



THE NAVAJO NATION

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Federal EPA reaches determination on ‘Indian Country,’ upholds Navajo sovereignty, uranium mining prohibition

WINDOW ROCK, Ariz. – Navajo Nation President Joe Shirley, Jr., on Thursday expressed appreciation and gratitude about the U.S. Environmental Protection Agency’s final land status determination that an area of land known as Section 8 within Church Rock Chapter is “Navajo Indian Country” within “a dependent Indian community.”

The determination means that the EPA has so far recognized the sovereignty of the Navajo Nation with regard to upholding the Diné Natural Resources Protection Act to prohibit uranium mining and processing on the Navajo Nation. It also means that the EPA is the appropriate agency to consider underground injection control permit applications under the Safe Drinking Water Act for that land.

“This is really just fantastic,” President Shirley said upon hearing the news of the Feb. 6 EPA determination. “Of course we’ve been praying about it all along. I’m glad the U.S. Environmental Protection Agency has determined to respect the Navajo Nation and the laws that are passed by its legislature.”

Hydro Resources Inc., a uranium processing company that would like to conduct *in situ* leach mining, has applied for a permit and continues to seek to mine in the area despite the Navajo Nation’s law and opposition to continue uranium mining or processing.

“This is a wonderful decision for the Church Rock community in particular and the Navajo Nation in general in support of efforts to stop any future uranium mining on the Navajo Nation,” said David Taylor, an attorney with the Navajo Nation Department of Justice who focuses on uranium issues. “The EPA decision is a first step in what

may very well be a long and drawn out legal fight. But it’s always good to win the first battle.”

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– Attorney David Taylor, Navajo Nation Department of Justice

Companies have continued their efforts to bring uranium operations back to the Navajo Nation, Mr. Taylor said. To date, he added, most of those efforts have been concentrated in the Navajo Eastern Agency and the Church Rock area, commonly referred to as the checkerboard, where companies think they can still mine uranium because many parcels of land are privately owned by non-Natives.

HRI may either appeal the decision to the 10th Circuit Court of Appeals or comply with the decision and apply to U.S. EPA for the appropriate permit, Mr. Taylor said.

“Either way, the Navajo Nation applauds the U.S. EPA decision,” he said.

According to the EPA’s determination document, which was released Wednesday, the EPA conducted a site visit to the HRI site and area, consulted with the Navajo Nation in accordance with its federal trustee relationship, and reviewed the status of the land in light of comments it

received, existing case law, and a Nov. 3, 2006, Interior Dept. opinion.

In that opinion, Interior Dept. Solicitor David L. Bernhardt concluded that Section 8 of Church Rock is part of a dependent Indian community and, therefore, constitutes Indian country as defined by federal law. Also, he said, the determination satisfied a three-part test of 10th Circuit Court of Appeals to conclude it is "Indian country."

The first part is that the land is the "appropriate community of reference," because it is geographically defined, and constitutes a community because it is cohesive in its interest and needs.

The second part concludes that it was set aside as Indian land for Indian use.

The third part is that Church Rock is under "federal superintendence" by virtue of the fact that the federal government holds title to 78 percent of the land in Church Rock for the benefit of the Navajo Nation or individual tribal members.

"Not only does the Navajo Nation government recognize the Church Rock Chapter as a part of the Navajo Nation," the final determination stated, "but EPA finds that the Navajo population helps to demonstrate the Indian character of the area," finding that 97.7 percent of the

population is Native American with the majority speaking Navajo."

President Shirley said the determination is an excellent example of two sovereigns acknowledging their government-to-government relationship in resolving difficult questions.

"The Navajo Nation regards itself as a nation within a nation," President Shirley said. "The laws we pass need to be respected, and I'm glad in this instance the EPA has determined to do just that. It's a fantastic day in the history of the Navajo Nation for the people and for their government."

"Because of the lack of respect in times past, many people were hurt," he said. "They weren't warned of the dangers of mining uranium ore, and, as a result, many people died. And, to this day, many people are sick and bedridden by the mining of the uranium ore."

"And I hope this means that there will be no more uranium mining on Navajoland and in what we regard as Navajo country. I'm happy for my people residing in the eastern portion of Navajoland and very happy for my government."

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