jurisdiction. Specifically, section 1451(b)(1)(B) of the SDWA provides that a Tribe may exercise regulatory functions under the Act provided that such functions "are within the area of the Tribal Government's jurisdiction." However, the SDWA does not provide further specific guidance regarding the types of land that may be considered to be within the area of a Tribal Government's jurisdiction. The federal regulations implementing this section of the SDWA, reiterating the broad statutory language, do not adopt a specific definition of what constitutes the "area of the Tribal Government's jurisdiction." The preamble to these regulations indicates that the extent of tribal jurisdiction must be examined on a case-by-case basis.[30]

As indicated above, much of the discussion in the Attorney General's Statement relates to the Navajo Nation's assertion of authority over land within the Eastern Navajo Agency. The Attorney General argues that in accordance with well-established principles of federal Indian law, the Navajo Nation possesses both civil regulatory authority and criminal authority over the Eastern Navajo Agency lands because this land constitutes "Indian country." As a result, he concludes that the Navajo Nation has sufficient jurisdiction over the Eastern Navajo Agency to support an EPA determination to treat the Navajo Nation as a State with respect to all of those lands pursuant to section 1451 of the SDWA.

In making the argument that the Navajo Nation's jurisdiction extends over all of Navajo Indian country, Attorney General Yazzie cites several instances in which EPA has previously adopted or utilized the Indian country definition to outline either the extent of federal authority or the limits of state jurisdiction with respect to environmental regulation. In particular, the Attorney General cites regulatory language that EPA uses to implement the provisions of the SDWA on Indian lands.[31] The Attorney General also cited the jurisdictional arguments that EPA successfully made in Washington Dep't of Ecology v. EPA[32], which involved the regulation of hazardous waste under the Resource Conservation and Recovery Act ("RCRA").[33] In both cases, EPA adopted the Indian country definition as an appropriate benchmark for determining the scope of federal and state jurisdiction over environmental matters on Indian lands.

In this case, EPA agrees that "Indian country" is the appropriate criterion for determining the extent of jurisdiction of

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[30] See 53 Fed. Reg. 37396, 37399-37400 (September 26, 1988).

[31] 40 C.F.R. §144.3.

[32] 752 F.2d 1465 (9th Cir. 1985).

[33] 42 U.S.C. §6901 et seq.

the Navajo Nation for the purposes of section 1451 of the SDWA.[34] Using the "Indian country" criterion is consistent with the SDWA and federal regulations implementing the statute. "Indian country" is the jurisdictional dividing line between federal and state authority under the SDWA in New Mexico: the UIC program for Indian country in New Mexico is administered by U.S. EPA[35], and the State of New Mexico's approved UIC program does not include Indian country.[36] However, the SDWA clearly envisions that the control of underground injection, to the extent possible, should be primarily a matter of local (tribal or state) regulation, and EPA's Indian Policy recognizes that tribal governments are the appropriate "non-Federal parties" for environmental regulation concerning a tribe's territory and members.[37] Although EPA did not adopt "Indian country" as the specific criterion to define tribal jurisdiction for the purposes of the SDWA, EPA did explicitly state that the Agency's action did not "preclude a Tribe from applying for 'treatment as a State' with respect to any lands over which it believes it has jurisdiction."[38] Both the statute and the regulations, therefore, look to federal Indian law for determining the scope of a tribe's jurisdiction in regulating underground injection. Under federal Indian law, tribal civil jurisdiction

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[34] It is important to note that EPA agrees that the federal Indian law definition of "Indian country" is the appropriate criterion for determining the jurisdiction of the Navajo Nation. The definition of "Navajo Indian Country" found at 7 N.T.C. §254 may be broader than the definition of "Indian country" under federal Indian law. See Texaco, Inc. v. Zah, 5 F.3rd 1374, 1376 and fn. 3 (10th Cir. 1993). However, since the Navajo Attorney General asserts that the definition of Navajo Indian Country is consistent with the federal definition of Indian country, EPA considers that any lands that meet the definition of Navajo Indian Country but fall outside the definition of Indian country under federal Indian law are not part of the Navajo Nation's jurisdictional claim for the purposes of the SDWA.

[35] See 40 C.F.R. Part 147, subpart HHH.

[36] See 40 C.F.R. Part 147, subpart GG.

[37] "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (November 8, 1984).

[38] 53 Fed. Reg. 37396, 37400 (September 26, 1988). In the preamble to the Final Rule, EPA declined to establish a presumption in favor of tribal jurisdiction for "Indian country" because there are cases where tribes would not or could not seek jurisdiction over all of "Indian country." See id. at 37399-37400. In this case, the Navajo Nation is seeking jurisdiction over all of "Indian country" in the Eastern Navajo Agency.

includes Indian country (as defined by statute and related case law[39]), and without question tribes' jurisdiction extends "over both their members and their territory."[40] In addition, tribes have jurisdiction over the activities of non-members on non-Indian owned land within Indian country where such activity "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[41]

Although EPA agrees that Indian country is the proper measure of the Navajo Nation's jurisdiction, EPA must further determine what parts of the Eastern Navajo Agency meet the definition of "Indian country." The Attorney General's Statement asserts that all of the Eastern Navajo Agency constitutes Indian country. Alternatively, the Attorney General's Statement claims that if a "site-specific" analysis of land in the Eastern Navajo Agency were conducted, virtually all of the Eastern Navajo Agency would be characterized as Indian country. The definition of "Indian country" found at 18 U.S.C. §1151 includes land within the limits of any Indian reservation, dependent Indian communities, and Indian allotments (where the Indian title has not been extinguished).[42] Also, land held in trust by the United States for the benefit of an Indian tribe is Indian country, even though not formally designated as a "reservation."[43]

At this time EPA cannot determine that all of the lands within the Eastern Navajo Agency are Indian country. Federal courts have held that some land that is in the Eastern Navajo Agency is not Indian country.[44] More importantly, as described in more detail below, EPA does not have sufficient information to make a determination that all of the land in the Eastern Navajo Agency is

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[39] See footnote 13, supra. See also Buzzard v. Oklahoma Tax Comm'n, 992 F.2d 1073 (10th Cir. 1993); Texaco, Inc. v. Zah 5 F.3d 1374 (10th Cir. 1993).

[40] United States v. Mazurie, 419 U.S. 544, 557 (1975). See also Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982); Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. 195 (1985).

[41] Montana v. United States, 450 U.S. 544, 566 (1981).

[42] See footnote 13, supra.

[43] United States v. John, 437 U.S. 634, 648 (1978)(quoting United States v. Pelican, 232 U.S. 442 (1914); Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505 (1991). Oklahoma Tax Comm'n v. Sac and Fox Nation, ___ U.S. ___, 113 S.Ct. 1985 (1993). See also, United States v. McGowan, 302 U.S. 535 (1938).

[44] See Blatchford v. Sullivan, 904 F.2d 542 (10th Cir. 1990).

Indian country and therefore within the jurisdiction of the Navajo Nation. Some types of land (i.e. tribal trust land and Indian allotments) clearly are Indian country. For certain types of land (i.e. private fee land within the Eastern Navajo Agency), however, EPA would need to find that the land is part of a dependent Indian community. Before EPA could make such a finding for any specific parcel of land, EPA would need to know the following: the general nature of the area surrounding the parcel, the relationship of the inhabitants to the Navajo Nation and the United States Government, and "the established practice of government agencies toward the area."[45]

Therefore, for the Navajo Nation's assertion of jurisdiction pursuant to section 1451 of the SDWA over lands in the Eastern Navajo Agency outside the exterior boundaries of the formal Navajo Reservation, EPA is evaluating specific categories of land status[46] to determine whether the lands in these categories are within Indian country. It is important to note what determination EPA is and is not making in this case at this time. For those categories of lands for which EPA cannot determine whether the Navajo Nation has jurisdiction, EPA is simply stating that the Navajo Nation has not adequately shown that it does have jurisdiction. However, EPA is not determining that the Navajo Nation <u>does not</u> have jurisdiction. Neither is EPA determining whether or not such lands are "Indian lands" for the purposes of EPA's UIC program in New Mexico.[47] Finally, EPA is making a determination only for the purposes of the SDWA and is not addressing the full extent of the Navajo Nation's sovereign authority over civil matters in Indian country.

a. Navajo Tribal Trust Land

A significant portion of the land within the Eastern Navajo Agency over which the Navajo Nation is asserting jurisdiction is land held by the United States Government in trust for the Navajo Nation ("tribal trust lands"). The Supreme Court has long held

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[45] <u>United States v. Martine</u>, 442 F.2d 1022, 1023 (10th Cir. 1971).

[46] The Attorney General's Statement refers to this analysis as "site-specific." However, it is more accurate to describe it as "category-specific" since EPA must evaluate types of land status rather than specific parcels or "sites."

