



Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
1889 F. Street N.W.
Washington, D.C. 20006

Thematic Hearing Request: Uranium Development and Waste in Indigenous Communities in the United States

December 8, 2022

Dear Secretary Reneaum Panszi:

By way of this letter, the undersigned organizations respectfully request a hearing during the 186th period of sessions of the Inter-American Commission on Human Rights (the "Commission"). The requested hearing will address human rights violations related to the development of uranium resources on and near Indigenous lands in the United States (U.S.) and the U.S. government's failure to meaningfully address radioactive and toxic wastes generated from historic uranium mining and milling on and near Indigenous lands. While Indigenous communities are by no means the only communities of color affected by uranium development waste or threatened by new uranium development, Indigenous communities have been uniquely and disproportionately affected by the U.S. government's policies, practices and lack of any cogent policy on uranium. This request highlights several critical situations that are emblematic of the struggles to maintain health, culture, clean air, clean water and clean land that many Indigenous communities face throughout the U.S. This request is submitted in the name of the New Mexico Environmental Law Center on behalf of Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), the Red Water Pond Road Community Association, Tonia Stands of the Oglala Lakota Tribe and Yolanda Badback of the Ute Mountain Ute Tribe.

I. Human Rights Issues to be Addressed

Although the U.S. has existing legal and regulatory frameworks for governing the development of uranium resources and for the remediation of historic uranium mining and milling waste, those frameworks are inadequate to protect human health and the environment. Additionally, to the extent that current legal and regulatory frameworks provide any protection to communities, these frameworks are implemented and enforced inequitably, making protections for most Indigenous communities illusory. Moreover, implementation and enforcement of existing laws and regulations as well as the adoption of new, more protective, laws and regulations is hobbled by a lack of any coherent national policy on uranium development or remediation. The risks posed to Indigenous communities is magnified by the U.S.'s troublesome history of colonialist and assimilationist policies that continue to inform the U.S.'s relationship with Indigenous Nations.

The inadequacy of existing legal and regulatory frameworks and the lack of a cogent national uranium development and waste disposal policy result in U.S. regulatory agencies falling short of their obligations under the Organization of American States Charter.¹ Further, within the litany of human rights shortcomings associated with uranium development and remediation on Indigenous lands in the U.S., several stand out. These include violating the right to a healthy environment,² the right to life,³ the

¹ Organization of American States, Charter of the Organization of American States (A-41) (1948), Art. 17 (respect for individual rights and universal principles of morality); Art. 45(a) (OAS member states commit to respect individual liberty and dignity without discrimination); Art. 47 (OAS member states shall give primary importance in development plans to encourage culture as a foundation for democracy and social justice).

² United Nations Human Rights Council, Res. No. 48/13 *The Human Right to a Clean, Healthy and Sustainable Environment*, A/HRC/Res/48-13 (Oct. 8, 2021); United Nations General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/76/L.75 (July 26, 2022) (recognizing a clean, healthy and sustainable environment as a fundamental human right).

³ American Declaration on the Rights and Duties of Man, Art. 1 (1948); International Covenant on Civil and Political Rights, Art. 6.1 (1966).

right to culture,⁴ the right to be free from discrimination,⁵ and the right to free, prior and informed consent.⁶

A. Legal and Regulatory Context

The legal and regulatory framework governing uranium development in the U.S. is complex. Depending on where uranium development takes place and how it is accomplished, the regulatory framework may be federal, state, or some combination of the two. For the purposes of this request, the requesting groups intend to focus on the role of the U.S. Nuclear Regulatory Commission (“NRC”) and Environmental Protection Agency (“EPA”) in uranium development, particularly as they relate to licensing in situ leach (“ISL”) uranium mines, and uranium mining and processing waste remediation. With respect to the White Mesa uranium mill, the state of Utah Department of Environmental Quality is also implicated.

The NRC is the regulatory agency that is responsible for licensing ISL uranium mines under the federal Atomic Energy Act of 1954.⁷ While the NRC may delegate implementation and enforcement authority to a state, U.S. law does not allow states to assert jurisdiction over tribal lands; therefore, the NRC is the exclusive regulatory authority for ISL mines on Indigenous lands.⁸

Though the NRC has sole responsibility for implementing and enforcing regulations governing ISL mining, the U.S. EPA has a role in promulgating standards for ISL mining. Under the Atomic Energy Act, the EPA has the authority to set groundwater protection standards, which the NRC must then enforce.⁹ Additionally, in order for ISL

⁴ American Declaration on the Rights and Duties of Man, Art. 13; American Declaration on the Rights of Indigenous Peoples, Art. XIII, OEA/Ser.D/XXVI.19 (June 15, 2016); United Nations Declaration on the Rights of Indigenous Peoples, Art. 8, A/61/L.67 (Sept. 13, 2007).

