



Navajo celebrates HRI ruling

Company says they are still moving forward to mine uranium in Indian Country

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By Kathy Helms
Diné Bureau

WINDOW ROCK — Ever since Johnny Livingston was a little boy, he remembers seeing Navajo families grazing their livestock on a portion of land within Churchrock Chapter known as Section 8, now owned by uranium mining company Hydro Resources Inc.

In 2006, as part of his declaration to the U.S. Environmental Protection Agency regarding jurisdictional issues over the land, the former Churchrock Chapter president identified Navajo families having Bureau of Indian Affairs grazing permits for the disputed area.

"Livestock owned by these and other Navajo families have grazed on Section 8 and its contiguous sections for as long as I can remember, including to this day," he said.

"In fact, the people have a Navajo term for the canyon at the north end of Section 8; they call it 'the cattle's home in their canyon,' or 'Cattle Canyon.' There is a trail that the old people said they used for cattle drives many years ago, and you can still see that trail going up the side of the mesa in Section 8."

The 10th Circuit Court of Appeals in Denver on Friday upheld a 2007 EPA decision that HRI's Section 8 mine site is located in "Indian Country," meaning that HRI will have to obtain an underground injection control permit from EPA rather than the New Mexico Environment Department before it can move forward with plans for in-situ leach uranium mining in Section 8.

HRI challenged the decision last May before the Court of Appeals. Rick Van Horn, chief operating officer for Uranium Resources Inc., parent company of HRI, said Monday that the company has not yet decided what it will do regarding the court ruling.

"We have 45 days to petition the court for an en banc review.

We don't know if we're going to do that or not, or how we're going to proceed. We're looking at what the options are now," he said, adding that they probably won't make a decision for a couple more weeks.

"Because we own the land in fee, we felt that it was privately held land. The

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question was, even though it's privately held land, if it's within the chapter, is that Indian Country or not Indian Country? Who has the jurisdiction to issue the IUC? We thought that the state would have the primacy initially.

The court obviously didn't agree.

"But we don't see this as a setback," he said. "We fully intend to continue pursuing this and then to be doing business in the state of New Mexico here pretty soon. When I say 'doing business,' I mean mining uranium."

Margot Perez-Sullivan, EPA, Region 9, spokeswoman, said Tuesday, "The EPA is pleased with the court's decision." But federal EPA is not the only one.

Residents react

Larry King, who lives about 1,000 feet away from the proposed mine site, said he was thrilled that the 10th Circuit judges agreed that EPA made the right decision in determining that Section 8 is in "Indian Country."

"But we've known all along that HRI's property is dependent Indian Country. Many, many years ago the reservation boundary had gone farther south of Section 8, but it was rescinded and the land distributed to the railroad company and the state, various sections to the tribal trust, and various sections to the Indian allotment.

"That's how it got into the hands of the railroad company, and the railroad company turned it over to the mining companies, and that's how Section 8 came to be what it is now — tribal fee land — and HRI has got that corner section, 160 acres in the southeast corner of Section 8."

King wants to see comprehensive health studies and cleanup of abandoned mines before they listen to any pitches of new uranium mining. "We cannot go another round with these companies promising that they will clean up, and then leaving the community and the Navajo Nation to deal with the contaminants again 10 to 20 years from now, and also leaving our water in shambles. In our area water is very sacred. We need to protect what's there," he said.

Stephen B. Etsitty, executive director of Navajo Nation Environmental Protection Agency, also was pleased with the court decision. "It doesn't necessarily say anything about stopping uranium mining, but it does put the permitting action on the shoulders of U.S. EPA.

"We've said all along that that's our preference because the U.S. government has the trust responsibility toward the Navajo Nation and we're confident in working with EPA on these issues," he said. "We know that HRI is reviewing the decision and there may be some other steps that they can take. We'll just wait for the other shoe to drop."

ENDAUM

Eric Jantz of New Mexico Environmental Law Center, which represented

Eastern Navajo Diné Against Uranium Mining, or ENDAUM, said the decision is important "not only for our client, but for Indian tribes as a whole. This is a case that really does affirm the federal jurisdiction over this land.

"Since it is Indian Country, it's not only federal jurisdiction for the purpose of the Safe Drinking Water Act, but it's also tribal jurisdiction for other purposes," he said, such as the Diné Natural Resources Protection Act of 2005 which banned uranium mining and milling throughout Navajo Indian Country.

"I think that the court's decision was pretty common sensical. If that corner section of land isn't Indian Country, I can't imagine what would be," Jantz said. "You're looking at a place that's within a community within boundaries of a chapter that's 97 percent Navajo. It's very clear that the subsistence economy and the culture in the area is Navajo.

To say there is anything other than a Navajo community is absurd."

Mitchell Capitan, president of ENDAUM, who lives in Crownpoint where HRI has proposed another mine, said that after 15 years of legal battles, he and his wife Rita are "very glad the decision came up in our way." Like Churchrock, Capitan said, "Here in the community of Crownpoint where their proposed mining site is, it's almost the same. It's all Indian Country, and I hope they respect that.

"There's boundaries above ground. We have fence lines and all that and we say, 'This is our land.' But underneath the surface where the water flows, the water has no boundaries.

It will flow wherever it needs to flow. We have no control under there. If anything happens at that particular private area site, it will affect the surrounding areas. That's what we're trying to tell them."

Tribal officials

Resources Committee Chairman George Arthur, who sponsored the uranium mining ban legislation, said more than 92 percent of the land in the chapter is held by the federal government for the exclusive use of Navajos.

"The ruling rejects the position of Hydro Resources Inc., which contended that its small island of fee land was, in essence, excluded from the community. That position would allow the fabric of Navajo communities to be destroyed from within anytime there is a small tract of non-Indian land within the community boundaries, for example, by setting up bars, or, in this case, endangering precious water supplies on those scattered tracts."

Navajo Nation President Joe Shirley Jr., in his State of the Navajo Nation Address to Council on Monday, said, "To no one's surprise here, the court found that the land is within the boundaries of the Churchrock Chapter and is part of the Navajo Nation.

"This ruling represents one more piece of protection in our resistance to renewed uranium mining on Navajoland in the spirit of our Natural Resources Protection Act."

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