[47] <u>See</u> 40 C.F.R. Part 147, subpart HHH; 40 C.F.R. §143.3.

that such tribal trust land is Indian country.[48] Therefore, EPA has determined that the Navajo Nation has demonstrated that it has jurisdiction over all Navajo tribal trust lands described in section IV.A. of the Attorney General's Statement.[49]

b. Navajo Trust Allotments

In addition to Navajo tribal trust land, the Navajo Nation asserts jurisdiction over all trust allotments granted to Navajo Indians in the Eastern Navajo Agency. Although the Attorney General's Statement does not identify all of these allotments, by definition, pursuant to 18 U.S.C. §1151(c), Indian allotments (the Indian title to which has not been extinguished) are Indian country. EPA has, therefore, determined that the Navajo Nation has demonstrated that it has jurisdiction over the Navajo allotments described in section IV.B. of the Attorney General's Statement.[50]

c. Ramah, Alamo, and Canoncito Reservations

The Navajo Nation also claims jurisdiction over the three "satellite" reservations of Ramah, Alamo, and Canoncito. Consisting of tribal trust land and Indian allotments, these reservation are clearly Indian country.[51] EPA has determined,

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[48] See footnote 43, supra, and accompanying text.

[49] Although the Navajo Attorney General did not identify all of the Navajo trust lands, based on the status of the land the Navajo Nation has demonstrated its authority over Navajo tribal trust lands. The tribal trust lands in the three "satellite" reservations would also be included in this determination. However, to avoid confusion, EPA discussed the "satellite" reservations separately. See the discussion at section III.D.2.c.

[50] As with EPA's determination regarding tribal trust lands, allotments in the three "satellite" reservations would be included in the determination regarding allotments in the remainder of the Eastern Navajo Agency. The "satellite" reservations are discussed separately to avoid confusion. See the discussion at section III.D.2.c.

[51] In order to avoid any confusion, EPA has treated the three "satellite" reservations separately. However, the tribal trust lands and allotments in these reservations are also Indian country under the analysis contained in parts III.D.2.(a and b) of the text. In addition, tribal fee lands within the Ramah Reservation are also Indian country. See the discussion at section III.D.2.e in the text.

therefore, that the Navajo Nation has demonstrated that it has jurisdiction over the three "satellite" reservations of Ramah, Alamo, and Canoncito, as described in section IV.E. of the Attorney General's Statement.

d. Land Withdrawn for Exclusive Navajo Use

The Navajo Nation also asserts jurisdiction over lands in the Eastern Navajo Agency that the Navajo Attorney General describes as lands that "have been withdrawn for the exclusive use of Navajo Indians by Congress and the Executive Branch."[52] Federal land that has been set aside for the exclusive use, occupancy, and/or benefit of Indians would most probably be considered part of a dependent Indian community.[53] Nonetheless, to make a determination that federal land in the Eastern Navajo Agency is Indian country, for any given parcel of land, EPA would still need information concerning, among other things, the nature of the Navajo Nation's interest in the parcel, the duration of that interest, and the supervision of the federal government over that parcel. Because this information was not provided in the Attorney General's Statement, EPA cannot make a categorical determination that federal land in the Eastern Navajo Agency is part of Indian country.[54] Therefore, at this time EPA cannot determine that the Navajo Nation has jurisdiction for the purposes of section 1451 of the SDWA over the federal lands described in section IV.B. of the Attorney General's Statement.

e. Navajo Tribal Fee Land

In section IV.C. of the Attorney General's Statement, the Navajo Nation also claims jurisdiction over tribal fee lands in the Eastern Navajo Agency, citing two federal court decisions that have

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[52] Attorney General's Statement, p. 21.

[53] See footnote 45 and accompanying text, supra.

[54] It appears that some of the land over which the Navajo Nation is claiming jurisdiction in this section of the Attorney General's Statement has already been (or will soon be) transferred to the Navajo Nation as tribal trust land, which is subject to the determination under section III.D.2.a in the text. According to the Attorney General's Statement, the status of some of the federal land over which the Navajo Nation is asserting jurisdiction is still subject to a dispute which is being resolved by agreement between the Navajo Nation and the federal agencies involved. That agreement seems to provide that the Navajo Nation will obtain the disputed land as tribal trust land. See Exhibit 32, Attorney General's Statement.

held that certain tribal fee land is part of a dependent Indian community.[55] Although much of the tribal fee land in the Eastern Navajo Agency may be part of particular dependent Indian communities, without more information EPA cannot determine whether all tribal fee land is part of Indian country.[56] Moreover, to make the determination that any specific parcel of tribal fee land is part of a dependent community, EPA would need to know the following: the nature of the area surrounding the land, how the land was acquired, the nature of federal supervision over the land, and its relationship to the Navajo Nation. None of this information was provided for specific parcels of land. Therefore, except for that tribal fee land that has been held to be part of Indian country[57], at this time EPA cannot determine that the Navajo Nation has jurisdiction for the purposes of section 1451 of the SDWA over tribal fee land in the Eastern Navajo Agency as described in section IV.C. of the Attorney General's Statement.

f. Other Lands in the Eastern Navajo Agency

Finally, the Navajo Nation asserts jurisdiction over all privately owned fee land and New Mexico state trust land within the Eastern Navajo Agency because virtually all of this land "falls

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[55] United States v. Martine, 442 F.2d 1022 (10th Cir. 1971); United States v. Calladitto, No. CR 91-356, 19 Ind. L. Rep. 3057 (D.N.M. Dec. 5, 1991). The Attorney General's Statement also cites two administrative decisions under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. §1201 et seq., which held that tribal fee lands were "Indian lands" under section 701(9) of SMCRA, 30 U.S.C. §1291(9). However, because the definition of "Indian lands" under SMCRA does not correspond exactly to the definition of "Indian country" and because there is no indication that the administrative decisions held that the tribal fee land was part of Indian country, EPA cannot determine that the tribal fee land in question is part of a dependent Indian community, and therefore part of Indian country.

[56] It should be noted that the mere fact of tribal ownership of fee lands does not by itself place that land within the definition of Indian country. See Buzzard v. Oklahoma Tax Comm'n, 992 F.2d 1073, 1076 (10th Cir. 1993)(holding that there must be some form of "federal government action indicating that the land is designated for use by Indians."). See also "Underground Injection Control Program for Certain Indian Lands; Final Rule" 53 Fed. Reg. 43096, 43098 (October 25, 1988)("purchase of land by Indians or Indian tribes is not alone sufficient to make the land 'Indian country'").

[57] See footnote 55, supra.

within dependent Navajo Communities."[58] For such land to be considered Indian country it must be within a "dependent Indian community."[59] Although the Attorney General's Statement contained a significant amount of general information about population, government services, and other activity within the Eastern Navajo Agency, the Statement did not provide information concerning any specific parcel of private fee land or state trust land. Before it could determine if a parcel of land is part of a dependent Indian community (and therefore is Indian country), EPA would need more information about that particular parcel of land.[60] Therefore, at this time EPA cannot determine that the Navajo Nation has demonstrated that it has jurisdiction over all of the privately owned fee land and New Mexico state trust land within the Eastern Navajo Agency as described in section IV.F. of the Attorney General's Statement.[61]

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[58] Attorney General's Statement, p. 24.

[59] See footnote 45 and accompanying text, supra.

[60] EPA is aware that in other contexts courts have reviewed the status of particular non-Indian owned lands in the Eastern Navajo Agency. See Blatchford v. Sullivan, 904 F.2d 542 (10th Cir. 1990); Sandoval v. Tinian, Inc., 5 Nav. Rep. 215 (Window Rock D. Ct. 1986). Nonetheless, given that these decisions did not arise in the context of tribal regulatory jurisdiction, for the reasons stated in the text, EPA cannot make a determination regarding that status of these specific parcels of land for the purposes of the SDWA. See also footnote 61, infra.

[61] It is important to note that in order to establish jurisdiction for the purposes of the SDWA over non-Indian owned lands that do lie within "Indian country" in the Eastern Navajo Agency, the Navajo Nation would also need to demonstrate that underground injection by non-Indians on non-Indian owned lands would have a serious and substantial effect on the Navajo Nation and its members. See Montana v. United States, 450 U.S. 544 (1981). Citing the nature of land use and ownership in the area, the fact that the vast majority of the population in the area is Navajo, and the specific purpose of the SDWA, the Navajo Nation has asserted that underground injection on non-Indian owned lands within the Eastern Navajo Agency does have a serious and substantial effect on the health and welfare of the Navajo Nation and its members. Nonetheless, because EPA is not able to determine what private fee lands and state trust lands are within "Indian country", EPA is not determining whether or not the Navajo Nation has made the requisite showing to establish jurisdiction over non-Indian activities on non-Indian owned lands that are part of Indian country within the Eastern Navajo Agency but outside the exterior boundaries of the formal Navajo Reservation.

g. Summary

EPA has determined that the Navajo Nation has demonstrated that it has jurisdiction over much of the land in the Eastern Navajo Agency. Specifically, based on the Navajo Nation's narrative statement, the Attorney General's Statement and related exhibits, and in accordance with the general principles of federal Indian law, EPA has determined that the Navajo Nation has satisfied the third criterion for TAS under section 1451 of the SDWA with respect to all Navajo tribal trust lands, all Navajo allotments within the Eastern Navajo Agency, the three "satellite" reservations of Ramah, Canoncito, and Alamo, and tribal fee lands and federal lands that have been previously determined to be part of "Indian country." However, as described above, EPA has determined that at this time the Navajo Nation has not demonstrated that it has jurisdiction for other lands in the Eastern Navajo Agency. Particularly, at this time EPA believes that the Navajo Nation has not satisfied the third criterion for TAS under section 1451 of the SDWA for federal land and tribal fee lands (except for the lands in these categories that have already been determined to be part of "Indian country"), private fee lands, and New Mexico state trust lands within the Eastern Navajo Agency.