⁵ Charter of the Organization of American States, Art. 45(a); International Covenant on Civil and Political Rights, Art. 2.1; International Convention on the Elimination of all Forms of Racial Discrimination, Art. 2.1(a).

⁶ American Declaration on the Rights of Indigenous Peoples, Art. XXIX.4, AG/RES. 2888 (XLVI-O/16) (2016); United Nations Declaration on the Rights of Indigenous Peoples, Arts. 29.2, 32.2, A/Res/61/295 (2007).

⁷ 42 U.S.C. §§ 2011 *et seq.*

⁸ *See, e.g., Worcester v. Georgia*, 31 U.S. 515, 562-563 (1832).

⁹ 42 U.S.C. § 2022.

mining to occur,¹⁰ the EPA must grant the mine operator an “aquifer exemption,” which allows the operator to pollute what would otherwise be an underground source of drinking water.¹¹ Finally, the EPA holds substantial authority to require remediation of historic uranium development sites. Under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”), the EPA is the primary regulatory authority for remediation of uranium mining and milling sites that have been determined to be a particularly significant threat to human health and the environment.¹²

B. Health, Cultural and Environmental Impacts of Current and Historical Uranium Development in Indigenous Communities

The health impacts of uranium development, both past and present, are well documented. Uranium’s decay products, particularly radon, have well established adverse health effects on humans. When radon is inhaled, densely ionizing alpha particles are deposited in the lungs.¹³ 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, exposure to gamma radiation can cause disease, including cancer.

¹⁰ 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 often has very low concentrations of these chemicals. ISL mining works by injecting chemicals into an aquifer to break the chemical bonds between the uranium and other heavy metals and the surrounding subsoil, causing those minerals to become mobile within the aquifer. As a result, once disturbed, uranium that was contained prior to mining, spreads over large areas of the disturbed aquifer. *See*, https://earthworks.org/issues/in_situ_leach_uranium_mining/. No commercial uranium mine in the U.S. has been able to restore an aquifer contaminated by ISL mining to its pre-mining condition. *See, e.g.,* Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*. U.S. Geological Survey Open-File Report 2009-1143 (2009), available at: <https://pubs.usgs.gov/of/2009/1143/pdf/OF09-1143.pdf>; https://earthworks.org/issues/in_situ_leach_uranium_mining/.

¹¹ 40 C.F.R. § 146.4.

¹² 41 U.S.C. §§ 9601 *et seq.*

¹³ World Health Organization, *WHO Handbook on Indoor Radon: A Public Health Perspective* at 1 (2009).

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.¹⁴ Likewise, studies of humans who have had long-term exposure to uranium in drinking water show that uranium ingestion causes renal damage.¹⁵ It is unsurprising, then, to see increased incidences of renal disease, heart disease, hypertension and cancers in Indigenous communities in close proximity to current uranium development operations and where historic uranium development occurred compared to similar communities where no uranium development has occurred.¹⁶

Similarly, Indigenous communities near currently operating uranium development operations experience significant environmental degradation. No element is spared. Ongoing and historic uranium development contaminates water,¹⁷ land¹⁸ and air.¹⁹ The cited examples of environmental degradation from uranium development are a small

¹⁴ World Health Organization, *Uranium in Drinking Water*, WHO/SDE/WSH/03.04/118 at 4-9 (2005).

¹⁵ 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.

¹⁶ See, e.g., Gallagher, Conor, *Oglala Lakotas Oppose Expansion of Uranium Mining Near Reservation*, Earth Island Journal (May 12, 2014) (Oglala Lakota oppose expansion of the Crow Butte ISL uranium mine because of reported unusually high incidences of cancer, birth defects and renal disease downstream and downgradient of the mine), available at:

https://www.earthisland.org/journal/index.php/articles/entry/Oglala_Lakotas_Oppose_Expansion_of_Uranium_Mining_Near_Reservation/;

Lewis, Johnnye, et al., *Mining and Environmental Health Disparities in Native American Communities*, 4 Current Env'tl Health Rpts 130 (2017), available at:

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5429369/pdf/40572_2017_Article_140.pdf.

