] When First Man and First Woman emerged, they formed the four sacred mountains with soil from the previous world.[15] These mountains – Blanca Peak (*Sis Najiní*), Colorado to the east, Mt. Taylor (*Tsoodził*), New Mexico to the south, Hesperus Peak (*Dibé Nitsaa*), Colorado to the north and the San Francisco Peaks (*Dook'o'oosłííd*), Arizona, to the west – form the boundaries of the Diné homeland or *Diné bikeyah*.[16] The eastern part of the traditional Diné territory - the area in northwestern New Mexico - played an important part in Diné culture. This area is considered the cradle of Diné civilization and the birthplace of several important Diné deities.[17]

Archeological records confirm Diné use and occupancy of the area since at least 1000 to 1500 C.E.[18] Beginning in the Sixteenth Century, encroaching European colonists from Spain

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[14] Griffin-Pierce, Trudy, *Native Peoples of the Southwest* at 311, University of New Mexico Press (2000).

[15] *Id.*

[16] Iverson, Peter, *Diné: A History of the Navajos* at 10-11, University of New Mexico Press (2002).

[17] *Id.* at 20.

[18] *Native Peoples of the Southwest* at 311-312.

and the United States regularly came into conflict with the Diné. After years of struggle, the Diné eventually acceded to terms of peace with the United States. Initially, the Diné were forced from their homeland to Fort Sumner, hundreds of miles to the south and east.[19] This forced relocation is known as the "Long Walk", but was actually a series of forced relocations between 1863 and 1866. In 1868, the Diné were finally allowed to return to part of their traditional territory by virtue of a peace treaty with the United States. The original "reservation" created by this treaty encompassed parts of New Mexico and Arizona.[20] The Navajo Nation reservation was subsequently expanded by a series of Executive Orders and Congressional Acts to its present day boundaries.[21]

Church Rock and Crownpoint are located in the eastern part of the area traditionally used and occupied by the Navajo in what is now called the Eastern Navajo Agency or Eastern Agency. The Eastern Agency was created by an Executive Order in 1907 in response to resource conflicts between the Diné and white and Mexican stockmen.[22] The Eastern Agency was to be an extension of the Navajo reservation in order to protect Diné sheepherders from white and Mexican settlers.[23] However, the Eastern Agency lands were quickly restored to Federal ownership by virtue of Executive Orders issued in 1908 and 1911.[24] Restoring the Eastern Agency to Federal ownership opened those lands up for colonizing by way of the General Allotment Act of 1887.

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[19] *Diné: A History of the Navajos* at 51-52.

[20] *Id.* at 72.

[21] *Id.*

[22] *Pittsburg & Midway Coal Co. v. Yazzie*, 909 F.2d 1387, 1390 - 1391 (10th Cir. 1990).

[23] *Id.*

[24] *Id.* at 1392-1393.

The General Allotment Act was passed by the United States Congress in order to open Indian territories to European settlement and resource exploitation.[25] Parcels of land were "allotted" to individual Indians, with the "surplus" land being sold to non-Indians. After twenty-five years, individual Indians could sell their allotments. Subsequent legislation reduced this period of time.[26] Economic pressure and byzantine inheritance requirements often resulted in an allotment being sold, broken up, or otherwise divested from Indian ownership.[27] As a result, the Eastern Agency is now a "crazy-quilt" or "checkerboard" of legal land statuses, where a parcel of privately owned land can be surrounded by Navajo reservation land, Federal public land, or individual Navajo allotments.[28] This "crazy-quilt" of legal jurisdictions has also made it more difficult for the Navajo Nation to protect traditional resources in the Eastern Agency. Figure 1 is a map of the current boundaries of the Navajo Nation and the location of Church Rock and Crownpoint. Of HRI's four proposed mine sites, two are within Navajo Indian Country and therefore subject to Navajo Nation's jurisdiction regulatory authority. Notwithstanding the varying degrees of protection afforded these lands by the federal law of the United States, the Eastern Agency is Navajo territory that has been traditionally used and occupied by the Diné for centuries.

2. *The Church Rock Community*

The license issued by the State allows HRI to conduct ISL mining at four sites in the Diné villages of Crownpoint and Church Rock. The two sites in Church Rock – called "Section 8" and "Section 17" – will be mined first. The two sites in the Crownpoint Chapter – called the

[25] *Diné: A History of the Navajos* at 94.

[26] *Id.*

[27] *Id.* at 94-95.

[28] *Id.*

"Crownpoint" and "Unit 1" sites – will be mined later. The uranium slurry generated by the mining process will be processed at a central processing plant in Crownpoint.

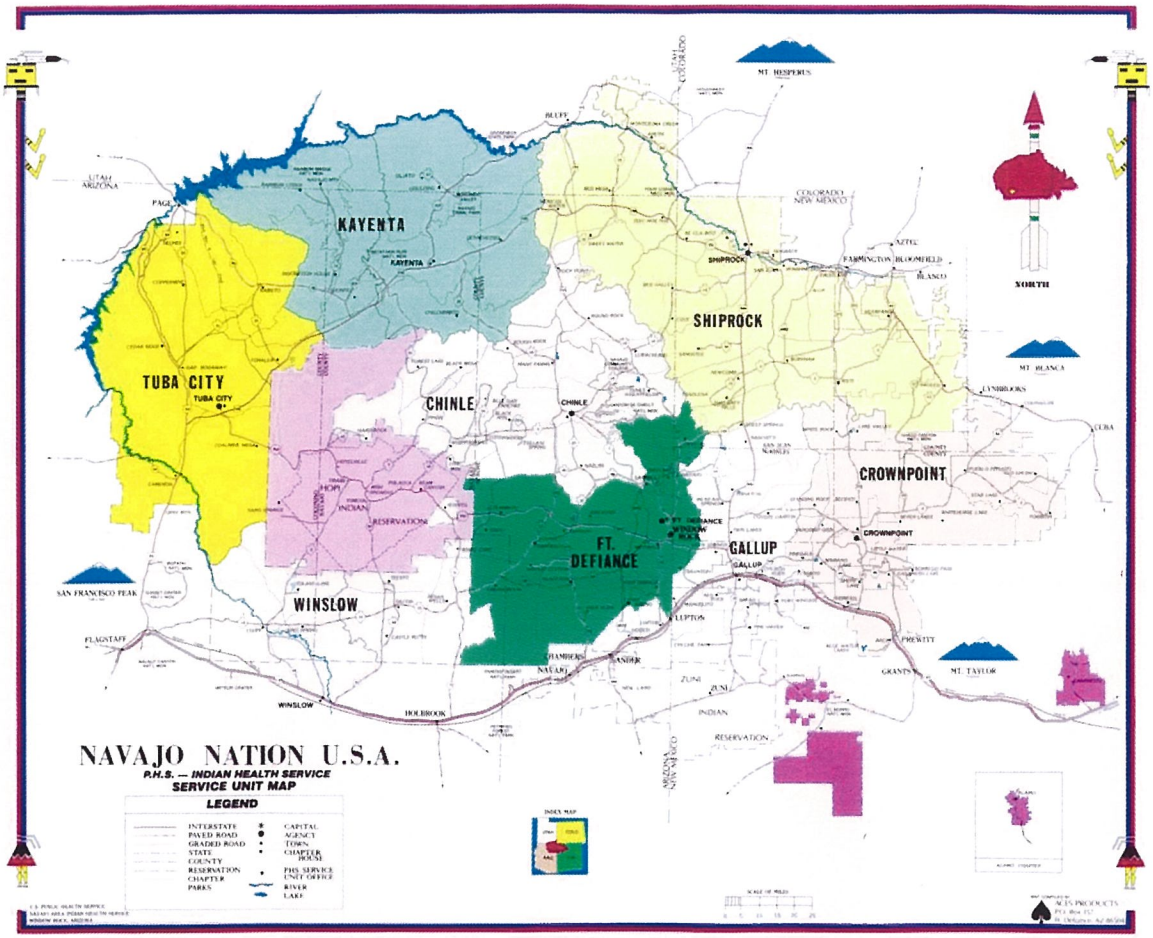

Figure 1: Map of the current boundaries of the Navajo Nation

The village of Church Rock is located in the Church Rock Chapter in northwestern New Mexico about five miles east of Gallup. Like most of the areas on the Colorado Plateau, Church Rock is arid, receiving an average of 10.2 inches (26 cm) of precipitation a year.[29] Church Rock

[29] NUREG 1508, *Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico* at 3-1 (Feb. 1997).

is rural and isolated.[30] Most of Church Rock's residents are Diné.[31] Many of Church Rock's residents engage in subsistence agriculture and gather medicinal and culturally significant plants from the land.[32] As of 1999, the percentage of families in the Church Rock Chapter living in poverty was 42.9%.[33] Based on a survey of Church Rock residents near the HRI mines sites conducted by Dr. Bullard in 1999, approximately 48% had no running water in their homes and 96% had no telephone service in their homes.[34]

Additionally, Church Rock is the site of the largest nuclear disaster in U.S. history. On July 16, 1979, the tailings dam at the United Nuclear Corporation uranium mill broke and released 93 million gallons of radioactive liquid into the Rio Puerco, a river which runs through Church Rock. The flood of radioactive and toxic liquid killed livestock and destroyed crops. It also left a wake of radioactive waste and heavy metals in the Rio Puerco's bed and banks that has yet to be remediated.