3. The Jurisdiction of the Navajo Nation in the Former Bennett Freeze Area

As indicated above, the Attorney General's Statement included a detailed summary of the statutory and administrative background regarding the imposition of the Bennett Freeze. In addition, the Navajo Nation has provided EPA with copies of the recent District Court opinion in Masayesva v. Zah (and related documents) as exhibits to its TAS jurisdictional assertion.

Based on the provisions of the 1974 federal statute that was enacted to limit development in the Bennett Freeze area, EPA had previously excluded the statutory freeze area from the approved portion of the Navajo Nation's TAS application to develop a PWSS program on Tribal lands. As indicated above, EPA's PWSS TAS determination concluded that since no tribe could be said to possess exclusive authority over the Bennett Freeze area:

> it would be inappropriate and contrary to Congressional intention as expressed in [25 U.S.C. §640d-9(f)] for EPA to grant Treatment as a State to any Tribe, including the Navajo Nation, for program development related to the Bennett Freeze area at this time.

Since the time of EPA's previous TAS determination, however, the United States District Court issued its opinion in Masayesva v.

Zah[62], as referenced above. That case was decided on September 25, 1992, and subsequently amended, in part, by a District Court Order dated December 18, 1992. In its pending UIC TAS application, the Navajo Nation has relied extensively on the holding in the Masayesva decision. Specifically, Attorney General Yazzie asserts that in Masayesva v. Zah, the District Court lifted the freeze with regard to the vast majority of the Bennett Freeze area, and that as a result, most of that area is now subject to the exclusive jurisdiction of the Navajo Nation. Overall, the Attorney General concludes that the Navajo Nation presently has exclusive jurisdiction over all of the former Bennett Freeze lands, with the exception of approximately 60,000 acres that were partitioned to the Hopi Tribe in the recent litigation.

Based on the information contained in the Attorney General's Statement and the District Court's opinion in Masayesva v. Zah, EPA has verified that the District Court ruling explicitly lifted the statutory freeze that was previously imposed on the Bennett Freeze lands pursuant to 25 U.S.C. §640d-9(f).[63] Since the statutory freeze is no longer generally in effect in the Bennett Freeze area, EPA's present task is to identify the specific lands within the former freeze area that are now subject to the Navajo Nation's jurisdiction for the purposes of the SDWA. EPA's determination on this issue is necessarily based on the District Court's opinion regarding the partitioning of the surface and subsurface lands of the 1934 Act Reservation between the Navajo Nation and the Hopi Tribe.

In its resolution of the Navajo-Hopi land dispute, the District Court identified specific lands that are to be partitioned to the Navajo Nation and the Hopi Tribe. The lands to be partitioned to each Tribe were discussed in Section IV of the District Court's ruling, and the partition line was identified in Appendix A to that opinion. In its ruling, the court further concluded that all of the lands that were partitioned to each Tribe were to be held in trust by the United States exclusively for that Tribe, within its designated reservation. The court further held that all of the lands that were partitioned to each Tribe pursuant to its opinion (including allotments held for individual Tribal members) "shall be subject to the jurisdiction of [that Tribe], to the same extent as is applicable to other portions of its reservation," pursuant to 25 U.S.C. §640-9(e) (emphasis added).

Based on the District Court's ruling in Masayesva v. Zah (affirming the Navajo Nation's jurisdiction over its partitioned lands), EPA has concluded that the Navajo Nation possesses adequate authority over its partitioned lands in order to be treated as a

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[62] CIV 74 - 842 PCT EHC (D. Ariz. 1992).

[63] See page 75 of the District Court's decision.

State under section 1451 of the SDWA.[64]

Finally, it should be noted that EPA is aware of the Hopi Tribe's October 16, 1992 Motion for Partial Stay Pending Appeal, in which the Tribe argued that "the provision of the [September 25, 1992] judgment lifting the 'Bennett Freeze' restriction on construction and development within the 1934 Reservation" should be stayed pending the Hopi Tribe's appeal in this case. EPA is also aware of the District Court's December 18, 1992 Order, which partially granted the Hopi Tribe's Motion for a Stay with respect to Navajo Indians who are not presently living within the joint use area specified in that Order.

Although the December 1992 District Court Order granted the Hopi Tribe's Motion in part, EPA notes that Order was limited in scope, to prohibit new construction in the specified joint use area by non-resident Navajos only. Moreover, the Order did not otherwise attempt to limit general jurisdiction of the Navajo Nation in the areas that were partitioned to the Navajo Nation in the court's September 1992 decision, including the area covered by the partial stay. Finally, the December 1992 Order specified that the Navajo Nation "may complete any improvements within the area partitioned to it," including "facilities for electrical or water services."

Based on the limited scope of the restrictions placed on the joint use area by the December 1992 Order, EPA does not believe that Order provides a basis for EPA to exclude the specified area from the scope of the pending UIC TAS application. Furthermore, with regard to the "irreparable injury" argument set forth in the Hopi Tribe's Motion for Partial Stay, EPA does not believe that any action that might be taken by the Navajo Nation to develop an UIC program would result in serious irreparable harm to the interests of the Hopi Tribe with respect to the lands in question. In this regard, it should be noted that EPA's approval of the pending UIC TAS application will enable the Navajo Nation to obtain grant funding for the development of an UIC program. However, this approval will not authorize the Navajo Nation to assume primary enforcement or regulatory responsibility with respect to the water resources or underground injection wells that are located on Reservation lands.

Finally, as stated in EPA's previous TAS determination, the decision to grant TAS to the Navajo Nation for the above-referenced lands is based on the facts and circumstances that are known to Region IX at the present time. Therefore, EPA's decision today

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[64] For a precise description of the lands that are to be included in the approved portion of the Navajo UIC application, see Section IV and Appendix A of the District Court's September 25, 1992 ruling.

will not affect the right or ability of the Navajo Nation or any other governmental entity, including the Hopi Tribe, to present additional facts or arguments to EPA in the future, based on new factual developments or the outcome of the pending litigation. In this regard, EPA may amend its approval of the Navajo Nation's UIC TAS application in the future as is necessary and appropriate, based on the courts' ultimate decision regarding the jurisdiction of the various Tribes with regard to the joint use area.

IV. The Tribe Has Adequate Capability to Administer an Underground Injection Control Program on Tribal Lands

In determining whether an Indian tribe is capable of administering an effective UIC program, EPA is to consider six factors which are enumerated both in the preamble to the regulations and in the regulations themselves at 40 C.F.R. §145.56(d). Based on our review of the Navajo Nation's application for TAS under section 1451 of the SDWA, EPA has concluded that the Tribe has submitted sufficient information regarding each of the factors specified in the regulations, and therefore, that the Navajo Nation has demonstrated its capability to administer a UIC program.

Specifically, the narrative statement and attachments included in the UIC TAS application indicate that the Navajo Nation:

(1) possesses adequate general management experience to qualify for TAS, based on its previous management of a number of Federal grants and contracts;

(2) has had extensive prior involvement in a variety of environmental and public health programs, including: an air pollution control program; a pesticide enforcement program; a PWSS program; an indoor radon program; solid and hazardous waste management programs; a Superfund program; an underground storage tanks program; a water resource management program; a Women, Infants and Children (WIC) nutrition program; an emergency medical services program; and a variety of community health programs;

(3) has adopted an adequate accounting system, in accordance with general Federal requirements, and is now in the process of enacting a revised procurement code, to replace an earlier Tribal purchasing manual;

(4) has adequately described the governmental entities which exercise the executive, legislative and judicial functions of the Tribal government;

(5) has provided sufficient detail regarding the Tribal

division which will administer (and assume primary enforcement responsibility for) the Navajo Nation's UIC program, the preparations which that office has made to date for the assumption of the program, and a description of the relationship between the Navajo Nation and the owners and operators of the underground injection wells to be regulated by the Navajo Nation; and

(6) currently employs trained personnel who possess the capability to develop and administer an effective UIC program, and has developed a plan to acquire additional administrative and technical staff as needed in the future, to support the Navajo Nation's ongoing effort to administer an effective UIC program.

V. Conclusion

Based on the administrative record established in this case, EPA has determined that the Navajo Nation has satisfied the statutory and regulatory requirements contained in section 1451 of the SDWA and 40 C.F.R. Part 145, and thereby qualifies for Treatment as a State for the purpose of administering an UIC program. Therefore, EPA Region IX hereby approves the Navajo Nation's application for TAS, subject to the jurisdictional limitations set forth in section III of this decision.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

15 July 1997

Mark Pelizza
HRI, Inc.
12750 Merit Drive
Suite 1020, LB 12
Dallas, Texas 75251

Dear Mr. Pelizza:

I am writing to let you know of EPA's recent determination that impacts permitting under the federal Safe Drinking Water Act (SDWA) of HRI's proposed in-situ uranium mining project near Church Rock, New Mexico. In previous correspondence, EPA informed HRI that it must obtain an underground injection control (UIC) permit under the federal SDWA from EPA Region 9 for that portion of HRI's project proposed for Section 17. For the reasons described below, HRI now must also obtain its federal SDWA UIC permit from EPA Region 9 for that portion of the Church Rock mining operation located on Section 8.