¹⁷ ProPublica, *The Cold War Legacy Lurking in U.S. Groundwater* (Dec. 3, 2022), available at:

https://www.propublica.org/article/uranium-mills-pollution-cleanup-us?utm_medium=social&utm_source=twitter&utm_campaign=socialflow;

U.S. EPA,

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0600819>

(describing groundwater remediation measures at the United Nuclear Corp. Mill in Churchrock, Navajo Nation, New Mexico).

¹⁸ Churchrock Chapter, Navajo Nation, et al., *Report of the Church Rock Uranium Monitoring Project 2003-2007* (May, 2007) (describing land and water contamination from historic uranium development in Churchrock, Navajo Nation), available at:

<http://www.sric.org/uranium/docs/CRUMPreportSummary.pdf>.

¹⁹ Mimiaga, Jim, *EPA: Uranium waste pond at White Mesa, Utah, out of compliance*, Durango Herald (April 13, 2022) (EPA determined air emissions from a White Mesa Mill evaporation pond exceeded standards for radon by ten times), available at: <https://www.durangoherald.com/articles/white-mesa-mill-violates-clean-air-act-epa-says/>.

sample of the widespread environmental impacts Indigenous communities live with daily.

Finally, uranium development's impacts on Indigenous cultural practices is the most under-acknowledged aspect of the industry's myriad adverse effects on Indigenous communities. Uranium development's specific cultural effects on Indigenous communities is discussed in more detail below; however, the essence of those impacts rests on Indigenous peoples' relationship with their environment (land, air and water) and the complete failure of U.S. regulatory agencies to take that fundamental reality into account.

II. Indigenous Communities' Experience with Uranium Development

Proposed and Existing Uranium Development: Navajo Nation and Lakota Nation

The U.S. has failed to ensure basic human rights necessary for a life of dignity for Indigenous communities affected by proposed and existing uranium development. While the devastating effects of historic uranium development are well chronicled,²⁰ albeit not well known, Indigenous struggles against new uranium development – and the attendant health, environmental and cultural effects – have been less recognized. The struggles of several Indigenous communities located in different regions of the U.S. demonstrate the significant effects of living with and under the threat of, contemporary uranium development and exemplify the U.S.'s disparate treatment of Indigenous communities.

*Crownpoint and Churchrock, Navajo Nation*²¹

Churchrock and Crownpoint are located in the eastern part of the area traditionally used and occupied by the Navajo (or Diné in their native language) 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 shepherders from White and Mexican

²⁰ See, e.g., ProPublica, *The Cold War Legacy Lurking in U.S. Groundwater*.

²¹ The proposed mining in Crownpoint and Churchrock is the subject of an individual Petition before this Commission. *Navajo Communities of Crownpoint and Churchrock v. United States of America*, Petition 654-11. However, Navajo requestors do not seek to discuss any specific rights violations associated with that matter, rather they wish to present their situation to address the larger structural issues related to proposed uranium mining in their communities.

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

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. As a result of the U.S. policies of colonization, assimilation and termination, land within the Eastern Agency in and near Crownpoint and Churchrock has been, or is planned to be, exploited for uranium development.

Although the nuclear industry and its government partners at the NRC tout ISL mining as safe and environmentally friendly, the environmental problems with ISL mining are well documented.²⁵ ISL mining's troubling environmental record is particularly problematic in the case of the Crownpoint Uranium Project proposed for Crownpoint and Churchrock.

First, although Crownpoint and Churchrock are rural communities, the proposed ISL mines²⁶ will be located very near, in many cases within yards of, substantial numbers of people. Indeed, the elementary school in Crownpoint is located less than a half mile from the plant where uranium mined from sites in Churchrock and Crownpoint will be processed. The school is also within a half mile of the proposed Crownpoint wellfields, where uranium will be mined. This stands in stark contrast to instances where the NRC has licensed ISL mines in predominantly White, rather than Indigenous communities, where it has done so only when the mine is not in close proximity to people.²⁷ The United States' inequitable treatment of Indigenous communities in licensing ISL mines is deeply disturbing and contrary to human rights law and norms.

²³ *Id.*

²⁴ *Id.* at 1392-1393.

²⁵ See, e.g., Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*; U.S. NRC, 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), available at: <https://www.nrc.gov/docs/ML0706/ML070600405.pdf>.

²⁶ The NRC licensed the proposed mines in 1998. <https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crown-point.html>.