3. *The Church Rock Mine Sites*

HRI's Church Rock mine sites each lie within territory traditionally used and occupied by the Diné. HRI's Section 8 licensed area is 164 acres of private land surrounded by land held in trust for the Navajo Nation and public land used by Diné residents for grazing and agricultural

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[30] Testimony of Robert D. Bullard, attached as Exhibit 1 to Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to Environmental Justice Issues at 16, 18 (Feb. 17, 1999) ("Bullard Testimony").

[31] *Id.* at 17; *see also*, Church Rock, Selected Characteristics from Census 2000, available at http://churchrock.nndes.org/cms /kunde/rts/churchrocknndesorg/docs/429390660-09-28-2004-10-58-27k.pdf.

[32] Bullard Testimony at 18.

[33] Church Rock, Selected Characteristics from Census 2000.

[34] Bullard Testimony at 21.

purposes.[35] While Section 8 is uninhabited, it is directly adjacent to Section 17, described below, where Petitioner Larry King and his family reside.

HRI's Section 17 licensed area at Church Rock is located on land held in trust by the U.S. Government for the Navajo Nation and leased by the Bureau of Indian Affairs to local residents who live and graze their livestock there. Three families live on Section 17 inside the licensed area, and approximately 850 people live within five miles of the Section 8 and Section 17 mining sites. Under the terms of the license issued by the State through the NRC, HRI may forcibly remove individuals and families from Section 17 or restrict grazing, agriculture, and cultural activities such as plant gathering during mining operations pursuant to the license issued by the State.[36]

HRI's licensed area on Section 17 includes parts of the abandoned Old Church Rock Mine, an underground uranium mine that operated in the early 1960s and from 1977 to 1983 before the land was purchased by HRI in the early 1990s. Although some of the old mine waste has been removed, the surface of the Section 17 portion of HRI's Church Rock licensed area remains contaminated by "dust and rocks apparently lost from trucks hauling the ore from the site, or possibly from excavated rock used to build the road."[37] The mine waste at HRI's Church Rock site emits gamma radiation, which emanates from uranium-decay chain radionuclides, such as radium. Near the Old Church Rock mine, HRI measured elevated radon levels that were more

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[35] *See*, *Hydro Resources, Inc. v. United States Environmental Protection Agency*, 608 F.3d 1131, 1136-1137 (10th Cir. 2010).

[36] Affidavit of Mr. Mark S. Pelizza at 19, ¶¶ 85-87, attached as Exhibit A to Hydro Resources, Inc.'s Response in Opposition to Intervenors' Written Presentation Regarding Air Emissions (July 29, 2005). Mr. Pelizza, an executive with HRI, specifically stated: "HRI will control the Sec. 17 well fields by a fence and has full discretion where this fence will be placed. ... Mr. King would be restricted from access as any other member of the public. HRI's surface use agreement allows unlimited use of the surface for mineral production including fencing to restrict any portion of Section 17."

[37] *See*, *In the Matter of Hydro Resources, Inc.*, CLI-06-14, 63 NRC 510, 514 (2006).

than ten times higher than radon levels at Crownpoint, where no mining had occurred, suggesting that elevated radiation levels are due to unreclaimed mine waste. HRI has also recorded gamma radiation emissions near the Old Church Rock mine that were seventeen to twenty-nine times higher than "typical" gamma radiation levels for the area. In 2003, more than 20 years after the Old Church Rock Mine closed, consultants to the Church Rock Chapter measured high levels of gamma radiation on Section 17 in the area around the Old Church Rock Mine.[38]

The licensed portions of Church Rock Section 8 and Section 17 are underlain by the Dakota Sandstone and Westwater Canyon aquifers, both of which provide drinking water for Diné residents throughout the Eastern Navajo Agency. Despite significant contamination from past uranium mining and milling, substantial amounts of good quality groundwater remain in the Church Rock area. According to the Final Environmental Impact Statement ("FEIS") the NRC prepared for the proposed ISL mines, current water quality in the Dakota Sandstone and Westwater Canyon aquifers at Church Rock Sections 8 and Section 17 is "good and meets New Mexico drinking water quality standards."[39]

Although there are no drinking water wells within the boundaries of the licensed Church Rock mine sites, there are many such wells throughout the surrounding area that draw upon the same aquifers that underlie the Church Rock sites. During the proceedings before the NRC, a staff member of the Navajo Nation Department of Water Resources testified on Petitioners' behalf that the Westwater Canyon Aquifer alone is used by more than 13,000 people for drinking

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[38] *See,* Declaration of Melinda Ronca-Battista, ¶¶ 21-27 (June 10, 2005) ("Ronca-Battista Declaration"), attached as Exhibit K to ENDAUM's Presentation in Opposition to Hydro Resources, Inc.'s Materials License Application with Respect to Radiological Air Emissions at Church Rock Section 17 (June 13, 2005).

[39] FEIS at 3-35.

water and is viewed by the Navajo Nation as the most important groundwater resource for future drinking water supplies in the Eastern Agency.[40]

The Church Rock Chapter as a whole is also heavily impacted by waste from historic uranium mining and milling. In testimony during the NRC proceedings on HRI's license, Dr. Christine Benally testified that most of the early uranium mines within the Navajo Nation remain uncontrolled and unmitigated.[41] There are 13 sites within 6 miles (9.6 km) of HRI's Church Rock sites at which uranium mining and processing was conducted. These sites include the United Nuclear Corporation ("UNC") Church Rock mill, which was an NRC licensed uranium byproduct disposal facility and is currently designated an EPA Superfund site. As a result, many of the 170 residences – encompassing as many as 700 individuals – within five miles of HRI's Church Rock sites, are currently already exposed to levels of radon as much as 42 times higher than background, as measured at the Crownpoint site. These residents are also exposed to elevated levels of gamma radiation.

These exposure levels are perhaps unsurprising given that clean-up of abandoned uranium mining and processing sites near HRI's Church Rock sites has been limited. The most extensive remediation work has been done at the UNC mill site, where some surface reclamation has occurred. However, groundwater contamination continues to be a concern.[42]

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[40] Declaration of Dr. John W. Leeper at 5, ¶ 10; 15, ¶ 28; and 17, ¶ 31 (March 1, 2005) ("Leeper Declaration"), attached as Exhibit E to Intervenors Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect to Groundwater Protection, Groundwater Restoration and Surety Estimates (March 7, 2005).

[41] Testimony of Christine J. Benally, Ph.D, attached as Exhibit 2 to ENDAUM's and SRIC's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect to Environmental Justice Issues at 24 (Feb. 15, 1999).

[42] *See*, http://cfpub.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Contams&id=0600819.

4. *The Crownpoint Community*

The Diné village of Crownpoint is a town of approximately 3,000 people.[43] Like Church Rock, Crownpoint is overwhelmingly Diné and is considered the political and administrative hub of the Eastern Navajo Agency.[44] The United States Bureau of Indian Affairs has a number of offices there and Crownpoint hosts the Crownpoint Healthcare Facility, operated by the Indian Health Service, which provides healthcare services to much of the Eastern Agency.

Crownpoint has very good quality drinking water.[45] Despite extensive uranium exploration and development in the region, Crownpoint avoided impacts from past uranium mining, with few exceptions.[46] The Navajo Tribal Utility Authority operates two water wells, which draw from the Westwater Canyon Aquifer, and provide water for at least 10,000 people in Crownpoint and surrounding Chapters of the Navajo Nation, including Becenti, Littlewater, and Nahodishgish.[47]

5. *The Crownpoint Mine Sites*

The proposed mine sites within the Crownpoint Chapter are the Crownpoint mine site[48] and the Unit 1 site.[49] Additionally, HRI proposes a uranium slurry central processing plant in Crownpoint that would be located in the middle of the village, within several hundred feet of the

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[43] Bullard Testimony at 21.

[44] *Crownpoint: Selected Characteristics from Census 2000*, available at http://crownpoint.nndes.org/cms/kunde/rts/crownpointnndesorg/ docs/429390045-09-28-2004-10-28-52t.pdf.

[45] Bullard Testimony at 22-23.

[46] *Id.* at 22 (describing the Mobil Oil section 9 pilot scale ISL project located approximately 5 miles (8 km) west of Crownpoint)

[47] *Id.* at 23.

[48] It is unlikely that HRI will be permitted to conduct mining operations at its Crownpoint mine site. In 1993, HRI applied for an aquifer exemption for the Crownpoint site, which was rejected by the U.S. EPA. A copy of that rejection letter is attached as Addendum 2.

[49] FEIS at 2-1.

nearest residence (occupied by Petitioners Christine Smith, Keithlynn Smith and Kenneth Smith) and local churches.[50] Figure 2 illustrates the proximity of the central processing plant to schools and nearby residences.