As previously explained, the preamble to the final rule that established the federal UIC program for Navajo Indian country states that when there is a dispute regarding the Indian country status of an area, EPA retains permitting authority under the federal SDWA, and, "pending the resolution of jurisdictional disputes, EPA will implement the Federal UIC program [40 CFR Part 147, subpart HHH] for [the] disputed lands." 53 FR 43095, 43097 (October 25, 1988). In October 1996, we received a claim from the Navajo Nation that Section 8 is within Indian country, and, therefore, subject to federal EPA authority rather than to the authority of the New Mexico Environment Department (NMED). Upon receipt of the Navajo Nation's claim, we requested additional information from both NMED and the Navajo Nation on the Indian country status of Section 8. Based on a review of the submitted information, we believe that the Navajo Nation has raised significant issues. Consequently, EPA has determined that the Indian country status of Section 8 is in dispute. Therefore, pursuant to EPA's final rule, HRI must obtain any required UIC permit under the federal SDWA from EPA Region 9.

We realize that this decision may be disruptive given that HRI and NMED have assumed for several years that the state-issued permit for Section 8 would be effective for the federal SDWA. Therefore, we would like to discuss with you a projected date for submission of an application and our review of the application. To the extent we can, EPA will use the information that HRI has already submitted to NMED for our permit review. We request that HRI submit the NMED-approved Discharge Plan and any supporting documentation to EPA as soon as possible.

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If you have any questions, or need any additional information, please contact me at (415) 744-1835, or Jim Walker at (415) 744-1833, for technical issues, or Greg Lind (415) 744-1376, for legal issues.

Sincerely,

Wendy L Melgin

for Laura Tom Bose
Chief, Ground Water Office

cc: Jep Hill, HRI, Inc.
James Bellis, NNDOJ
Bennie Cohoe, NNEPA
Susan McMichael, NMED

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DECLARATION OF JAMES D. WILLIAMS

I, James D. Williams, do hereby declare pursuant to 28 U.S.C. §1746:

1. I am Professor Emeritus in the Department of Sociology and Anthropology at New Mexico State University in Las Cruces, NM. I received my doctoral degree in Sociology from the University of Illinois in 1978. I have been qualified as and have testified as an expert witness in the fields of statistics and demography in several cases in the United States District Court for the District of New Mexico as well as New Mexico District Courts.

2. As a professional demographer, I routinely work with tabulations prepared by the United States Bureau of the Census. I am familiar with Census procedures, methods, and products. Among the products prepared at the Bureau after the 2000 census of population and housing, were special tabulations of 2000 census data for Chapters of the Navajo Nation.

3. The Bureau is in a unique position to be able to overlay any boundaries desired onto its master geo-coded address file so as to prepare special tabulations using techniques that are common in the profession of demography.

4. I have reviewed the special tabulations for Church Rock Chapter in northwest New Mexico with respect to Total Population and the American Indian population. The table is attached to this affidavit and reports that Church Rock Chapter is, on the basis of single race responses in the 2000 Census, 97% American Indian or Alaska Native. The table further reports that the White population of the Church Rock Chapter is 1.4% and the Other Race population for the Chapter is .9%, all on the basis of single race responses. The table also reports an additional 19 persons stating at least one mention of American Indian and Alaska Native (2737 multi-race plus single race minus 2718 single race) for a total of 97.7% of the population which is either American Indian or Alaska Native (single race or in combination with another race). This is the most accurate data available for the census year.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed this 24th day of January, 2006.

James D. Williams

CHURCH ROCK
Selected Characteristics from Census 2000

	Number	Percent
TOTAL POPULATION	2,802	100.0
SEX AND AGE		
Male	1,339	47.8
Female	1,463	52.2
Under 5 years	296	10.6
5 to 9 years	321	11.5
10 to 14 years	336	12.0
15 to 19 years	304	10.8
20 to 24 years	197	7.0
25 to 34 years	391	14.0
35 to 44 years	397	14.2
45 to 54 years	270	9.6
55 to 59 years	83	3.0
60 to 64 years	63	2.2
65 to 74 years	92	3.3
75 to 84 years	37	1.3
85 years and over	15	0.5
Median age (yrs)	23.0	(X)
RACE		
White	38	1.4
Black or African American	1	0.0
Amer Indian/Alaska Native	2,718	97.0
Asian	0	0.0
Native Hawaiian/Other PI	0	0.0
Some other race	26	0.9
Two or more races	19	0.7
Amer Indian/Alaska Native combination w/Other race	2,737	97.7
HOUSEHOLDS BY TYPE		
Total households	725	100.0
Family households	583	80.4
Non-family households	142	19.6
Average household size	3.86	(X)
Average family size	4.39	(X)
HOUSING TENURE		
Occupied housing units	725	100.0
Owner-occupied housing	637	87.9
Renter-occupied housing	88	12.1
MARITAL STATUS		
Population 15 years & over	1,814	100.0
Never married	887	48.9
Now married	680	37.5
Separated	98	5.4
Widowed	57	3.1
Divorced	92	5.1
VETERAN STATUS		
Civilian Pop 18 years & over	1,641	100.0
Civilian veterans	48	2.9
LANGUAGE AT HOME		
Population 5 years and over	2,607	100.0
English only	701	26.9
Navajo/Native American	1,906	73.1
Speak English not very well	683	26.2
Spanish & Other	8	0.3
Speak English not very well	0	0.0

	Number	Percent
SCHOOL ENROLLMENT		
Population 3 years & over	1,271	100.0
Nursery school, preschool	114	9.0
Kindergarten	33	2.6
Elem school (grades 1-8)	699	55.0
High school (grades 9-12)	258	20.3
College or graduate school	167	13.1
EDUCATIONAL ATTAINMENT		
Population 25 years & over	1,328	100.0
Less than 9th grade	245	18.4
9th to 12th grd, no diploma	368	27.7
High school grad (inc GED)	350	26.4
Some college, no degree	233	17.5
Associate degree	95	7.2
Bachelor's degree	37	2.8
Graduate/professional deg	0	0.0
Perc HS graduate/higher	53.8	(X)
Perc bachelor's deg/higher	2.8	(X)
EMPLOYMENT STATUS		
Population 16 years & over	1,781	100.0
In labor force	987	55.4
Civilian labor force	987	55.4
Employed	761	42.7
Unemployed	226	12.7
Percent Unemployed	22.9	(X)
Not in labor force	794	44.6
COMMUTING TO WORK		
Workers 16 years & over	750	100.0
Car/truck/van(drove alone)	343	45.7
Car/truck/van -- carpooled	323	43.1
Public transportation	19	2.5
Walked	34	4.5
Other means	15	2.0
Worked at home	16	2.1
Travel time to work (minutes)	31.8	(X)
CLASS OF WORKER		
Private wage/salary workers	409	53.7
Government workers	324	42.6
Self-employed workers	16	2.1
Unpaid family workers	12	1.6
INCOME IN 1999		
No. of Households	692	100.0
Median household income	$19,265	(X)
No. of Families	576	100.0
Median family income	$22,639	(X)
Per capita income	$5,723	(X)
Median earnings:		
Male full-time, year-round	$20,000	(X)
Female full-time, year-round	$14,614	(X)
POVERTY STATUS IN 1999		
No. & (%) of families in poverty	247	42.9
No. & (%) of persons in poverty	1,152	40.4

	Number	Percent
Total housing units	920	100.0
UNITS IN STRUCTURE		
1-unit, detached	635	69.0
1-unit, attached	42	4.6
2 units	0	0.0
3 or 4 units	0	0.0
5 to 9 units	27	2.9
10 to 19 units	0	0.0
20 or more units	0	0.0
Mobile home	206	22.4
YEAR STRUCTURE BUILT		
1999 to March 2000	11	1.2
1995 to 1998	168	18.3
1990 to 1994	193	21.0
1980 to 1989	237	25.8
1970 to 1979	128	13.9
1960 to 1969	87	9.5
1940 to 1959	46	5.0
1939 or earlier	50	5.4
ROOMS		
Median (rooms)	3	(X)
VEHICLES AVAILABLE		
None	120	17.2
1	321	46.1
2	192	27.6
3 or more	63	9.1
HOUSE HEATING FUEL		
Utility gas	84	12.1
Bottled, tank, or LP gas	195	28.0
Electricity	38	5.5
Fuel oil, kerosene, etc.	0	0.0
Coal or coke	0	0.0
Wood	379	54.5
Solar energy	0	0.0
Other fuel	0	0.0
No fuel used	0	0.0
PLUMBING & TELEPHONE		
Lacking complete plumbing	272	39.1
Lacking kitchen facilities	267	38.4
No telephone service	381	54.7
OCCUPANTS PER ROOM		
Occupied housing units	696	100.0
1.00 or less	372	53.4
1.01 to 1.50	131	18.8
1.51 or more	193	27.7
MORTGAGE & RENT		
Owner-occupied units	406	100.0
VALUE in Median dollars	$33,800	(X)
With a mortgage	51	12.6
Median mortgage payments	$561	(X)
Renter-occupied units	115	100.0
No cash rent	87	75.7
Median rent payments	$317	(X)

Source: United States Census 2000; Extracted and formatted by LSR Innovations; November 2003

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DECLARATION OF RAYMOND KEE

I, Raymond Kee, do hereby declare pursuant to 28 U.S.C. §1746:

1. I am employed as a Title Examiner by the Navajo Land Department within the Navajo Nation Division of Natural Resources, a government agency of the Navajo Nation.