²⁷ See, e.g., U.S. Bureau of Land Management, Final Environmental Impact Statement, Lost Creek Uranium In-Situ Recovery Project at 3-1 (2012) (nearest residence to ISL mine is approximately 15 miles away) available at: <https://www.nrc.gov/docs/ML1225/ML12256B061.pdf>. The Lost Creek ISL mine is located in Sweetwater County, Wyoming, which is 78.9% non-Hispanic White. See, <https://datausa.io/profile/geo/sweetwater-county-wy>. U.S. NRC, Willow Creek Uranium Recovery Project Fact Sheet at 1 (nearest population is approximately 10 miles from the project), available at: <https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/is-christensen-ranch.pdf>. The Willow Creek project is located primarily in Johnson and Campbell Counties, Wyoming. *Id.* Johnson County is 90.7% non-Hispanic White. See, <https://www.census.gov/quickfacts/johnsoncountywyoming>. Campbell County is 86.9% non-Hispanic White. See, <https://www.census.gov/quickfacts/campbellcountywyoming>.

Second, the NRC failed to take into account Diné cultural views and practices in licensing the Crownpoint Uranium Project. The Diné view uranium as a disruptive element that brings disharmony and which should be left in the ground.²⁸ Disturbing uranium and introducing it into the air, soil and water is therefore a cultural affront to the Diné and inhibits expression of culture. Rather than consider and respect this fundamental cultural reality, the NRC focused on archaeological sites and discounted living cultural practices entirely.

Oglala Lakota Band, Lakota Nation

Like the Navajo Nation, the Lakota Nation has been disproportionately affected by uranium mining compared to more White and affluent communities. Most of the active uranium ISL mines are located in traditional Lakota Territory. This territory spans parts of six states and was guaranteed by the Fort Laramie Treaties of 1851 and 1868.²⁹ The Lakota Nation has never ceded this territory.³⁰ A map of the current boundaries of the Lakota reservation and the unceded territory is in Figure 1, below.

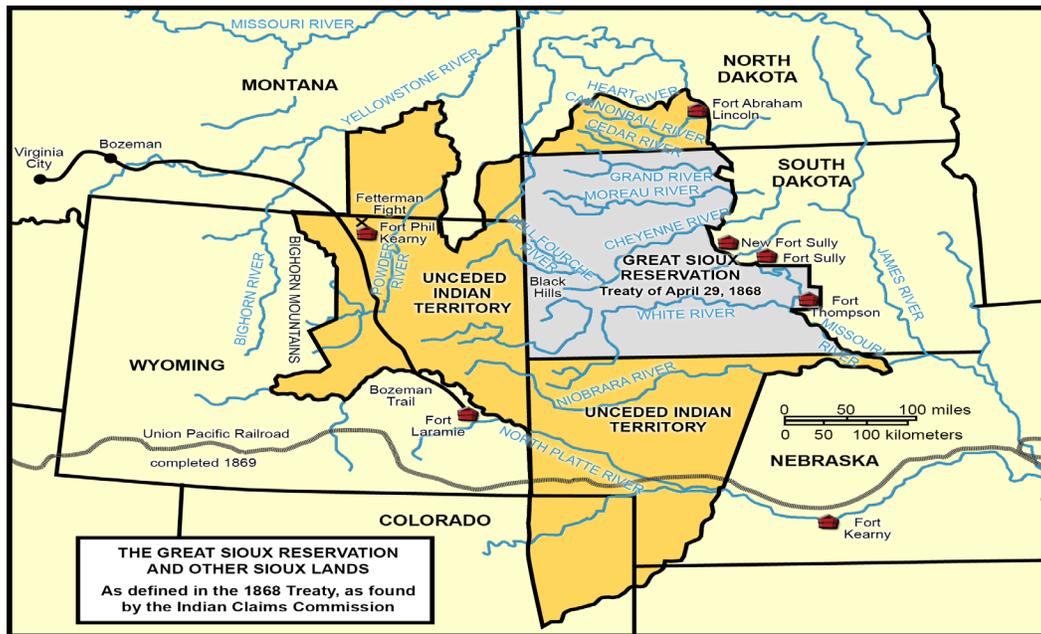


Fig. 1

²⁸ Markstrom, Carol A., and Charley, Perry H., *Psychological Effects of Technological/Human Caused Environmental Disasters*, in *The Navajo People and Uranium Mining* at 105.