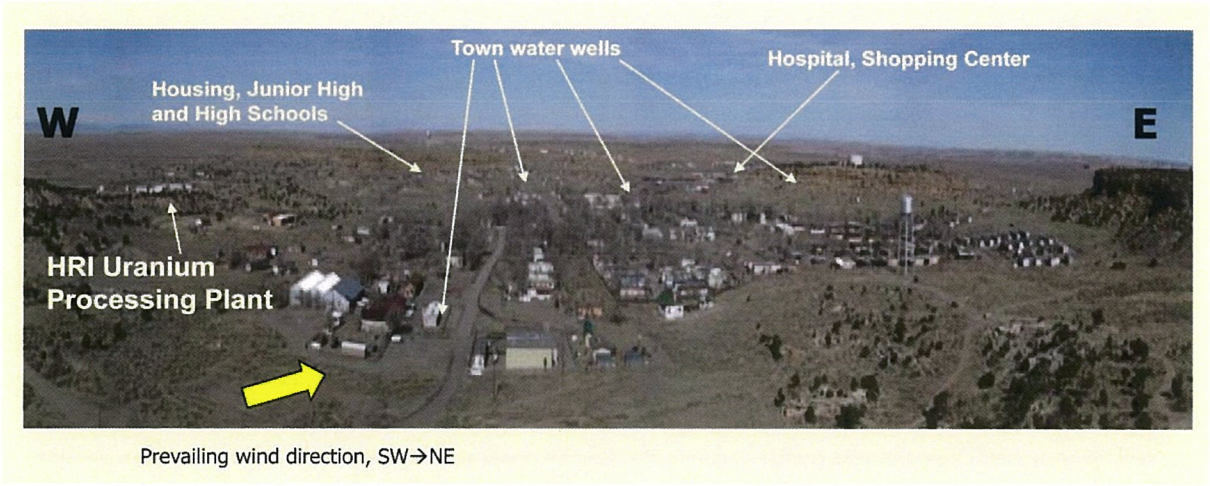

Figure 2: Proximity of the central processing plants

HRI proposes to use technology in its central processing plant that would allegedly reduce radon emissions from the processing plant from 58.3 Curies per year to 4.8 Curies per year.[51] This technology was the basis for the NRC's conclusion that HRI's processing operations would not exceed regulatory limits for radioactive air emissions. However, HRI provided no technical specifications, manufacturer's specifications, or operating history for this technology, and the State required none.[52] Indeed, Dr. Alan Eggleston, one of HRI's own expert witnesses who later testified on ENDAUM's behalf in the NRC administrative proceeding,

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[50] *Id.* at 2-2.

[51] Declaration of Bernd Franke at 16, ¶ 25 (June 12, 2005), attached as Exhibit L to ENDAUM's Presentation in Opposition to Hydro Resources, Inc.'s Materials License Application with Respect to Radiological Air Emissions at Church Rock Section 17 (June 13, 2005).

[52] *Id.*,¶ 24.

testified that HRI's proposed technology was purely theoretical with no operational track record.[53] Dr. Eggleston further testified that ISL mining is not an industrial activity that usually takes place in close proximity to schools, residential areas, or health centers because the radioactive air emissions from these operations can reach unsafe levels.[54]

The Unit 1 site is located to the west of Crownpoint. Like the other sites, mining is proposed for the Westwater Canyon aquifer. Like the other sites, groundwater quality is generally good in both the Westwater Canyon and Dakota aquifers, which are the aquifers that will be impacted by mining. As acknowledged by the State, groundwater quality is good and generally meets New Mexico groundwater standards.[55] The Unit 1 site is near two private wells and within 2 miles (3.2 km) of the Crownpoint public drinking water supply wells. This water supply provides water for the local schools, residences and Crownpoint hospital.

B. Diné Cultural Attitudes Toward the Environment and Uranium.

Indigenous peoples often have unique and intimate ties to the land and their surrounding environments.[56] The Diné are no different in this respect. The Diné have distinct cultural and spiritual ties to the land and the environment within their traditional homeland. The proposed ISL uranium mines and associated activities directly threaten these ties.

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[53] Affidavit of Dr. Alan Eggleston at 4, ¶ 11 (May 14, 2004), attached as Exhibit 2 to ENDAUM's Motion to Supplement the Final Environmental Impact Statement (May 14, 2004).

[54] *Id.* at 5, ¶ 14.

[55] FEIS at 3-31.

[56] *See, e.g.*, Inter-American Commission on Human Rights, Report No. 40/04, Case 12.053, Merits, *Maya Indigenous Communities of the Toledo District v. Belize,* Section IV.B.2.a (Oct. 12, 2004); Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Rights System* at ¶ 1, OEA/Ser.L/V/II, Doc. 56/09 (Dec. 30, 2009).

1. *Diné Cultural Attitudes Toward the Environment.*

Because Church Rock and Crownpoint are within *Diné bikeyah*, they have particular spiritual and cultural importance to the Diné and the Petitioners. Petitioner Mitchell Capitan testified before the NRC:

> This land is my home and my family's home on several levels. For one thing, our roots are literally tied to this land. In accordance with Navajo tradition, my family buries the umbilical cords of our newborns on family land. This custom binds each child to the land where his umbilical cord is buried. This bond with Mother Earth is very important to each of us. It is a Navajo belief that to maintain harmony, a Navajo must live between the four sacred mountains. In my family, we make prayers to these mountains every morning and we feel we are being protected here by the four sacred mountains. My home in Crownpoint is within these mountains, and so my family belongs here. In addition, we live close to our relatives, including clan relatives. It is important to live among your clans; these relatives can help you when you need them. When you live among your relatives, you practice "K'ei", which means you have respect for the deep bonds that exist between one another and that you carry out certain duties to each other.[57]

The land is also carries significant cultural importance in terms of the subsistence it provides. Petitioner Larry King testified before the NRC that it would be impossible for him to relocate to avoid the mining project, stating:

> We would have no place to go. Through my father's side, this parcel of land [Section 17] has been in my family's possession for several generations. We all live here together on my family's land and we feel at home, at peace, and safe. We were all born and raised here and this place is home to us.
>
> .....
>
> Raising livestock helps with income and for human consumption and survival. For most Navajo people, their flocks of sheep and livestock are considered part of the family. We cannot part with them. When I look outside and I see my livestock grazing out there, I feel good, knowing that I am able to carry on the traditional Navajo way of life. For the older Navajo people, if their sheep get taken away, they get sick.[58]

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[57] Written Testimony of Mitchell W. Capitan at 3-4 (Feb. 9, 1999), attached as Exhibit 5 to ENDAUM's and SRIC's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect to Environmental Justice Issues (Feb. 19, 1999).

[58] Written Testimony of Larry J. King at 4-5 (Feb. 9, 1999), attached as Exhibit 4 to ENDAUM's and SRIC's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect to Environmental Justice Issues.

Diné cultural attitudes about their natural surroundings necessarily include water. The essence of Diné philosophy is encompassed in the phrase *są'a nágháí bik'e hózhó*, which translates loosely to "universal beauty, harmony and happiness".[59] The phrase is commonly abbreviated as simply *hózhó*. *Hózhó* is the premise of the Diné worldview that all things are interrelated and interdependent, so that to exploit or destroy any aspect of creation is to harm one's self. All aspects of the natural world are imbued with sacredness and must be approached in the proper way to maintain balanced relationships in the universe.[60] Thus, the destruction of water disrupts the natural balance of things and creates disharmony (*hóchxó*).

2. *Diné Cultural Attitudes Toward Uranium.*

In the Diné worldview, uranium represents a parable of how to live in harmony with one's environment. Uranium is seen as the antithesis of corn pollen, a central and sacred substance in Diné culture, which is used to bless the lives of Diné people.[61] Diné tradition says:

> In one of the stories Navajos tell about their origin, the Dineh (the people) emerged from the third world into the fourth and present world and were given a choice. They were told to choose between two yellow powders. One was yellow dust from the rocks, and the other was corn pollen. The Dineh chose corn pollen, and the gods nodded in assent. They also issued a warning. Having chosen the corn pollen, the Navajo [people] were to leave the yellow dust in the ground. If it was ever removed, it would bring evil.[62]

This view is held by the Petitioners. In written testimony before the NRC, Petitioner Mitchell Capitan testified:

> In the Navajo culture, uranium is said to be a source of evil that is best left in the ground. My tradition tells me that once uranium is brought to the surface, the surrounding area is contaminated and the people will be destroyed. If mining

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[59] *Native Peoples of the Southwest* at 333.

[60] *Id.*

[61] Markstrom, Carol A., and Charley, Perry H., *Psychological Effects of Technological/Human Caused Environmental Disasters*, in *The Navajo People and Uranium Mining* at 105.

[62] *Id.*

begins at Crownpoint or Unit 1, I will no longer be able to use Sections 22 or 27 for plant gathering and food crop cultivation. And, we will not be able to perform ceremonies in those areas.[63]

C. Uranium's Radiological and Chemical Properties

The Diné's cautious attitude toward uranium is justified in light of uranium's radiological and chemical properties. Uranium and its decay products have both radiological and chemical properties that affect human health. Uranium is a naturally occurring element that is found in low concentrations throughout the earth's crust. Uranium itself gives off little ionizing radiation[64] itself, but as it decays[65], its decay products, particularly radon and radium, can release significant ionizing radiation.

Human exposure to ionizing radiation is measured in "rem", which is a unit of health risk.[66] There is no safe level of ionizing radiation. Even the smallest dose of ionizing radiation causes a correspondingly small increase in the risk of cancer to humans.[67]

In addition to its radiological properties, uranium also has chemical properties that can affect human health. Uranium is a heavy metal like mercury and lead, and like those heavy metals, it can have serious negative health effects when ingested.

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[63] Written Testimony of Mitchell W. Capitan at 3.

[64] Ionizing radiation is energy that travels through space in the form of particles or electromagnetic waves that is given off by radionuclides. Paladin Africa, Ltd., *Radiation Protection in Uranium Exploration*, available at the International Atomic Energy Agency ("IAEA") website, http://www.iaea.org/OurWork/ST/NE/NEFW/documents/RawMaterials/RTC-Malawi-2010/10kmrad.pdf.

[65] Radioactive decay occurs when an unstable radioactive isotope emits radiation and changes into a new element. Paulka, Sharon, *Introduction to Radiation* at 7, International Atomic Energy Agency (2009), available at http://www.iaea.org/OurWork/ST/NE/NEFW/documents/RawMaterials/RTC-Namibia-2009/1_Introduction%20to%20Radiation%20&%20Uranium%20Miningx.pdf. The decay process continues until a stable isotope occurs.

