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Monday, March 08, 2010

DISSENTING JUDGE SAYS COURT DECISION PUTS HEALTH OF NAVAJO PEOPLE AT RISK

SANTA FE, N.M. – A federal appeals court judge has condemned a decision of two of his colleagues that upholds the Nuclear Regulatory Commission’s (NRC) license allowing Hydro Resources, Inc. (HRI) to mine for uranium in Churchrock and Crownpoint chapters of the Navajo Nation.

Judge Carlos F. Lucero, in a stinging dissent, disagreed with the majority’s decision upholding the NRC’s administrative ruling that HRI did not have to comply with federal limits on radiation releases from existing mine waste at the Churchrock Section 17 proposed *in situ* leach (ISL) mine site.

“Because the majority’s decision in this case will unnecessarily and unjustifiably compromise the health and safety of the people who currently live within and immediately downwind from Section 17, I must respectfully dissent,” Judge Lucero wrote. “The NRC’s erroneous decision and the majority’s endorsement of that decision will expose families [living near Section 17] to levels of radiation beyond those deemed safe by the NRC’s own regulations, jeopardizing their health and safety.”

The 2-1 ruling upheld the license NRC issued to HRI in January 1998, after which a lengthy administrative hearing that lasted through 2006 considered the scientific and legal validity of the license. Eastern Navajo Diné Against Uranium Mining (ENDAUM), Southwest Research and Information Center (SRIC), and two Navajo women from Pinedale Chapter intervened in the case in 1995, participated in the entire administrative proceeding, and were plaintiffs in the federal lawsuit decided Monday by the three-judge panel.

ENDAUM and SRIC were represented by the New Mexico Environmental Law Center (NMELC) and the community members were presented by DNA-People’s Legal Services of Window Rock, Arizona.

Even though the panel acknowledged that conditions imposed by NRC in the HRI license will not guarantee that groundwater contaminated by such toxic and radioactive pollutants such as arsenic, radium, and uranium will be restored after mining ceases, the judges ruled that NRC had just enough of a rational basis to issue the license, and therefore the court had to defer to the agency’s judgment. In other words, the panel found that restoring groundwater close to safe standards and requiring a clean-up bond that might approach the cost of restoring the groundwater is good enough for Navajo communities.

“We are very disappointed in the court’s decision,” said Eric Jantz, staff attorney of the New Mexico Environmental Law Center and lead attorney on the appeal. “The majority passed up the opportunity to protect the health and safety of the people of Crownpoint and Church Rock — because the NRC won’t.”

Jantz noted that while the license authorizes ISL mining at all four sites (two in Churchrock and two in and near Crownpoint), the panel’s ruling on groundwater restoration and financial assurance mentioned only the Churchrock Section 8 site, and its ruling on radioactive air emissions applied only to Churchrock Section 17, which is contiguous to Section 8. He noted that at least 850 people live within five miles of the two proposed Churchrock ISL sites — a concern evinced by Judge Lucero in his dissent.

“We remain concerned that HRI seeks to mine uranium within one-half mile of two of Crownpoint’s municipal water supply wells, a proposal that is unprecedented in the ISL industry in the U.S.,” he said.

“So despite the Court’s decision, the people of Crownpoint and Churchrock will continue to resist any attempts to conduct uranium mining in their communities.”

BACKGROUND

On May 12, 2008, for the first time in United States history, the 10th Circuit judges heard oral arguments challenging the NRC for its approval of a source materials license for an *in situ leach* uranium mine in the aquifer used as the primary drinking source for 15,000 Navajo people. The Navajo communities of Crownpoint and Church Rock, New Mexico, with the assistance of the NMELC, ENDAUM and SRIC, fought the NRC and HRI, demanding that they stay off of Navajo lands in New Mexico. NMELC presented oral arguments to the panel of Federal judges asking that the NRC decision to allow mining be set aside.

ENDAUM is the first community group ever to challenge a NRC source materials license for an ISL uranium mine. This court setback is even more devastating now that the nuclear industry ramps up its lobbying campaign to gain access to stimulus funds for construction of new nuclear plants.

“I think it's critical to look at the entire nuclear fuel chain when talking about any one of its links,” Jantz said. “So when there's a discussion about uranium mining, it's important to talk about the enrichment and power Regeneration aspects of the chain, because enrichment affects New Mexico, as does generation.”

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The mission of the New Mexico Environmental Law Center is to protect New Mexico’s natural environment and communities through legal and policy advocacy, and public education. The New Mexico Environmental Law Center’s attorneys have handled over 100 critical cases in low-income and minority communities fighting pollution and environmental degradation. The Law Center charges few, if any, fees to its clients, most of whom are from Hispanic and Native American communities. The NMELC celebrated its 20th anniversary in 2008. Membership and gifts help New Mexico communities protect their natural environment and their health from toxic pollution, the degrading effects of growth and liabilities created by irresponsible mining. Contact: Sebia Hawkins, Director of Development 505-989-9022.

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INTERVIEWS AND IMAGES ARE AVAILABLE UPON REQUEST

CONTACT:

Jennifer Marshall
505-231-1776
jennifer@jmarshallplan.com
www.jmarshallplan.com