²⁹ Owe Aku (Bring Back the Way), *Environmental Justice and the Survival of a People: Uranium Mining and the Oglala Lakota People* at 3 (2008-2009), available at: <http://www.mining-law-reform.info/lakotasurvival.pdf>.

³⁰ *Id.*

The Oglala Lakota Tribe, which is one of the bands of the Great Sioux Nation, has been particularly affected by uranium development. The existing Crow Butte ISL mine is approximately 40 miles from the Pine Ridge reservation, within unceded Lakota territory.³¹ The Oglala Lakota have long opposed the mine and its expansion because of concerns about surface and ground water contamination.³² The proposed Dewey-Burdock ISL mine is located near the town of Edgemont, South Dakota, within the Black Hills, an area of substantial cultural significance to the Lakota people, and within the unceded Lakota lands.³³ Further, most of the existing operating ISL uranium mines lie within unceded Lakota territory in Wyoming.

The saturation of ISL mines within unceded Lakota territory is significant. First, the operating mines pose a significant risk to ground and surface water.³⁴ Second, the operating and proposed mines have an incalculable impact on Lakota cultural beliefs and practices. The environmental contamination inherent in ISL mining within the Lakota traditional territory strikes at the cultural heart of the Lakota people.³⁵ Nevertheless, the NRC has consistently ignored living cultural practices in evaluating whether to license uranium development within unceded Lakota territory.³⁶ In fact, the NRC failed to even comply with fundamental domestic environmental and historic preservation laws when engaging with the Oglala Lakota about historic cultural sites.³⁷ The NRC's failure to engage with Indigenous communities on even the most superficial level falls well short of providing free, prior and informed consent,³⁸ and its decisions to

³¹ White Plume, Debra, *Oglala Sioux Battles Uranium Mine*, Indianz.com (Aug. 18, 2015), available at: <https://www.indianz.com/News/2015/08/18/debra-white-plume-ogla-la-sioux.asp>.

³² Lakota Times, *Activists Granted Standing to Oppose Uranium Producer* (Dec. 4, 2008), available at: <https://www.lakotatimes.com/articles/activists-granted-standing-to-oppose-uranium-producer/>.

³³ Friedler, Delilah, "Get the Hell Off": *The Indigenous Fight to Stope a Uranium Mine in the Black Hills*, Mother Jones (March/April 2020), available at: <https://www.motherjones.com/politics/2020/05/the-black-hills-are-not-for-sale/>.

³⁴ *Id.*

³⁵ *Environmental Justice and the Survival of a People: Uranium Mining and the Oglala Lakota People* at 2.

³⁶ Friedler, Delilah, "Get the Hell Off": *The Indigenous Fight to Stope a Uranium Mine in the Black Hills*

³⁷ Feb. 5, 2014 Letter from Bryan Brewer, President of the Oglala Sioux Tribe to NRC, available at: http://www.powertechexposed.com/2014.02.05%20OST%20letter%20to%20Haimanot%20Yilma_NRC.pdf ; *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Comm'n*, 896 F.3d 520, 536 (D.C. Cir. 2018).

³⁸ In 2017, the NRC issued a manual for engaging with Indigenous tribes. See, NRC, NUREG-2173 *Tribal Protocol Manual* (2017), available at: <https://www.nrc.gov/docs/ML1821/ML18214A663.pdf>. The *Tribal Protocol Manual* effectively confirms the experience of Indigenous communities engaging with the NRC, i.e., that the NRC sees its obligations to engage with tribes as voluntary and when the NRC deigns to engage, it will impose its plans on Indigenous communities, irrespective of the communities' wishes. See, e.g., *Tribal Protocol Manual* at 2, 10-11, Sec. 1.F.

treat the Lakota people inequitably is certainly a failure of the U.S. government to ensure their basic human rights.

Uranium Waste Remediation: Navajo Nation and Ute Mountain Ute

The U.S. has similarly failed to ensure basic human rights necessary for a life of dignity for Indigenous communities affected by waste from historic uranium mining and processing. Like the U.S. government's treatment of Indigenous communities in the context of current and proposed uranium development, its ill treatment of Indigenous communities in the context of uranium waste remediation is not restricted to a single geographic area or Indigenous nation.

The Red Water Pond Road Community, Navajo Nation

The United States Government's shameful history of taking tribal lands through force or deception and eradicating Indigenous cultures in order to exploit natural resources is well established.³⁹ However, it is critically important to keep this history in mind when evaluating the current circumstances at the Red Water Pond Road Community.