[66] *Introduction to Radiation* at 21.

[67] National Academy of Sciences, *Biological Effects of Ionizing Radiation (BEIR) VII* at 7 (2005).

D. Adverse Health Effects Caused by Exposure to Uranium and its Decay Products

1. *Adverse Health Effects from Radiation*

Uranium's decay products, particularly radon, have well documented adverse health effects on humans. When radon is inhaled, densely ionizing alpha particles are deposited in the lungs.[68] The radioactive alpha particles interact with lung tissue, causing genetic mutations, which can lead to uninhibited cell growth, i.e., cancer. Since even one alpha particle can cause a genetic mutation, any exposure to radon has the potential to cause lung cancer.

The uranium decay product radium also emits gamma radiation. Gamma radiation is high energy radiation that can have significant adverse health impacts. As with all ionizing radiation, chronic exposure to gamma radiation can cause disease, including cancer.

The adverse health effects from occupational exposures to radiation from uranium and its decay products are firmly established. Numerous studies demonstrate that uranium miners and mill workers suffer higher mortality rates compared with individuals who never worked in uranium mines or mills.[69] Increased mortality and morbidity rates were particularly pronounced among Diné uranium workers and in those cases were directly attributable to exposure to radiation from uranium and its decay products.[70]

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[68] World Health Organization, *WHO Handbook on Indoor Radon: A Public Health Perspective* at 1 (2009).

[69] Shuey, Chris, *Uranium Exposure and Public Health on the Navajo Nation and in New Mexico: A Literature Summary* at 1 (lasted updated July, 2010), attached as Addendum 3; *see also, e.g.*, Gilliland, Frank, et.al., *Radon Progeny Exposure and Lung Cancer Risk Among Non-Smoking Uranium Miners*, Health Physics, Vol. 79, No. 4, pp. 365 - 372 (Oct. 2000).

[70] *Id.*; Brugge, Doug and Goble, Rob, *The History of Uranium Mining and the Navajo People*, American Journal of Public Health at 1414-1415, Vol. 92, No. 2 (2002).

2. *Uranium's Chemical Effects on Human Health.*

Uranium's chemical toxicity on the kidney (nephrotoxicity) is also well established. Experiments in non-human animals have shown that both acute and chronic exposure to uranium causes renal injury and dysfunction.[71]

Likewise, studies of humans who have had long term exposure to uranium in drinking water show that uranium ingestion causes renal damage.[72] As a result of the available human studies data, the WHO adopted a provisional drinking water guideline for uranium of 0.015 mg/l based on its chemical toxicity.[73]

3. *Uranium's Hormone Disrupting Effects.*

Emerging research is also finding a link between exposure to uranium and endocrine function disruption. A researcher at Northern Arizona University found, based on non-human animal experiments, that uranium, like other heavy metals such as cadmium, has estrogenic activity.[74] Indeed, the Northern Arizona University study found that uranium concentrations below the EPA drinking water standard caused estrogenic effects.

E. Health Effects from Living in Proximity to Uranium Mines and Mills

Although the biological effects of uranium and its decay products are fairly well understood in the abstract, there have been very few studies analyzing the health effects encountered by people living near abandoned uranium mines and mills. Whether this is because

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[71] World Health Organization, *Uranium in Drinking Water*, WHO/SDE/WSH/03.04/118 at 4-9 (2005).

[72] A study of two groups of subjects in a Canadian community, one that was exposed to high levels of uranium in drinking water and one that was not, demonstrated that increased levels of uranium in urine were associated with excretion of other chemicals that indicated diminished renal function. Similar results were found in a study of a Finnish community that was exposed to a median level of 0.028 mg/l of uranium in its drinking water. *Uranium in Drinking Water* at 10.

[73] *Id.* at 13.

[74] Raymond-Whish, Stephanie, et.al., *Drinking Water with Uranium Below the U.S. EPA Water Standard Causes Estrogen Receptor-Dependent Responses in Female Mice*, Environmental Health Perspectives at 1714, Vol. 115, No. 12 (Dec. 2007).

of circumstance or design is unclear; however, recent research is beginning to reveal that living in close proximity to historic uranium mines and mills can lead to an array of significant negative health effects.

Recent studies have found a strong association between living in proximity to uranium mines and negative health outcomes. The Federally funded and community-based DiNEH Project is an ongoing population-based study that is examining the link between high rates of kidney disease among Diné in the Eastern Navajo Agency and exposure to uranium and other heavy metals from abandoned uranium mines.[75] The DiNEH Project study has found statistically significant increase in the risk for kidney disease, diabetes, hypertension, and autoimmune disease in Diné living within 0.5 miles (0.8 km) of abandoned uranium mines.[76,77]

F. Uranium's Depositional Properties

In northwestern New Mexico, uranium deposits most frequently occur in elongated masses several feet thick and several hundred to a thousand feet long.[78, 79] These deposits are called "roll front" deposits. Uranium was spread over large areas by dissolving in ground and surface water and being transported along well defined channels before settling on sandstone grains. Because of uranium's depositional characteristics, it is most often located in

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[75] *Uranium Exposure and Public Health on the Navajo Nation and in New Mexico: A Literature Summary* at 1-2; *see also*, Pinney, Susan, et. al., *Health Effects in Community Residents Near a Uranium Plant at Fernald, Ohio, USA,* International Journal of Occupational Medicine and Environmental Health, Vol. 16, No. 2, pp. 139-153 (2003).

[76] A copy of a recent powerpoint presentation on the DiNEH Project research is attached as Addendum 4. This presentation provides a more detailed explanation of the study's methodology and data.

[77] Proximity to a location where toxic or hazardous substances exist is a commonly accepted surrogate for exposure. *Health Effects in Community Residents Near a Uranium Plant in Fernald, Ohio, USA* at 142.

[78] FEIS at 3-12.

[79] The mineral complexes in which the element uranium is found are most commonly uraninite (a uranium oxide), coffinate (a uranium silicate), pitchblende (a form of uraninite) and carnotite (a uranium-vanadate). Brugge, et. al., *Exposure Pathways and Health Effects Associated with Chemical and Radiological Toxicity of Natural Uranium: A Review*, Reviews on Environmental Health at 179, Vol. 20, No. 3 (2005).

underground sandstone aquifers that are characterized by complex series of stacked and interbraided paleo-stream channels.[80] These underground stream channels can act as a series of pipes which can transport water (and pollution) much more quickly than can the surrounding rock.[81]

G. Description of *In Situ* Leach Mining

In its undisturbed state, uranium is immobile in an aquifer. The water in the uranium ore bodies contains high concentrations of chemicals such as uranium, radon and radium. However, because these ore bodies are isolated and the uranium is immobile, surrounding groundwater may have very low concentrations of these chemicals. Thus, an aquifer with a mineralized ore zone may also have drinking water quality groundwater nearby, which is the case with Crownpoint and Church Rock.[82]

By its nature, the ISL process of mining uranium in an aquifer contaminates groundwater. ISL mining involves establishing a series of injection and production wells that are laid out in a series of geometric patterns known as "well fields."[83] Mining is conducted by injecting a solution of water, dissolved oxygen, and sodium bicarbonate through injection wells and into the discrete areas of uranium mineralization, called "ore zones." The solution dissolves the uranium in the ore zone and causes it to become mobile in the aquifer, capable of moving over large areas. Production wells then pump the uranium-laden solution to the surface for processing. At a

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[80] *See, e.g.*, Cowan, E.J., *The Large Scale Architecture of the Fluvial Westwater Canyon Member, Morrison Formation (Upper Jurassic) San Juan Basin, New Mexico*, SEPM Concepts in Sedimentology and Paleontology, No. 3 pp. 80-93 (1991).

[81] *See*, Declaration of Dr. Spencer G. Lucas at Section E, pp. 23-28 (Feb. 25, 2005), attached as Exhibit II to ENDAUM's and SRIC's Written Presentation In Opposition to Hydro Resources Inc.'s Application for a Materials License with Respect to Groundwater Protection Groundwater Restoration, and Surety Estimates (March 7, 2005).

[82] *See, In the Matter of Hydro Resources, Inc.*, LBP-99-30, 50 N.R.C. 77, 105 (1999), affirmed, CLI-00-12, 52 N.R.C. 1 (2000).