2. The Navajo Land Department is the Office of the Navajo Nation with responsibility for the custody and maintenance of records relating to lands within the Navajo Nation, including lands within the Church Rock Chapter.

3. The records are maintained as official government records of the Navajo Nation. All the information in this Declaration is either contained in the public land records maintained by the Navajo Nation or the Bureau of Indian Affairs, or has been determined by me from records shared with the State of New Mexico.

4. The attached map, entitled Church Rock Chapter Surface Land Status Classification, was prepared by the Navajo Land Department at my request. The map accurately reflects ownership of land within the Church Rock Chapter.

5. The boundaries of the Church Rock Chapter are shown on the attached map.

6. There are approximately 56,526.04 acres of land within the Church Rock Chapter. The ownership of these lands is categorized as follows:

Ownership	Acreage
Navajo Tribal Trust Lands	30,699.14
Navajo Nation Fee Lands	244.82
Individual Indian Allotments	15,649.50
Bureau of Land Management	5,712.70
NM State Lands Leased by Navajo Nation	1,724.69
NM State Lands	439.47
Private Lands	2,055.72

7. All of the land owned by the Bureau of Land Management in the Church Rock Chapter is subject to grazing leases from BLM to Navajos.

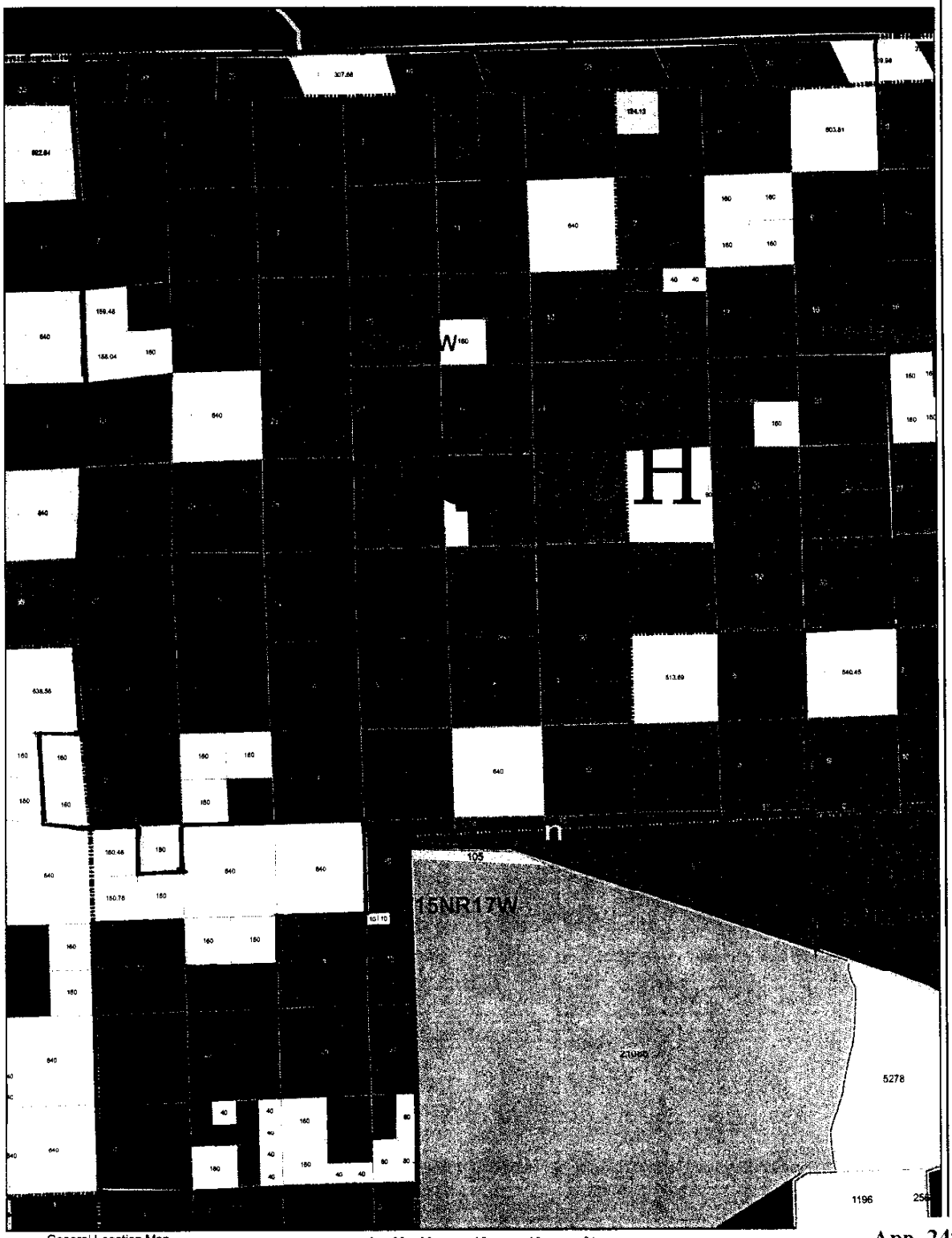
8. In summary over 95% (54,030.85 out of 56,526.04 acres) of the land in the Church Rock Chapter is held in trust for or in fee by the Navajo Nation, held in trust by the United States for Navajo citizens, or otherwise used exclusively by members of the Navajo Nation.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed this 27th day of January, 2006.

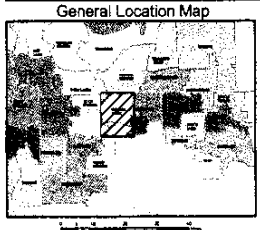
Raymond Kee

Raymond Kee

Church Rock Chapter
Surface Land Status Classification



General Location Map



0 0.3 0.6 1.2 1.8 2.4 Miles

Map Legend

Chapter House Location

H.S Township & Range Grid

Chapter Boundaries

Chapter Board Area

Navajo Nation Executive Order Boundary

Section Lines

Land Surface Classification

Private Leased Land

State Leased Land

BLM Leased Land

Navajo Tribal Fee Land

Navajo Tribal Trust Land

BIA Indian Allotted Land

Remaining 7198 Pt. D Lands

Military Reservation Land

Downloaded 2 points

December 6, 2005

NAVAJO LAND DEPARTMENT
GIS SECTION

NAVAJO NATION
DIVISION OF NATURAL RESOURCES
WINDOW ROCK BLVD. NN PRES BLDG. RM 174
PO Box 9000
[illegible]
T: (928) 871-6809 | F: (928) 871-7039
[illegible]

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DECLARATION OF JOHN W. LEEPER, PH.D.

I, John W. Leeper, do hereby declare pursuant to 28 U.S.C. § 1746 that:

1. I am the Branch Manager of the Water Management Branch of the Navajo Nation Department of Water Resources.

2. I earned a Bachelor of Science degree in Civil Engineering from the University of California at Davis in 1981, a Master of Sciences degree in Civil Engineering from the California State University at Los Angeles in 1983, and a Ph.D. in Civil Engineering from the Colorado State University at Fort Collins in 1989. I am a registered professional engineer in California (No. 36765) and in Arizona (No. 29220). I have more than 15 years of professional experience in hydrology and water resources planning and management, as reflected in my Resume' attached hereto as Exhibit "A," which is incorporated herein by this reference.

3. My professional experience in hydrology and water resources planning and management has focused on such matters for Indian tribes generally and for the Navajo Nation in particular. During the four years when I worked for Stetson Engineers, Inc., I worked on technical water rights studies for the Campo Band in Southern California, the Flathead and Fort Belknap Indian Reservation in Montana, the Nez Perce Reservation in Idaho, the Warm Springs Reservation in Oregon, and the Hopi, Zuni, and Navajo Reservations in Arizona and New Mexico. During the four years when I worked for Natural Resources Consulting Engineers, Inc. ("NCRE"), I provided technical support to the Office of the Tribal Water Engineer of the Shoshone and Arapaho Tribes in Wyoming, and I worked on technical studies in support of the Little Colorado River general stream adjudication, and on water development projects for the Government of Eritrea.

4. Since April 1995, I have been a Civil Engineer with the Navajo Department of Water Resources in Fort Defiance, Navajo Nation (Arizona). Since 1997, I have been the Branch Manager of the Department's Water Management Branch. As Branch Manager, I supervise and manage more than 20 hydrologists and technicians who are responsible for: (a) providing technical support to the Navajo Nation's water rights efforts in five ongoing general stream adjudications in Utah, Arizona and New Mexico, (b) operating snow surveys, climate stations, observation wells, surface water gages and other water monitoring functions on the Navajo Reservation, (c) providing information for drought response and mitigation, (d) providing flood plain management, (e) assisting with watershed restoration, and (f) regional water planning including water projects for irrigation, municipal, and industrial purposes. The Department of Water Resources operates under Navajo statutory provisions that set forth Navajo policy and objectives for water resources underlying Navajo country. Such policies and objectives include those of the Navajo Safe Drinking Water Act, 22 N.N.C. Chapter 7, Subchapter 15, and the Navajo Nation Water Code, 22 N.N.C. § 1101, et seq. (2005).