It is in this historical context that the U.S. government permitted uranium mining and processing in the community with no input from the community about whether or how uranium mining or processing would occur in their residential area. Consequently, the Red Water Pond Road Community (represented by the yellow star) is now situated between two uranium mine Superfund sites and one uranium mill Superfund site, as shown in Figure 2.

³⁹ See, e.g., *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980); *United States v. Dann*, 470 U.S. 39 (1985); Newton, Nell J., et al., eds., *Cohen's Handbook of Federal Indian Law*, § 1.03[1] at 29 (LexisNexis 2005).

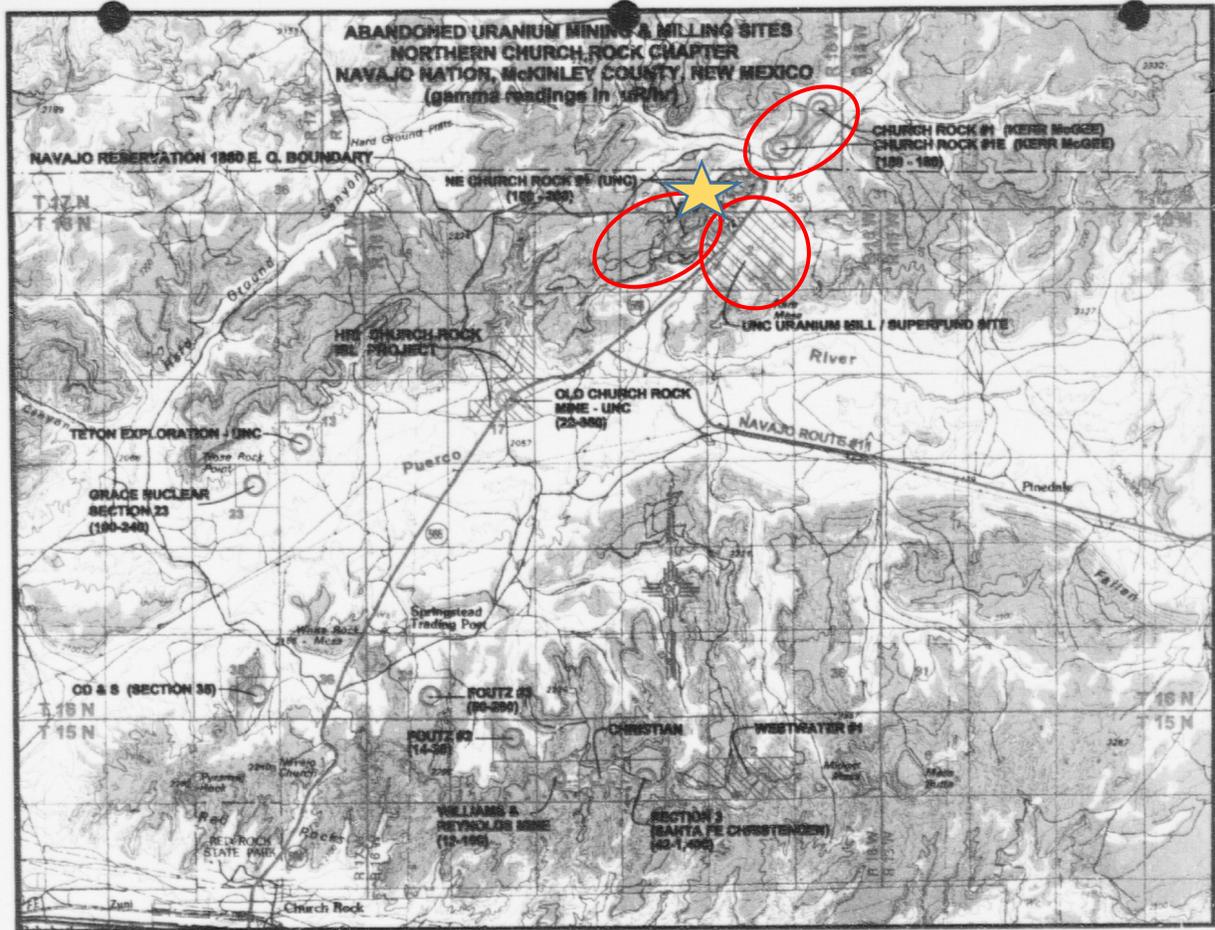


Fig. 2

The legacy Community members were left with is widespread toxic and radioactive contamination. Indeed, even when Community members raised concerns – decades ago - about toxic and radioactive waste near their homes affecting their health, the EPA ignored those concerns, reassuring the Community that they were safe. It was not until 2007, after a community-initiated radiation survey found radiation levels in the Community were significantly higher than background levels, that the EPA finally conceded that Red Water Pond Road was not a safe or healthy place to live.⁴⁰ Rather than learning from these historical injustices, however, the EPA continues to impose its own “solutions” on the Community with respect to waste remediation, ignoring the Community-proposed solutions entirely.