[83] During the mining process, monitoring wells around the perimeter of the well field are used to detect movement of contaminants outside the wellfields. This movement outside the wellfield is called an "excursion".

processing plant, the uranium is chemically stripped from the groundwater, which is then returned to the aquifer to extract more uranium.[84] The uranium that is stripped from the groundwater is then processed into uranyl peroxide or "yellowcake", which is further refined into fuel for nuclear power plants.[85]

The ISL method of extracting uranium is illustrated in Figure 3.[86]

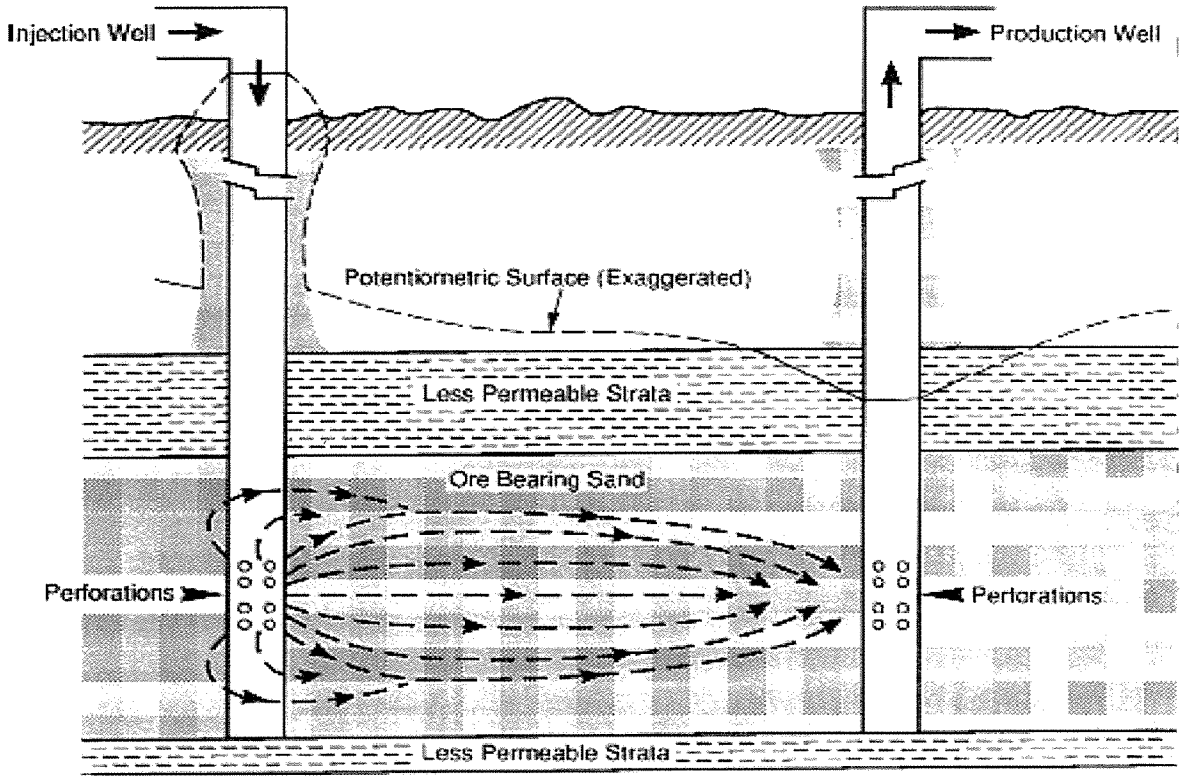

Figure 3. In situ leach mining process

[84] FEIS at 2-2.

[85] FEIS at 2-9 – 2-12.

[86] This illustration is an oversimplification of the process and does not illustrate the very complex hydrogeology at the planned mine sites which consists of a web of stacked and inter-braided Paleolithic stream channels which can act as preferred pathways for contamination.

H. The ISL Industry's Environmental Record

As an industry, ISL uranium mining's environmental record is poor. Excursions are frequent as are spills and leaks that introduce radioactive and toxic chemicals into soil and water.[87] The NRC, to a limited extent, acknowledges the poor record of spills and leaks at ISL operations.[88]

More significantly, the ISL industry's record of remediating groundwater at mined aquifers is also very poor. In 2009 the United State Geological Survey ("USGS"), an administrative arm of the State, evaluated the groundwater restoration results of ISL mines in Texas, where ISL mining has been conducted for over thirty years.[89, 90] That report concludes that based on restoration efforts in Texas - the state with the longest history of ISL mining and with the most comprehensive database of restoration information - **no** ISL uranium mine restored groundwater to pre-mining conditions, even if one considers the inflated pre-mining average contaminant levels as a legitimate representation of baseline, confirming the claims Petitioners have made for years.

These findings are consistent with other data from the State which also demonstrate that ISL operation restoration efforts that are considered "successful" actually do not restore

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[87] *See*, Addendum 5. These attached data from the Irigaray/Christensen Ranch ISL project in Wyoming show that over the project's operating history, there have been nearly 100 leaks and spills dumping hundreds of thousands of gallons of contaminated water on the site. These data are typical of ISL operations in the United States.

[88] In its Generic Environmental Impact Statement on In Situ Leach Uranium Mining, the NRC notes that the Smith Ranch-Highland ISL operation, located in Wyoming, had more than 80 spills from 1988 to 2007. NUREG-1910, *Generic Environmental Impact Statement for In Situ Leach Uranium Milling Facilities* at 2-44.

[89] Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*. U.S. Geological Survey Open-File Report 2009-1143 (2009). That report is attached as Addendum 6.

[90] Data include groundwater restoration failures by HRI's parent company Uranium Resources, Inc, at its Longoria and Benevides mines.

groundwater to pre-mining conditions.[91] Moreover, even after "restoration" has been deemed complete, contaminant levels may actually rise and migrate due to geochemical conditions altered by ISL mining.[92]

The State itself has acknowledged that no ISL mine it has regulated has ever restored groundwater to pre-mining conditions. In response to comments on the Moore Ranch, Wyoming, ISL project environmental impact statement, the NRC conceded "that, to date, restoration to background water quality for all constituents has proven to be not practically achievable at licensed NRC IS[L] sites."[93]

Finally, the ISL industry's failure to restore groundwater at any site where mining has occurred is even more astonishing when one realizes that by averaging small areas of poor groundwater quality with large areas of good water quality within a mine site, uranium operators regularly inflate pre-mining contaminant levels. The United States Geological Survey demonstrates that baseline, i.e., pre-mining, contaminant levels are, as a matter of course, inflated to allow mining to proceed. The USGS report on ISL groundwater restoration states:

> The argument is commonly made that before mining, groundwater in IS[L] well fields is so contaminated that it should not be used for human consumption. Before mining, these aquifers are typically granted exemptions from the Clean Water Act, termed aquifer exemptions, by the U.S. Environmental Protection Agency (USEPA).
>
> In Texas, more than 25 percent of [mine areas] are characterized by baseline groundwater above the maximum contaminant level (MCL) for arsenic, cadmium, lead, radium, and uranium (shown highlighted on Table 4). MCL is set by the U.S. Environmental Protection Agency (USEPA; http://www.epa.gov/safewater/contaminants/index.html) for those elements with well-established links to

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[91] NUREG CR-6870, *Consideration of Geochemical Issues in Groundwater Restoration in Uranium In-Situ Leach Mining Facilities* at p.19, Table 3; p. 20, Table 4; p. 21, Table 5; p. 22, Table 6 (Jan. 2007).

[92] *Id.*

[93] NUREG 1910, Supp. 1, *Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County Wyoming* at B-36 (Aug. 2010) (citations omitted).

> negative human health effects. All [mine areas] contain radium above MCL, and 90 percent contain uranium above MCL. **Although baseline is artificially elevated in this database because the operator is selecting the highest average value within the production or mine area**, this value does serve to identify elements of concern in these well fields.[94]

The ultimate result of averaging water quality is that substantial amounts of high quality water are lumped together with small areas of poor quality water to give an overall impression of poor quality water that exceeds drinking water standards.

Because of the ISL industry's poor environmental record and ongoing contamination from conventional uranium mining and milling, the Navajo Nation passed a law in 2005 prohibiting any uranium mining or processing within its jurisdiction. The Diné Natural Resources Protection Act ("DNRPA") is based on traditional Diné law and is intended to protect all natural resources within "Navajo Indian Country." [95] Both Church Rock Section 17[96] and Unit 1,[97] mine sites are subject to Navajo Nation jurisdiction and the DNRPA's ban on uranium mining and processing. Nevertheless, the NRC has refused to acknowledge Navajo Nation jurisdiction and Navajo Nation may be subject to legal challenge by HRI.

I. Uranium Resources, Inc.'s Environmental Record

Hydro Resources, Inc., has no operating history, but shares management with its parent company, Uranium Resources, Inc. ("URI"), headquartered in Lewisville, Texas. URI has extensive operational history in Texas and its environmental record is comparable to that of the ISL industry as a whole.

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[94] *Groundwater Restoration at Uranium In-Situ Recovery Sites, South Texas Coastal Plain* at 11 (emphasis added).

[95] CAP-18-05, Resolution of the Navajo Nation Council, An Act Relating to Resources, and Diné Fundamental Law; Enacting the Diné Natural Resources Protection Act of 2005; Amending Title 18 of the Navajo Nation Code (2005). A copy of the DNRPA is attached as Addendum 7.

[96] *HRI, Inc. v. Environmental Protection Agency*, 198 F.3d 1224, 1254 (10th Cir. 2000) (holding that EPA did not abuse its discretion in determining that Section 17 is Indian Country).

[97] *See*, 18 U.S.C § 1151(c) (Indian allotments are "Indian Country").

According to public data provided by the Texas Department of Water Resources and the Texas Department of Health, which implement the Atomic Energy Act in Texas pursuant to delegated authority from the State, URI's environmental record consists of many spills, leaks and the inability to restore mined aquifers to pre-mining conditions. ENDAUM presented this information to the NRC during the administrative litigation. However, the administrative law judge found:

> The subsurface water in this part of the Westwater is not potable today; it does not meet EPA standards. It also should be recognized that the Westwater is huge, so that it can tolerate relatively small toxic areas like the Section 17's old mine workings and still provide high-quality drinking water.
>
> .....
>
> Ford (Ford May 11, 1999 Affidavit at 2-15) further persuades me of the likelihood of successful restoration and discusses the problems associated with restoration at the Church Rock site. In the interest of full disclosure, he reveals that "it is extremely likely that after ISL mining is completed, the groundwater quality will be restored to acceptable levels so that the water use of the aquifer is maintained." "[I]t is unlikely that groundwater activities at the Church Rock site will achieve baseline concentrations for all groundwater parameters ... However, it is likely that most, if not all, of the groundwater parameters will achieve secondary groundwater restoration goals state in HRI License Condition 10.21."
>
> The "if not all" statement by Ford above likely is not satisfactory to the Intervenors, but I find it adequate.[98]

The Presiding Officer arrived at this finding despite evidence from the demonstration project of ongoing contamination from radium, arsenic, and uranium.[99] Despite the ISL industry's groundwater restoration record as a whole and URI's groundwater restoration record

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[98] *In the Matter of Hydro Resources, Inc.*, LBP-99-30, 50 NRC at 102-104, 106.