5. In my official capacity with the Navajo Nation, I also supervised water development investigations on several proposed Navajo Nation municipal water projects including the Navajo Gallup Water Supply Project, the Farmington to Shiprock Pipeline, the Three Canyon Water

Supply Project, and the Western Navajo Pipeline, among others. I am familiar with the design and planning criteria used by the Navajo Nation and the responsible federal agencies to develop these projects.

6. In my official capacity with the Navajo Nation, I have also supervised the preparation of more than 15 technical reports addressing water rights protection and water resources planning and management for the Navajo Nation. A list of these technical reports is reflected on the attached Resume'.

7. In performing my duties for the Navajo Nation, I have attended numerous meetings of Navajo Nation Chapters and have otherwise coordinated and communicated closely with the elected officials of the Chapters. The Navajo Nation is comprised of 110 such Chapters, and Navajo law specifically grants the Chapters the authority to make decisions over local matters. See 26 N.N.C. §1 B 2. (2005)

8. The purpose of this Declaration is to describe the Navajo Nation's water resources planning, management and operations in the Church Rock Chapter of the Navajo Nation, and thereby to assist in defining the appropriate "community of reference" for determining the appropriate jurisdictional authorities for the area that includes the southwest quarter of section 8, Township 16 North, Range 16 West, N.M.P.M., a parcel of land that is within the Church Rock Chapter of the Navajo Nation (section 8 parcel). In forming my conclusion regarding the appropriate community of reference, I have considered from a hydrological standpoint the nature of the area in question, the relationship of the inhabitants of the area to the Navajo Nation and federal government, established practices of government agencies toward the area, the cohesiveness manifested by common interests or needs of the inhabitants as supplied by the locality, and the nature of underground aquifers generally, where, for example, contaminants introduced at one site may migrate to other areas of the aquifer.

9. In preparing this Declaration, I reviewed the following reports and studies:

a. Final Environmental Impact Statement for the proposed HRI Crownpoint Project (NUREG-1508, Feb. 1997);

b. The demographic information available in the 2004 edition of Chapter Images.

10. I am familiar with the characteristics and the current and likely uses of underground water resources of the Church Rock Chapter. The Navajo Nation, in part through the Indian Health Services, provides virtually all of the services and infrastructure for water resources planning, development and use within the Church Rock Chapter, which includes the section 8 parcel. Federal law defines an "underground source of drinking water as an aquifer... (a)(1) which supplies any public water system, or (2) which contains a sufficient quantity of ground water to supply a public water system; and (i) currently supplies drinking water for human consumption..." 40 CFR §144.3.

11. The Westwater Canyon Aquifer is a subunit of the Morrison Formation, which the

Navajo Gallup Water Supply Project Technical Memorandum reports as providing more than 300 acre-feet of groundwater for municipal use in an area within the chapters of Church Rock, Coyote Canyon, Crownpoint, Little Water, Mariano Lake and Pinedale. The Westwater Canyon Aquifer is located directly below the section 8 parcel and it is used extensively for municipal, domestic and livestock supplies throughout these Chapters including the Church Rock Chapter.

12. The overall quality of the Westwater Canyon Aquifer, as shown in the wells for which the Navajo Department of Water Resources has information and/or has obtained extensive documentation regarding the quality of water of wells producing water from the Westwater Canyon Aquifer, is outstanding. It meets primary Safe Drinking Water Act standards.

13. The inhabitants of the Church Rock Chapter are almost all members of the Navajo Nation. Those residents extensively use water from Westwater Canyon aquifer wells for domestic purposes, including drinking water and livestock watering. A 1998 compilation by Balleau Groundwater, Inc., taken from the official records of the Navajo Department of Water Resources, reports that at least 14 wells from that aquifer are located in a 20-mile radius of the section 8 parcel. At least three of those wells are located within six miles of the section 8 parcel and within the Church Rock Chapter.

14. The Entrada Aquifer (also referred to as the Cow Springs Aquifer) also runs throughout the Church Rock Chapter, including below the section 8 parcel. Use of this aquifer is currently limited to livestock, municipal and domestic purposes. However, in my professional opinion, the Cow Springs Aquifer is very likely to be tapped for a municipal (including drinking) water supply for the planed Springstead Estates Housing Development, located within the Church Rock Chapter and approximately 3 miles south of the section 8 parcel. In addition, the United States Bureau of Reclamation has proposed the Cow Springs Aquifer as a water source for the expansion of the Crownpoint Regional Water System, which extends from Crownpoint to Becenti. The Indian Health Service has plans to further extend this system to Lake Valley. This aquifer will also be used for the expansion of the regional water system that extends from the Church Rock to Smith Lake.

15. Similarly, the Dakota Sandstone Aquifer runs throughout the Church Rock Chapter, including under the section 8 parcel. It is used extensively for livestock water by local residents in the area, and these water sources are also at times used for in-house domestic purposes.

16. The policies and objectives of the Navajo Nation, as stated in 22 N.N.C. §2502 (2005) of the Navajo Safe Drinking Water Act, include the "protect[ion of] the health and welfare of the Navajo people by ensuring that the water is safe for drinking and other purposes." Additionally, in 22 N.N.C. §1101 (2005) the Navajo Nation asserts its sovereign authority over all actions which affect the use of water within the Navajo Nation. Because the Westwater Canyon, the Dakota Sandstone and the Cow Springs Aquifers in the Church Rock Chapter are underground sources of drinking water for present and future drinking water supplies, Navajo law requires that groundwater quality in these aquifers not be degraded or jeopardized in a manner that may preclude current or future development of the water resources in them.

17. The underground water supplies underlying the Church Rock Chapter are vital community assets that must be protected. The degradation of these water supplies cannot be confined to the point at which pollutants are introduced because these pollutants can migrate beyond arbitrary section-line and land status boundaries. Because of the geology and hydrology of the area, and the proximity of the section 8 parcel to drinking water and other wells (including that foreseen for the Springstead Estates Housing Development) in the Church Rock Chapter, the in situ uranium mining proposed for the section 8 parcel (as well as a larger neighboring parcel of land held in trust for the Navajo Nation in section 17) may pollute and significantly jeopardize the viability of the Westwater Canyon, Dakota Sandstone and Cow Springs Aquifers as underground sources of drinking water for the inhabitants of the Church Rock Chapter and surrounding areas which are also within the Navajo Nation and inhabited predominantly by Navajo citizens.

18. With respect to water resources planning and development, the residents of the Church Rock Chapter rely almost exclusively on the Navajo Nation and the federal government as trustee. I have observed the cohesiveness and the common needs and interests of these residents relating to the provision of water for drinking and stock watering, and the focus of their activities in these respects is the Church Rock Chapter government. In my experience the Chapter has an unqualified Indian character.

19. Based on my experience and study it is my professional opinion that:

a. the Westwater Canyon, Cow Springs and Dakota Sandstone aquifers underlying the Church Rock Chapter, including the section 8 parcel, are "underground sources of drinking water" under federal law, 40 C.F.R. § 144.3; and

b. from a hydrological and water resources perspective, the Church Rock Chapter forms the most appropriate "community of reference"; and

c. the proposed uranium mining operations in the section 8 parcel in the Church Rock Chapter may substantially jeopardize important underground sources of drinking water as defined in 40 C.F.R. § 144.3, and violate Navajo policy as stated in enactments of the Navajo Nation Council.

d. the section 8 parcel is not a part of the San Juan drainage basin, but rather is part of the Rio Puerco and Little Colorado drainage basin as shown in attached Exhibit A.

20. I know the above facts on my personal knowledge and they are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of January, 2006.

John W. Leeper

John W. Leeper, Ph. D., P.E.