⁴⁰ See, *Report of the Churchrock Uranium Monitoring Project 2003-2007* at iv-v (May 2007), available at: http://www.sric.org/uranium/docs/CRUMP_ReportSummary.pdf.

For example, in order to protect themselves from ongoing radiation and toxic materials exposure in their community, the Red Water Pond Road residents asked the EPA to relocate them collectively to a nearby mesa, called Standing Black Tree Mesa (*Tsin tizhin Ei'aah*) which is a traditional use area for the community. Instead, the EPA fractured the community by paying to relocate some families to mobile homes outside of the Navajo Nation or to other areas within the Navajo Nation. EPA effectively forced community members to choose between continued exposure and leaving their community and severing cultural ties with the land where they lived.

Further, even after relocation, many Red Water Pond Road Community members continued to demand that the waste from the Northeast Churchrock Mine and the Quivira Mine be removed from their community and disposed of in a licensed facility outside the Navajo Nation. Rather than impose any further financial costs on the party liable for the Northeast Churchrock Mine remediation,⁴¹ the EPA is allowing the operator to consolidate the mine waste with mill tailings at the United Nuclear Corp. uranium mill,⁴² approximately half a mile from the Red Water Pond Road Community.

Red Water Pond Road Community residents have been waiting for their community to be cleaned up for decades. In 2014, the Red Water Pond Road Community Association brought their concerns about the pace and thoroughness of mine remediation in their community compared to more affluent and White communities that have been impacted by uranium development to the Committee on the Elimination of Racial Discrimination. As a result, the CERD committee directed the United States to “Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date.”⁴³ Since 2014, the EPA has conducted no appreciable cleanup of the mines in the Red Water Pond Road Community. The U.S. government has failed to honor the Red Water Pond Road Community’s rights to a healthy environment, life, and culture in allowing for this ongoing exposure to contaminants and continuing to allow for practices that result in human rights violations.

⁴¹ General Electric (“GE”) is financially responsible for remediating the Northeast Churchrock Mine. GE’s gross profits for 2021 were \$20.3 billion. See, <https://www.macrotrends.net/stocks/charts/GE/general-electric/gross-profit>.

⁴² GE also owns the UNC uranium mill.

⁴³ Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, ¶ 10(c), CERD/C/USA/CO/7-9 (Sept. 25, 2014).

White Mesa Ute Community, Ute Mountain Ute Tribe

The Ute Mountain Ute Tribe are the Weeminuche band of the Ute Nation.⁴⁴ The Ute Mountain Ute's traditional territory spanned parts of what are now the states of Utah, Colorado, Arizona and New Mexico.⁴⁵ The current Ute Mountain Ute territory is located in southwest Colorado and northwest New Mexico.⁴⁶ There are also Ute Mountain Ute allotments in White Mesa, Utah.⁴⁷ The Ute Mountain Ute community in White Mesa is also located adjacent to the last operating uranium mill in the United States.⁴⁸

The White Mesa Ute community's proximity to the White Mesa uranium mill has resulted in significant health, environmental and cultural impacts. In forty years of operation, the White Mesa mill has resulted in significant groundwater contamination,⁴⁹ radioactive air emissions,⁵⁰ and cultural⁵¹ impacts. Because of the significant adverse health, environmental and cultural impacts the White Mesa Mill has had on the White Mesa Ute Community, the Ute Mountain Ute Tribe passed a resolution calling for the immediate cessation of operations at the mill.⁵²

Nevertheless, the regulatory agency with primary responsibility to ensure compliance with health and environmental laws, the Utah Department of Environmental Quality,

⁴⁴ See, <https://www.utemountainutetribe.com/>.

⁴⁵ *Id.*

⁴⁶ <https://www.utemountainutetribe.com/natural%20resources.html>, About the Reservation.

⁴⁷ https://web.archive.org/web/20080626005051/http://www1.eere.energy.gov/tribalenergy/guide/pdfs/ute_mountain_ute.pdf.