[99] *Id.*

in particular, the NRC nevertheless managed to conclude that HRI would be able to restore groundwater to pre-mining conditions.[100]

VI. UNITED STATES VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

A. Right to Life

The American Declaration's first Article guarantees the most fundamental of human rights – the right to life. Article 1 guarantees that "[e]very human being has the right to life, liberty and security of his person."

The right to life has been interpreted to be both fundamental and expansive. This human right has also been interpreted to include the right to a clean and healthy environment. In its 1997 Report on the Situation of Human Rights in Ecuador, the Inter-American Commission stated:

> Respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and the preservation of physical being. Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being.
>
> ...
>
> The norms of the Inter-American System of Human Rights neither prevent nor discourage development; rather, they require that development take place under conditions that respect and ensure the human rights of the individuals affected. As set forth in the Declaration of Principles of the Summit of the Americas: "Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly".[101]

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[100] *In the Matter of Hydro Resources, Inc.*, LBP-99-18, 49 NRC 415, 417-418 (1999).

[101] Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, Ch. VIII, EOA/Ser.L/V/II96, doc. 10, rev. 1 (April 24, 1997).

The Inter-American Commission further clarified the scope of this right in its Report on the Situation of Human Rights in Paraguay. There, it noted:

> The right to life is not only the negative obligation not to deprive anyone of a life arbitrarily, but also the positive obligation to take all necessary measures to secure that that basic right is not violated.
> ...
>
> We believe that there are distinct ways to deprive a person arbitrarily of life: when his death is provoked directly by the unlawful act of homicide, as well as **when circumstances are not avoided which will likewise lead to the death of persons**.
> ...
>
> The arbitrary deprivation of life is not limited, thus, to the illicit act of homicide; **it extends itself likewise to the deprivation of the right to live with dignity**. This outlook conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights.[102]

Finally, in the *Case of the Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Court specifically found that Paraguay had failed to protect the petitioners' right to life under the American Convention on Human Rights by divesting them of their ancestral lands. The Inter-American Court concluded:

> One of the obligations the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.
> ....
>
> [T]his Court established that the State did not guarantee the right of the members of the Yakye Axa Community to communal property. The Court deems that this fact has had a negative effect on the right of the members of the Community to a decent life, because it has deprived them of the possibility of access to their traditional means of subsistence, as well as to use and enjoyment of the natural

[102] Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Paraguay*, Ch. V, ¶ 11,OEA/Ser.L/V/II.110, Doc. 52 (March 9, 2001) (emphasis added).

resources necessary to obtain clean water and to practice traditional medicine to prevent and cure illness.[103]

Like Paraguay in the *Yakye Axa* case, the United States in this case has failed to guarantee minimum conditions for a dignified life for the Petitioners and other Church Rock and Crowpoint community members by licensing the HRI project. The State, through its administrative agency the NRC, has approved a uranium mining project it concedes will result in groundwater contamination in the communities where the mining will occur. The NRC acknowledges that it is unlikely that HRI will be able to restore the groundwater at its Church Rock and Crownpoint mine sites to pre-mining levels, particularly for uranium, arsenic and radium.[104] However, the State justified the inevitable contamination by assuming – contrary to the evidence before it: 1) that the groundwater quality at the mine sites was poor and as such, could not be used for drinking purposes[105]; 2) that – paradoxically – while on a "small" scale the local aquifers were heterogeneous (where contaminants can move more quickly through more permeable rock), at the scale of the mines contaminants move slowly and uniformly[106,107]; and 3) that the regional aquifer is so big that it can withstand relatively small areas of contamination.[108]

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[103] *Case of the Yakye Axa Indigenous Community v. Paraguay* at ¶¶ 162, 168, Judgment (Merits, Reparations and Costs) (June 17, 2005).

[104] *In the Matter of Hydro Resources, Inc.*, LBP-99-30, 50 NRC at 102-104, 106.

[105] This assumption is based on the industry practice, described above, of averaging good quality groundwater with poor quality groundwater. *See, In the Matter of Hydro Resources, Inc.*, CLI-00-12, 52 NRC 1 at 6 (2000) (holding that the secondary groundwater restoration goal will unlikely ever be used at Section 8 because the average groundwater quality is already well above that standard).

[106] *In the Matter of Hydro Resources, Inc.*, LBP-99-30, 50 NRC at 88.

[107] The issues of averaging poor with good groundwater quality and determining the hydrogeological characteristics of the aquifers in Church Rock and Crownpoint is aggravated by the paucity of data that the NRC required HRI to submit as part of its license application. The NRC is allowing HRI to submit comprehensive data about pre-mining groundwater quality and hydrogeological conditions after the administrative adjudication has concluded and after the opportunity for meaningful public participation has passed. *In the Matter of Hydro Resources, Inc.*, LBP-99-30 50 NRC at 86, 93-94; LBP-05-17, 62 NRC 77, 92-97 (2005).

[108] *Id.*, LBP-99-30, 50 NRC at 102.

Those "small" areas of contamination, however, will occur on traditional Diné lands where Petitioners live and where they get their water for domestic, agricultural and cultural purposes.

Likewise, the NRC acknowledges that every ISL project in the United States since the Mobil Section 9 Pilot Project (which the NRC used as a groundwater restoration model for the HRI project) has failed to restore groundwater to pre-mining conditions. The NRC is also aware that HRI's parent corporation Uranium Resources, Inc., failed to restore groundwater to pre-mining conditions at any of its ISL mines in Texas. Nevertheless, the State justified its license by finding that it had no evidence to show that Uranium Resources, Inc. "failed to learn from its experience."[109] By licensing a project it knows will contaminate good quality groundwater that the Navajo Nation has indicated is and will be an important source of drinking water in the Church Rock and Crownpoint communities, the State has failed to insure minimum conditions for a dignified life for the people in those communities, including Petitioners.

The State's failure to protect the Petitioners' right to life is amplified when the above-described licensing decision is put in the context of ongoing contamination from past uranium mining and milling. At Church Rock, in particular, the NRC downplayed or simply ignored the ongoing contamination from historic uranium mining and milling. The Petitioners raised the fact that there are 13 abandoned uranium mine and mill sites within 6 miles (9.6 km) of the Church Rock site, but the NRC deemed this largely irrelevant[110] and at worst "regrettable".[111] The Petitioners produced data showing that radiation from mine waste at the Church Rock Section 17

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[109] *In the Matter of Hydro Resources, Inc.*, LBP-99-18, 49 NRC 415, 417-418 (1999).

[110] *In the Matter of Hydro Resources, Inc.*, LBP-98-9, 47 NRC 261, 283(1998) (holding that concerns regarding existing contamination in and around HRI's Church Rock sites were not germane to the proceeding).

[111] *In the Matter of Hydro Resources, Inc.* LBP-99-30, 50 NRC at 123.

site was above NRC's regulatory standards before HRI's project even began, but the NRC disclaimed any authority to do anything about that contamination.

Finally, the Petitioners pointed out time and again that the ongoing exposures to those living in close proximity to existing mine and mill waste constituted a public health crisis that would be aggravated by the HRI project, but these facts were found to be "irrelevant". Moreover, even though the Navajo Nation prohibited uranium mining and processing within its sovereign territory - including Church Rock Section 17 and Unit 1 - the NRC refused to reconsider its licensing decision, even with respect to the two mine sites within the Navajo Nation's jurisdiction.[112] The cumulative effects of the HRI project combined with the ongoing exposure to radioactive and chemical contaminants from past uranium mining and milling create an enormous barrier to guaranteeing the minimum condition of a dignified life. It is a barrier the State has helped to erect and refuses to address. The State therefore has abridged the Petitioners' right to life under Article 1.

B. Right to Health

Article 11 of the American Declaration guarantees the right of "every person" to "the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources." The Commission has interpreted an analogous provision in the American Convention to include the following:

> ... the essence of the State obligation to comply with legal protection to guarantee the social and economic aspirations of its people, giving priority to their needs for health, food and education. Prioritizing the "right to survive" and "basic needs" is a natural consequence of the right to personal security.[113]

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[112] *In the Matter of Hydro Resources, Inc.*, CLI-06-29, 64 NRC 417, 419-420 (2006).

[113] Inter-American Commission on Human Rights, *Annual Report 1988*, ¶ 322, OEA/Ser.L/V/II.74, Doc. 10, rev. 1 (Sept. 16, 1988).

Further, the Commission has issued precautionary measures in order to protect the right to health encompassed in the American Convention. In *San Mateo de Huanchor Community v. Peru*, the Commission issued a precautionary measure based on the petitioners' ongoing exposure to toxic mine waste sludge, finding "[t]he administrative decisions that were taken were not observed, more than three years have elapsed, and the toxic waste sludge of the Mayoc field continues to cause damage to the health of the population of San Mateo de Huanchor, whose effects are becoming more acute over time."[114]

Finally, the Inter-American Court has likewise recognized the link between a clean environment and the right to health. In *Case of the Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Court noted:

> Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity. In the case of indigenous peoples, access to their ancestral lands and to the use and enjoyment of natural resources found on them is closely linked to obtaining food and clean water.[115]

Similar language in other international instruments has likewise been interpreted to include the positive right of a clean and healthy environment. The Committee on Economic, Social and Cultural Rights' ("CESCR") General Comment 14 provides the most comprehensive interpretation of this right. General Comment 14 specifically interprets Article 12 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right of

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[114] *San Mateo de Huachor Community v. Peru* at ¶ 59, Report No. 69/04, OEA/Ser.L/V/II.122, Doc. 5, rev. 1 (2004).