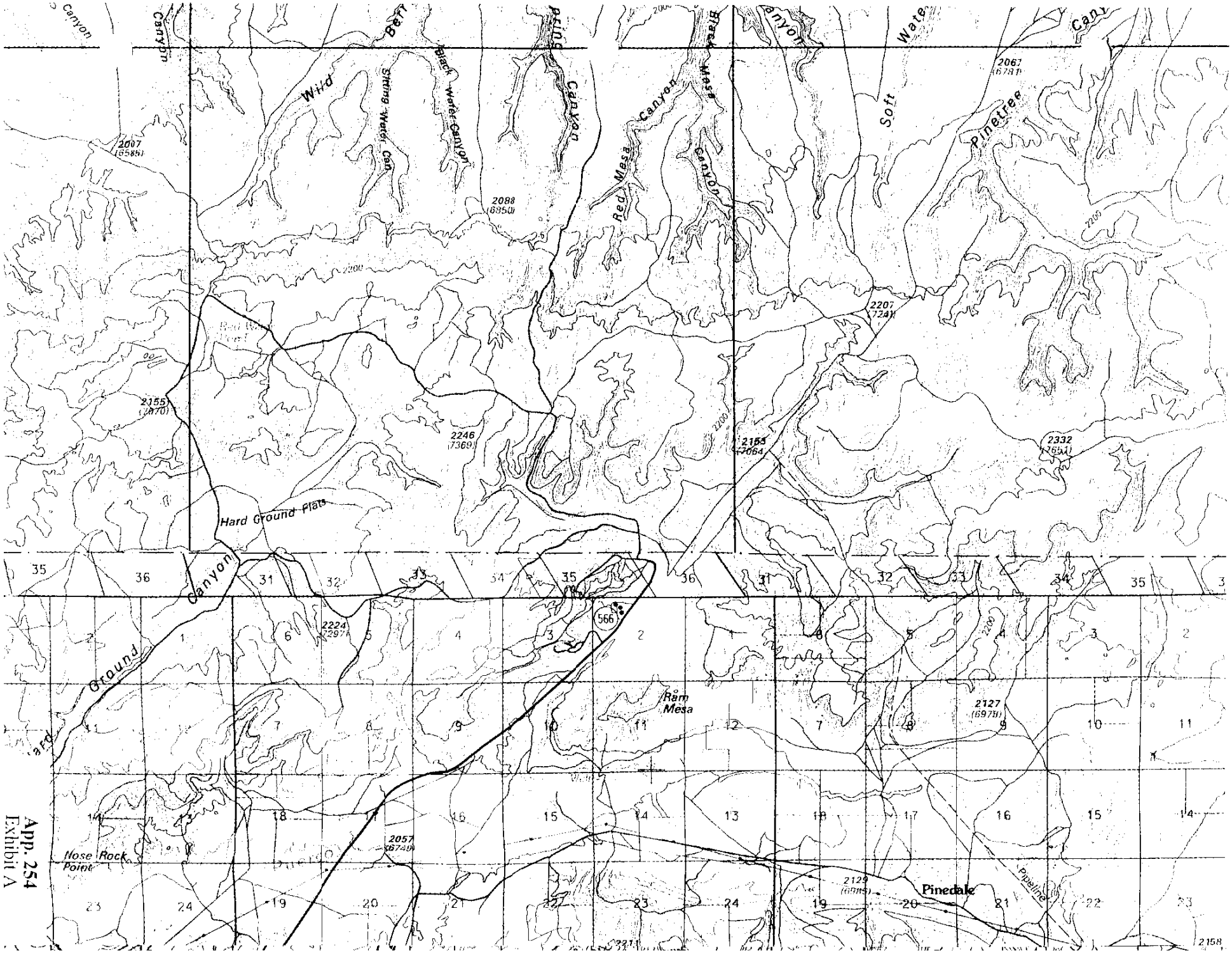

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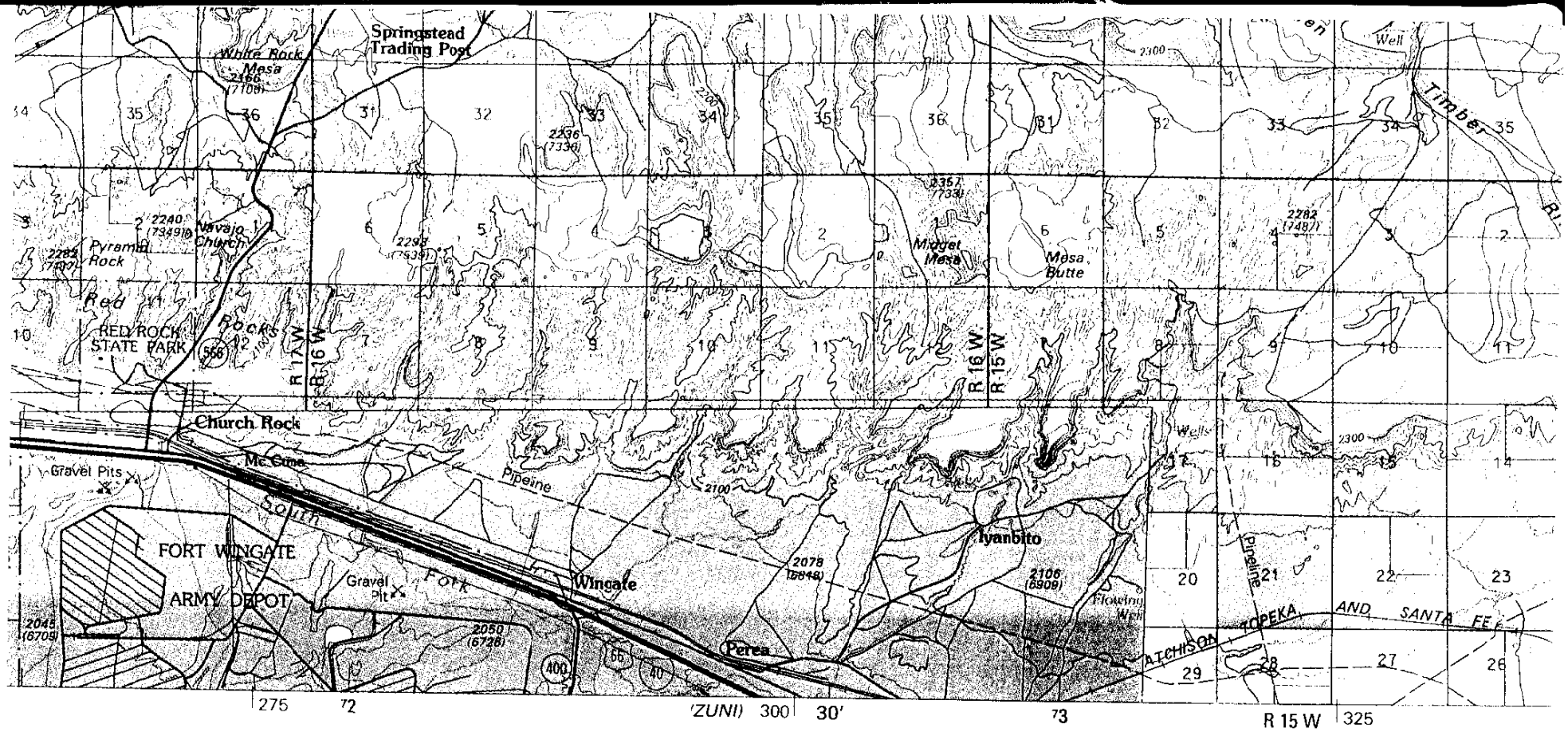
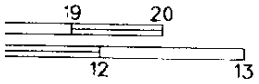
Exhibit A



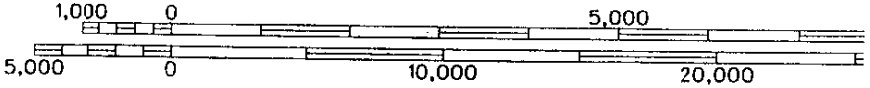


SCALE 1:100,000

1 CENTIMETER ON THE MAP REPRESENTS 1 KILOMETER ON THE GROUND

CONTOUR INTERVAL 20 METERS

CONTOUR INTERVAL 50 METERS WEST OF 109 00'



JOHN W. LEEPER

P.O. Box 855
43 Palomino Loop
Jamestown, New Mexico 87347
505-488-5256

Professional Registration:

Registered Professional Engineer - California, No. 36765
Arizona, No. 29220

Education:

Ph.D., 1989, Civil Engineering, Colorado State University, Dissertation Title: The Impact of Water Control on Navajo Irrigation Systems.

M.S., 1983, Civil Engineering, California State University, Los Angeles, Thesis Title: A Derivation of an Instantaneous Unit Hydrograph Using Kinematic Wave Equations.

B.S., 1978, Civil Engineering, University of California, Davis.

Experience:

Branch Manager, Water Resources Management, Navajo Nation, Fort Defiance, Arizona, 1997- Present.

The Branch Management for the Water Resources Management Branch of the Department of the Navajo Nation. Responsibilities included, among other activities, supervising the staff of the Water Resources Management Branch which includes approximately 20 employees. Responsibilities also include technical assistance with surface and groundwater permitting, participation in settlement negotiations for the Navajo Nation's adjudication of the Little Colorado River and the San Juan River Basin. During this period technical memorandums were prepared on the Three Canyon Water Supply Project, the Navajo Gallup Water Supply Project, the Shiprock Irrigation Projects, the Farmington-Shiprock Pipeline, the Ganado Water Supply Project, the Western Navajo Water Supply Project a Water Resources Strategy Document and Flood Plain Management. These projects require working closely with a variety of federal and state agencies including the U.S. Bureau of Reclamation, the U.S. Bureau of Indian Affairs, the Army Corps of Engineers, the U.S. Department of Agriculture, Arizona Department of Water Resources and the New Mexico Office of the State Engineer. The Branch's program support from all of these agencies has increased during this time.

JOHN LEEPER - RESUME (CONTINUED)

Civil Engineer, Water Resources Management, Navajo Nation, Fort Defiance, Arizona, 1995 - 1997.

Civil Engineer for the Water Resources Management Department of the Navajo Nation. Responsibilities included supervision of approximately five employees. Responsibilities also included, among other activities, technical assistance with surface and groundwater permitting, participation in settlement negotiations for the Navajo Nation's adjudication of the Little Colorado River, and in technical analysis of water development projects in the San Juan River Basin including the proposed Navajo Gallup Water Supply Project, and negotiation with Mobil Oil and Thriftway regarding water use on the Navajo Nation. During this period technical memorandums were prepared on the Water Code Fee Structure, population and water demand on the Navajo Nation, water supply at Canyon Diablo and others.

Supervising Senior Engineer, Natural Resources Consulting Engineers, Fort Collins, Colorado, 1992 - 1995.