⁴⁸ <https://protectwhitemesa.org/about-us/>.

⁴⁹ January 8, 2020 Letter from Scott Clow, Ute Mountain Ute Tribe Environmental Dept. to Utah Div. of Waste Management and Radiation Control, available at:

https://uraniumwatch.org/whitemesamill/UteMtUte_toDWMRC_WhiteMessa_Groundwater_DRC-2020-001384_011720.pdf. The state of Utah has assumed implementation and enforcement authority of the federal Atomic Energy Act, pursuant to an agreement with the NRC. See, <https://deq.utah.gov/waste-management-and-radiation-control/radioactive-materials-regulatory-program>.

⁵⁰ <https://www.grandcanyontrust.org/blog/uranium-mill-near-bears-ears-still-violating-clean-air-act>. See also, March 3, 2022 letter from U.S. EPA to Mark Chalmers, President and CEO Energy Fuels Resources (USA), Inc., available at: <https://www.grandcanyontrust.org/sites/default/files/resources/2022-03-03-EPA-Letter-to-EFR-White-Mesa-Mill.pdf#page=2>.

⁵¹ Grand Canyon Trust, *The Business of Radioactive Waste* at 15 (March, 2022), available at:

https://www.grandcanyontrust.org/sites/default/files/resources/White_Mesa_Report_March2022_Final.pdf.

⁵² https://www.grandcanyontrust.org/sites/default/files/resources/UMUT_Resolution2021-135_Opposition_Strategic_Uranium_Reserve.pdf.

has taken no steps to address the Ute Mountain Ute concerns. While the White Mesa Community waits for justice, it continues to be exposed to radioactive and toxic materials.

III. Proposed Hearing

The Commission has committed itself to ensuring the protection of the human rights of individuals within the Organization of American States system, and most recently to ensuring the economic, social and cultural rights of the region's peoples. Recognizing this and the recent attention uranium development has garnered from the U.S. government, the Commission can provide an important regional framework which is currently lacking and strengthen Indigenous communities' efforts to ensure their physical and cultural survival. Given the urgency of the matter described above, we respectfully request a hearing to focus the Commission's attention on the situation of many Indigenous communities in the United States who labor under the burden of existing uranium development, proposed uranium development and ongoing exposure to radioactive and toxic waste from historic uranium development.

Our presentation will consist of an overview of the situation of the communities outlined above, a discussion of legal standards setting out the obligations of the United States, and recommendations for fulfilling those obligations. These issues will be presented in more depth at the hearing by community members and advocates most directly familiar with them.

We recommend inviting the following individuals to participate on behalf of the United States, in addition to the representative of the U.S. Permanent Mission to the Organization of American States:

Mr. Christopher Hansen, Chair
U.S. Nuclear Regulatory Commission
Mail Stop O-16 B33
Washington, D.C. 20555-0001
Chair@nrc.gov

Mr. Michael Regan
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We also respectfully request that the Commission urge the United States to take the following actions:

1. That the U.S. Nuclear Regulatory Commission and U.S. Environmental Protection Agency immediately adopt regulations and guidance to incorporate free, prior and informed consent in all its decisions affecting Indigenous nations within the United States:

2. That the U.S. Nuclear Regulatory Commission immediately suspend all source and byproduct materials licensing actions for uranium ISL mines within established Indian Country and within traditional Indigenous territories, pending review of the NRC's policies and practices on ISL mine licensing in Indian Country;

3. That the U.S. Nuclear Regulatory Commission immediately suspend all source and byproduct materials licensing actions for uranium ISL mines within established Indian Country and within traditional Indigenous territories, pending review of the NRC's policies and practices on remediation of historic uranium development waste in Indian Country;

4. That the U.S. EPA, particularly Regions 6 and 9, immediately suspend all aquifer exemption permitting processes in Indian Country and within traditional Indigenous territories, pending review of their regulations, policies and practices for issuing such aquifer exemptions;

5. That the U.S. EPA, particularly Regions 6 and 9, immediately undertake an analysis of the feasibility of one or more regional uranium waste landfills to centralize uranium development waste disposal in areas away from Indian Country and Indigenous culturally significant areas;

6. That the U.S. EPA immediately promulgate ISL groundwater protection standards.

Thank you for your thoughtful consideration of our request. Please contact Eric Jantz at the New Mexico Environmental Law Center with any questions. We extend our appreciation in advance for the potential opportunity to present to the Commission.

Sincerely,



Eric Jantz

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