[115] *Case of the Yakye Axa Indigenous Community v. Paraguay* at ¶ 167, Complaint No. 12.313, Judgment (Merits, Reparations and Costs) (June 17, 2005).

"everyone to enjoyment of the highest attainable standard of physical and mental health". In interpreting this Article, the CESCR concluded:

> [T]he drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and **extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.**[116]

In the context of indigenous peoples, the CESCR further determined that:

> [T]he Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health. [117]

In this case, the United States, by virtue of the authority exercised by the Nuclear Regulatory Commission, has failed to protect conditions that promote the Petitioners' right to health. The State has ignored the public health, environmental and cultural impacts of ongoing environmental contamination from past uranium mining and milling and continues to license uranium mining projects which will lead to further contamination.

The NRC has systematically downplayed the scope and severity of contamination in Diné communities from historic uranium mining and milling throughout the HRI proceeding. From the FEIS, where the communities' resistance to new uranium mining is framed as an issue of "sensitivity" based on misperception of alleged past wrongs by regulatory agencies and industry[118] to the Presiding Officer's tepid acknowledgement of a "regrettable" history of

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[116] CESCR, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* at ¶¶4, 11, E/C.12/2000/4 (Aug. 11, 2000) (emphasis added).

[117] *Id.* ¶ 27.

[118] FEIS at 3-86 – 3-87.

uranium mining, the NRC appears to being doing more to accommodate the uranium mining industry and licensee than address the serious public health issues facing Petitioners. The result of the NRC's failure to acknowledge the scope and severity of the ongoing contamination from past uranium mining and milling is that new uranium mining, which will indisputably contaminate Church Rock's and Crownpoint's groundwater, cannot, in the NRC's view, pose any threat to public health and the environment. However, the contamination caused by the proposed ISL operation when viewed in the context of the ongoing contamination, cannot be seen as anything except a continuation of a regulatory policy that resulted in the current contamination.

Even when the HRI project is viewed in isolation, however, the State still has not fulfilled its obligations under Article 11. As described in the preceding section, the NRC Staff, the Presiding Officer, and the NRC Commissioners all concede that groundwater at Section 8 and the other mine sites will not be restored to pre-mining conditions. The Mobil Section 9 Pilot Project, upon which HRI's restoration goals and financial surety are based, failed to restore groundwater to pre-mining conditions, and every ISL operation in the United States since then has failed to do so. Nevertheless, the State licensed the operation, based exclusively on the assumption that average groundwater quality within the mine sites would be poor. Therefore, when mining is complete and the mine sites are released for "unrestricted use", future occupants who may drill drinking water or stock watering wells will find high concentrations of contaminants. Additionally, water outside the mine site is likely to be contaminated by the water from the mining operations.

Further, HRI's proposed near zero emission processing plant is untested. As conceded by HRI's own consultant, while such a processing plant would be desirable, in practice it is

infeasible. Thus, HRI's processing plant is likely to expose nearby residents, such as Petitioner Christine Smith and her family, to high levels of radioactive air emissions. Under Article 11, these circumstances do not provide the "underlying determinants" of health and the State is therefore in breach of its obligations under that Article.

C. Right to Cultural and Religious Integrity

Article 13 of the American Declaration provides, in relevant part, "[e]very person has the right to take part in the cultural life of the community." Article 3 provides, "[e]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private." The Inter-American Commission has recognized the intimate ties between indigenous cultural and religious practices and land in the context of interpreting indigenous peoples' right to property. The Commission found:

> More particularly, the organs of the Inter-American System of Human Rights have acknowledged that indigenous peoples enjoy a particular relationship with the lands and resources traditionally occupied and used by them, by which those lands and resources are considered to be owned and enjoyed by the community as a whole and according to which **the use and enjoyment of the land and its resource are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.**[119]

Other international instruments also shed light on the State's obligations under Articles 3 and 13 in this case. The International Labor Organization Convention 169, Article 5, provides the following with respect to the right to take part in the cultural and religious life of the community in the context of indigenous communities:

> In applying the provisions of this Convention[,] the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

Further, Article 13.1 provides:

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[119] *Mayan Indigenous Communities of the Toledo District v. Belize* at ¶ 114 (emphasis added).

> In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

The United Nations Declaration on the Rights of Indigenous Peoples Articles 8.1, 11, and 25 also speak to this issue. Article 8.1 is particularly unequivocal in mandating that, "[i]ndigenous peoples have the right not to be subjected to ... destruction of their culture."

Finally, the International Convention on Civil and Political Rights in Article 27 provides:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In this case, HRI's materials license allows it to extract a mineral resource (*łeetso* or uranium) that is an affront to the cultural norms of the Diné. Notwithstanding Petitioners' public health and environmental concerns, the damage to land and groundwater that will result from the State approved industry will disrupt natural harmony (*hoozho*) in a way that cannot be undone. The groundwater contamination that will indisputably occur will not only make water that is currently potable unfit for consumption, but will also make these same sources of water unfit for ceremonial and other cultural purposes. The land that will be disturbed by HRI's operations, to the extent that it has not already been impacted by past uranium mining and milling, will carry the indelible stain of desecration. It will no longer be fit for ceremonial practices or for gathering plants and herbs used in religious ceremonies. The disharmony caused by HRI's operations will impose an incremental cultural insult on the Petitioners, in addition to the ongoing cultural affronts caused by historic uranium mining and milling.

Further, it is well established that "boom and bust" resource extraction activities impose significant social and cultural costs on host communities.[120] These social and economic costs include increases in crime, particularly domestic violence and illegal drug use and sales.[121] They may also include the appearance of or increase in prostitution.[122] The Petitioners' cultural values are likely to be negatively impacted due to increased prostitution, property and violent crime, domestic violence, drug addiction, drug trafficking, traffic congestion, traffic accidents and deaths, and other public costs that normally follow from extractive resource industries.

Finally, Petitioner Larry King's likely displacement will physically remove him from the land that has been occupied by his family for generations. Mr. King's physical removal from his home represents an assault on his cultural ties to the specific parcel of land – Section 17.

D. Right to Property

Finally, the United States has abrogated its obligation to protect the Petitioners' property under Article 23. Article 23 provides, "[e]very person has a right to own such private property as meets the essential needs of decent living and help to maintain the dignity of the individual and of the home."

In the spirit of *Maya Indigenous Communities of Toledo v. Belize*, this provision should be interpreted in light of other international instruments and advances in normative international law. Article 23 of the Declaration should be interpreted in light of Article 21 of the American Convention, which provides, "[e]veryone has the right to the use and enjoyment of his property.

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[120] *See, e.g.*, Davenport, III, Joseph and Davenport, Judith Ann, *The Boom Town: Problems and Promises in the Energy Vortex*, University of Wyoming, Laramie (1980); Kuyek, Joan and Coumans, Catherine, *No Rock Unturned: Revitalizing the Economies of Mining Dependent Communities*, Mining Watch Canada (2003); Amundson, Michael A., *Home on the Range No More: The Boom and Bust of a Wyoming Uranium Mining Town, 1957-1988*, *The Western Historical Quarterly,* vol. 26, No. 4 at 483-505 (Winter, 1995).

[121] *No Rock Unturned: Revitalizing the Economies of Mining Dependent Communities* at 11.

[122] *Id.* at 33.

2. If, by the time the Commission has reviewed this Petition, the NRC has completed renewal review of HRI's materials license, recommend that the NRC impose a license condition on HRI's license prohibiting commencement of mining activities until the requirements of 1(a), (b), and (c), above, have been met;

3. That the NRC require HRI to submit comprehensive baseline groundwater quality and other hydrological, geological, and geochemical data, subject to a public hearing and in accordance with internationally accepted sampling methods and statistical analyses, by license amendment if necessary, before HRI is allowed to conduct any mining operations;

4. That the NRC rescind HRI's license for the Church Rock Section 17 and Unit 1 sites which are subject to the Navajo Nation's ban on uranium mining and processing;

5. That the NRC or other appropriate administrative agency prohibit forced removal of Petitioner Larry King or his family from Church Rock Section or forced disruption of his subsistence grazing practices or cultural activities;

6. That if HRI is permitted to commence mining operations as planned, the State provide or require HRI to provide adequate financial and non-financial redress to the Petitioners, the affected communities, and the Navajo Nation, including, as appropriate, providing potable water supplies in perpetuity;

7. That the NRC not issue any further source and byproduct materials licenses within the boundaries of the Church Rock and Crownpoint Chapters until comprehensive environmental and public health surveys and environmental remediation have been accomplished; and

8. The Commission hold a Special Hearing on the issues presented in this Petition.

Respectfully submitted on behalf of Petitioners by:

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Attorneys for Petitioners

Mitchell W. Capitan
for ENDAUM
[redacted]
Crownpoint, Navajo Nation (NM) 87313
[redacted]

EXHIBIT
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C

RESOLUTION
OF THE
EASTERN NAVAJO AGENCY COUNCIL
THE NAVAJO NATION

No. ENAC-08/2021-044

SUPPORTING EASTERN NAVAJO DINÉ AGAINST URANIUM MINING'S ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS AGAINST THE UNITED STATES NUCLEAR REGULATORY COMMISSION

