



October 24, 2011

National Environmental Justice Advisory Council (NEJAC)
c/o U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: New Mexico Environmental Law Center Written Comments to the National Environmental Justice Advisory Council

Dear NEJAC Members:

With the renewed interest in uranium mining in the Southwest, and the uranium mining industry's emphasis on using *in situ* leach, or ISL, mining techniques, the EPA's role in protecting public health and the environment has become more important than ever. As a brief background note, ISL uranium mining involves injecting fluids into groundwater to chemically extract uranium from discreet ore bodies. The invariable result of this mining is widespread contamination of groundwater with heavy metals and radiation. To date, no commercial ISL operation has been able to restore groundwater to pre-mining conditions. *See*, Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*. U.S. Geological Survey Open-File Report 2009-1143 (2009); NUREG 1910, Supp. 1, *Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County Wyoming* at B-36 (Aug. 2010)(in response to comments that ISL operations cannot restore groundwater, the NRC replied, "that, to date, restoration to background water quality for all constituents has proven to be not practically achievable at licensed NRC IS[L] sites"). More often than not, groundwater contamination associated with ISL mining occurs in communities that are already burdened by radioactive and toxic contamination from historic uranium mining and milling.

Before any company can inject fluids into groundwater, it must receive an aquifer exemption from the EPA or EPA must approve an aquifer exemption from a state. An aquifer exemption is, in essence, a permit to pollute certain underground sources of drinking water. Aquifer exemptions are issued pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* ("SDWA"), and its implementing regulations. One of the primary purposes of the Safe Drinking Water Act is to protect underground sources of drinking water. *See, Id.* at § 300h.

In the past, the EPA program responsible for ISL permitting, the Underground Injection Control ("UIC") permit program, has appeared not to consider the communities in which these uranium mining operations were taking place. Aquifer exemptions or state equivalents for ISL operations were granted without consideration of the existence of impacts from past uranium

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mining and milling, whether the groundwater in the aquifer to be mined was potable, and the tribal and community need for groundwater resources. As a result, hundreds of thousands – perhaps millions – of gallons of potable water needed by tribes and tribal communities will be forever contaminated.

There are, however, opportunities for revisiting and rectifying these past injustices. ISL projects are receiving new scrutiny from concerned citizens in uranium impacted communities and tribal governments. In particular, Eastern Navajo Diné Against Uranium Mining, the Multicultural Alliance for a Safe Environment, and the Navajo Nation are deeply skeptical of new uranium mining proposals in the Eastern Agency of the Navajo Nation in northwestern New Mexico.

As these ISL projects go through permitting review in Regions 6 and 9, EPA should take the opportunity to take a second look at past permitting decisions and processes and revisit them in order to meet the laudable goals set forth in Plan EJ 2014, § 3.2, and consistent with the spirit of E.O. 12,898. Given that much of the information used for past permitting decisions is outdated, stale, obsolete or inaccurate, the EPA has ample basis for reviewing past decisions. Moreover, the EPA now has thirty years of operational data from the ISL industry upon which to review past and pending permitting decisions.

While uranium impacted communities remain concerned about the EPA's reluctance in many cases to closely scrutinize its past and some current ISL permits under the SDWA, many community members are pleased that the UIC program in Region 9, in particular, is taking positive steps to address environmental justice in its SDWA permitting decisions. Such positive steps should be mandated across all regions to ensure consistent treatment of environmental justice communities.

In addition to taking environmental justice principles into consideration in the context of ISL permitting under the SDWA, the EPA's Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") programs should also be more aggressive in meeting the environmental justice goals outlined in Plan EJ 2014. Specifically, community experience with the EPA's CERCLA program in remediating uranium mines in the Eastern Navajo Agency has been disappointing.

For example, in the case of the Northeast Church Rock Mine ("NECRM") remediation in Church Rock, the EPA's CERCLA program failed to give credence to community experience or desires. The community members who live near the NECRM were not party to any negotiations between the EPA and the Potentially Responsible Party ("PRP") about how the waste that burdens their community would be remediated or the location of its final removal. Community members near the NECRM, along with tribal members across the southwest, demanded that the radioactive waste be removed from Indian Country. However, this option was not considered in any meaningful way.

This decision-making pattern seems to be repeating itself in the initial evaluation process of the Gulf Mariano Lake Mine, where initial site evaluation is going forward without community input. Therefore, while EPA and PRPs fashion remediation strategies, the

communities that are impacted and ultimately have to live with the decisions that are made are excluded from the process.

What NEJAC should advise EPA to do:

- 1) Advise UIC programs in all EPA regions to review and revise, where appropriate and desirable, aquifer exemptions that have been granted which affect environmental justice communities, particularly indigenous communities.
- 2) Direct EPA to develop and implement a consistent policy between regions for evaluating and granting aquifer exemptions affecting environmental justice and indigenous communities.
- 3) Recommend that EPA conduct a comprehensive review of aquifer exemptions for ISL operations that EPA has granted or that state programs have granted and which EPA has overseen, to determine whether underground sources of drinking water or private wells adjacent to exempted aquifers have been impacted by ISL operations. If data on the impacts of ISL operations on adjacent underground sources of drinking water or wells do not exist or are unreliable, NEJAC should recommend that EPA take steps to gather and analyze the appropriate data. Any EPA data gathering efforts, should, of course, include meaningful input and participation from uranium impacted communities and communities where ISL operations are proposed.
- 4) Recommend that EPA review its practice of exempting entire aquifers or large portions of aquifers under its UIC programs for ISL operations, rather than exempting those portions of an aquifer immediately adjacent to individual ore bodies.
- 5) Direct EPA to develop and implement a policy for increased meaningful participation of community members in CERCLA remediation activities implemented by EPA, particularly in areas impacted by uranium mining and milling. Community members and organizations (not just governments) should be actively involved in the remediation decision process early in that process, pursuant to Plan EJ 2014, §§ 2.3 and 3.3.
- 6) Direct EPA to incorporate the principle of free, prior and informed consent as codified in the United Nations Declaration on the Rights of Indigenous Peoples into its process of evaluating and granting permits, including aquifer exemptions and underground injection control permits that involve resource extraction activities affecting Indian land or resources.
- 7) Information on the health impacts of living in proximity to uranium mines and mills is spotty at best. NEJAC should advise the EPA to seek out and encourage partnerships between EPA and other federal agencies – such as the Centers for Disease Control and Department of Health and Human Services – along with uranium impacted communities, to conduct primary epidemiological studies in these communities.
- 8) Currently, there is no comprehensive regulatory framework for uranium mine remediation. Current clean-up efforts rely on a patchwork of state laws and regulations, site by site plans under CERCLA, and varying remediation standards pursuant to several federal laws.

NEJAC should advise EPA to begin the process of investigating and drafting legislation that would address uranium mine remediation in a comprehensive manner.

Thank you for the opportunity to submit comments. Please do not hesitate to contact me if you have any questions, need clarification on any issue, or would like additional information.

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping horizontal and diagonal strokes, positioned above the typed name.

Eric Jantz
Staff Attorney