WHEREAS:

1. The Eastern Navajo Agency Council (ENAC) is established under the Legislative Branch of the Navajo Nation and certified by Resolution IGRS-251-01; and
2. Pursuant to 26 N.N.C. Section 103 (D) (4), the Eastern Navajo Agency Council, a consortium of elected Chapter Officials representing thirty-one (31) certified Navajo Nation Chapters agree to address and undertake common goals and interests for the benefit of the Eastern Navajo Agency Chapters; and
3. Pursuant 2 N.N.C SECTION; 4028; the Eastern Navajo Agency Council is vested with government authority to review all matters affecting the community to make most appropriate recommendations when necessary to the Navajo Nation, County, State, Federal and other local agencies; and
4. Uranium mining has caused widespread devastation of public health, natural resources and cultural values within Diné tah; and
5. The United States Government continues to avoid or delay its responsibility to clean up uranium contamination on Navajo lands, instead, the United States Government, through the United States Nuclear Regulatory Commission ("NRC") devotes resources to approving new uranium development projects on Navajo lands, which will affect Navajo water sources; and
6. In 1998, the NRC approved license SUA-1580, which allows Hydro Resources, Inc. ("HRI") (now NuFuels, Inc.) to mine uranium on four sites in Crownpoint and Churchrock –collectively known as the Crownpoint Uranium Project - using the in situ leach ("ISL") method of uranium recovery; and
7. In its undisturbed state, uranium remains immobile in an aquifer and is confined to small discreet areas and uranium bearing aquifers are commonly safely used drinking water sources; and
8. ISL mining recovers uranium by injecting chemicals into an aquifer to react with immobile uranium deposits, causing uranium and other toxic heavy metals to spread through large areas of the aquifer; and
9. During ISL mining operations, highly contaminated water regularly migrates beyond the mine site; and
10. Transporting yellowcake from ISL mines creates a risk to communities along transportation routes; and
11. HRI/NuFuels seeks to mine uranium in the Westwater Canyon aquifer, which contains high quality water in Churchrock and is the sole source drinking water aquifer for Crownpoint; and
12. At the time the NRC approved the HRI/NuFuels license, no ISL uranium mine had ever restored a mined aquifer to pre-mining quality; and
13. Since 1998, when the NRC approved SUA-1580, no commercial ISL mine has been able to restore contaminated aquifers to pre-mining conditions; and
14. Widespread radioactive and heavy metal contamination from ISL mining makes aquifers unsuitable for drinking water sources, agricultural use, or for cultural purposes; and
15. ISL uranium mines also cause radioactive air emissions, leaks and spills of radioactive and toxic liquids, and displacement of individuals and communities; and
16. ISL uranium mining's deleterious effects last for thousands of years, putting future generations of Diné at risk.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Eastern Navajo Agency Council hereby supports Eastern Navajo Diné Against Uranium Mining's Petition to the Inter-American Commission on Human Rights in Case 14,544, seeking redress for human rights violations perpetrated by the United States related to its approval of the Crownpoint Uranium Project.
2. **FURTHER BE IT RESOLVED** the Eastern Navajo Agency Council hereby urges the Inter-American Commission on Human Rights to find that the United States has breached its obligations under the American Declaration on the Rights and Duties of Man to protect the life, health, property, religion and culture of the Crownpoint and Churchrock communities.
3. **FURTHER BE IT RESOLVED** that the United States immediately rescinds SUA-1590.

CERTIFICATION

I hereby certify that the foregoing resolution was approved by the Eastern Navajo Agency Council at a duly called meeting via Teleconference, at which a quorum was present and the same was passed by a vote of 67 in favor, 0 opposed, 2 abstained, this 05th day of June 2021.

Motion: Thomas Barbone

Second: Cecil Lewis

Jeremy Johnson, President

ATTEST:

Judy Platero, Secretary

NAVAJO NATION

JONATHAN NEZ
PRESIDENT

CROWNPOINT CHAPTER
P.O. Box 336
Crownpoint, New Mexico 87313
Phone (505) 786-2130/2131 Fax (505) 786-2136
Website: www.crownpoint.navajochapters.org Email: crownpoint@navajochapters.org

MYRON LIZER
VICE PRESIDENT

Rita Capitan, President
Leonard Perry, Vice President
Helen Murphy, Secretary/Treasurer
Mark Freeland, Council Delegate
Herbert Enrico, Land Board Member

Chapter Administration
Aaron Edsitty, Community Services Coordinator
Email: aedsitty@navajochapters.org
Felicia A. Singer, Accounts Maintenance Specialist
Email: fjohn@navajochapters.org

RESOLUTION CPC: 21-08-06

SUPPORTING EASTERN NAVAJO DINÉ AGAINST URANIUM MINING'S ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS AGAINST THE UNITED STATES NUCLEAR REGULATORY COMMISSION

WHEREAS:

1. Crownpoint Chapter is a certified unit of local government and political subdivision of the Navajo Nation having met all of the requirements at 26 N.N.C., Section 03; and codified at 11 N.N.C., Part 1, Section 10; and

2. Pursuant to 26 N.N.C., (B)(1) the Navajo Nation Council delegates to Chapter governmental authority with respect to local matters consistent with Navajo law, including custom and tradition; and

3. Uranium mining has caused widespread devastation of public health, natural resources and cultural values within Diné tah; and

4. The United States Government continues to avoid or delay its responsibility to clean up uranium contamination on Navajo lands, instead, the United States Government, through the United States Nuclear Regulatory Commission ("NRC") devotes resources to approving new uranium development projects on Navajo lands, which will affect Navajo water sources; and

5. In 1998, the NRC approved license SUA-1580, which allows Hydro Resources, Inc. ("HRI") (now NuFuels, Inc.) to mine uranium on four sites in Crownpoint and Churchrock –collectively known as the Crownpoint Uranium Project - using the in situ leach ("ISL") method of uranium recovery; and

6. In its undisturbed state, uranium remains immobile in an aquifer and is confined to small discreet areas and uranium bearing aquifers are commonly safely used drinking water sources; and

7. ISL mining recovers uranium by injecting chemicals into an aquifer to react with immobile uranium deposits, causing uranium and other toxic heavy metals to spread through large areas of the aquifer; and

8. During ISL mining operations, highly contaminated water regularly migrates beyond the mine site; and

9. Transporting yellowcake from ISL mines creates a risk to communities along transportation routes; and

10. HRI/NuFuels seeks to mine uranium in the Westwater Canyon aquifer, which contains high quality water in Churchrock and is the sole source drinking water aquifer for Crownpoint; and

11. At the time the NRC approved the HRI/NuFuels license, no ISL uranium mine had ever restored a mined aquifer to pre-mining quality; and

12. Since 1998, when the NRC approved SUA-1580, no commercial ISL mine has been able to restore contaminated aquifers to pre-mining conditions; and

13. Widespread radioactive and heavy metal contamination from ISL miming makes aquifers unsuitable for drinking water sources, agricultural use, or for cultural purposes; and

14. ISL uranium mines also cause radioactive air emissions, leaks and spills of radioactive and toxic liquids, and displacement of individuals and communities; and

15. ISL uranium mining's deleterious effects last for thousands of years, putting future generations of Diné at risk.

NOW, THEREFORE, BE IT RESOLVED:

1. Crownpoint Chapter supports Eastern Navajo Diné Against Uranium Mining's Petition to the Inter-American Commission on Human Rights in Case 14.544, seeking redress for human rights violations perpetrated by the United States related to its approval of the Crownpoint Uranium Project;

2. Crownpoint Chapter urges the Inter-American Commission on Human Rights to find that the United States has breached its obligations under the American Declaration on the Rights and Duties of Man to protect the life, health, property, religion and culture of the Crownpoint and Churchrock communities;

3. That the United States immediately rescinds SUA-1580.

C-E-R-T-I-F-I-C-A-T-I-O-N

WE, HEREBY CERTIFY, THAT THE FOREGOING RESOLUTION was duly considered by the Crownpoint Chapter (Navajo Chapter) New Mexico, Stated of New Mexico-McKinley County at a duly called Regular Chapter Meeting, at which a quorum was present and that the same was passed by a vote of 8 in Favor, 0 Opposed, 4 Abstained on the 17th day of August, 2021.

Motion: Bess Seshillie Second by: Herbert Enrico

Rita Capitan, President

Leonard Perry, Vice President

Helen Murphy, Secretary/Treasurer

Mark Freeland, Council Delegate

Office of Legislative Counsel
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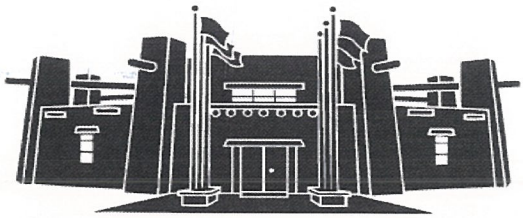
Fax # (928) 871-7576



Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Mark Freeland
Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano, Nageezi, Crownpoint Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: October 22, 2021

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING THE EASTERN NAVAJO DINÉ AGAINST URANIUM MINING, AND THE PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AGAINST THE UNITED STATES THAT STATES THE UNITED STATES BY ITS ACTS AND OMISSIONS HAVE CONTAMINATED AND CONTINUE TO CONTAMINATE NATURAL RESOURCES IN THE NAVAJO COMMUNITIES OF CROWNPOINT CHAPTER AND CHURCH ROCK CHAPTER, THE UNITED STATES HAS VIOLATED PETITIONERS' HUMAN RIGHTS AND BREACHED ITS OBLIGATIONS UNDER THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient as to formatting. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.