Technical support for the Office of the Tribal Water Engineer of the Shoshone and Arapaho Tribes in Fort Washakie, Wyoming. This assistance included, among other activities, surface and groundwater permitting, dam safety monitoring of Washakie Dam, implementing cost-share programs and evaluation irrigation rehabilitation alternatives.

Supervision of portions of the Assessment and Plan for the Rehabilitation of the Wind River Irrigation Project and presentation of the plan to water users at a series of public meetings. This plan addresses management, finances, on-farm systems, equipment and the physical system.

Supervision of portions for the Wind River Basin Wide Study which evaluated the water supply, and present and future water demands in the Wind River Basin.

Support for the federal team which is litigation and negotiation the federally reserved water rights in the Little Colorado River Basin. This assistance included technical studies involving the Navajo, Hope, San Juan Southern Paiute, White Mountain Apache and Zuni Tribes.

Preliminary technical evaluations of the Toker Dam Water Supply Project for the Province of Asmara in Eritrea and the Tekezzie-Setit Hydropower and Irrigation Project for the Government of Eritrea.

Senior Civil Engineer, Stetson Engineers, San Rafael, California, 1989 - 1992.

Estimation of the impact of non-Indian water use on water development of the Pechanga, Morongo, Santa Rosa, Cuyapaipe and La Posta Indian Reservations in Souther California.

Inventory and assessment of the rehabilitation potential of historically and presently irrigated lands on the Flathead Indian Reservation, Montana. Evaluation of the water supply and demand of those lands.

Development of a water resources management plan for the Santa Ynez Water Conservation District in Central California.

Quantification of water resources and historical water requirements of irrigated land on Peoples Creek, Fort Belknap Indian Reservation, Montana.

Evaluation of local facilities required for delivery of California Water Project water to Improvement District Number 1, Santa Ynez Water Conservation District.

Inventory of historically and presently irrigated lands on the Navajo and Hopi Indian Reservations. Evaluation of water supply and demand of those lands.

Analysis of benefits and costs of seepage reduction options available to the San Luis Drainage Unit in the Central valley of California.

Inventory of historically and presently irrigated lands on the Nez Perce Reservation in Idaho. Conducted a feasibility level engineering study of potentially irrigable lands on the Reservation.

Determination of natural flow and minimum allowable in stream flows on the Deschutes River in Oregon in conjunction with the quantification of federal reserved water rights of the Warm Springs Indian Reservation.

Assistant Course Director/Graduate Teaching Assistant, Colorado State University, Fort Collins, Colorado, 1985 - 1988.

Development of training materials and field exercises for the course "Irrigation System Rehabilitation".

Assisted international participants with analysis of on-farm systems and irrigation organizations in the U.S. for "social and Technical Aspects of Irrigation Management" course.

Conducted technical sessions on erosion control, technology assessment and agricultural extension for the Peace Corps Agro-Forestry training at Colorado State University. Trainees were assigned to Rwanda, Mali, Senegal and Lesotho.

Consultant for the Peace Corps' African Food System Initiative in Lesotho. This assignment included development of training materials for community water supply and irrigation engineers., and forestry and conservation trainees.

Adaption of MULTSED, a physically based watershed and channel routing model, to the prehistoric Mummy Lake Water Collection System in Mesa Verde National Park.

Graduate Teaching Assistant, California State University, Los Angeles, California, 1983.

Technical Coordinator/Volunteer, U.S. Peace Corps, Nepal, 1978 - 1981.

Development of training materials for community water supply trainees and suspension bridge engineers in Nepal. Surveyed potential bridge sites in remote rural areas of Nepal. Designed and prepared cost estimates of bridges for the Local Development Ministry. Supervised construction of suspension bridges using workers from local villages.

Engineering Assistant, State Water Resources Control Board, Sacrament, California, 1978

Organization of engineer's field reports from water pollution control construction sites. Inspected sites to verify compliance with State Water Resource Control Board schedules.

Languages:

English, Nepali, Limited Spanish.

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
SUPPLEMENTAL DECLARATION OF JOHN LEEPER

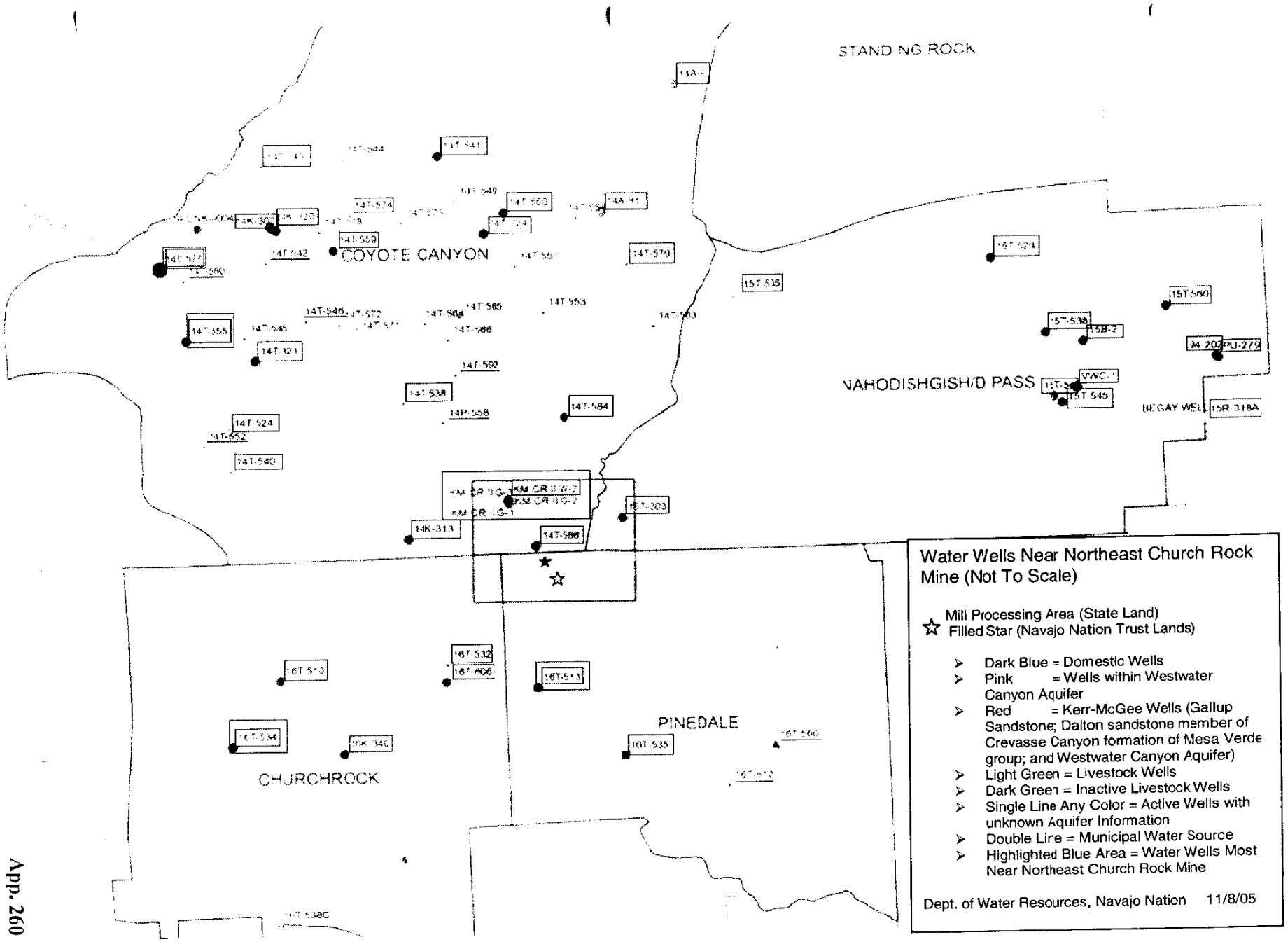
I, John Leeper, do hereby declare pursuant to 28 U.S.C. §1746:

1. In addition to the facts set forth in the other Declaration filed by me in this matter, the attached exhibit is a map prepared under my direction that shows wells located in the Church Rock Chapter and surrounding areas. Information regarding the wells shown on this map is contained in the data bases maintained by the Navajo Nation Division of Natural Resources Department of Water Resources.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed this 27 day of January, 2006.

John Leeper

John Leeper


STANDING ROCK
COYOTE CANYON
NAHODISHGISH/D PASS
PINEDALE
CHURCHROCK
Water Wells Near Northeast Church Rock Mine (Not To Scale)
Mill Processing Area (State Land)
Filled Star (Navajo Nation Trust Lands)
Dark Blue = Domestic Wells
Pink = Wells within Westwater Canyon Aquifer
Red = Kerr-McGee Wells (Gallup Sandstone; Dalton sandstone member of Crevasse Canyon formation of Mesa Verde group; and Westwater Canyon Aquifer)
Light Green = Livestock Wells
Dark Green = Inactive Livestock Wells
Single Line Any Color = Active Wells with unknown Aquifer Information
Double Line = Municipal Water Source
Highlighted Blue Area = Water Wells Most Near Northeast Church Rock Mine
Dept. of Water Resources, Navajo Nation 11/8/05

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DECLARATION OF EDWARD CARLISLE

I, Edward Carlisle, do hereby declare pursuant to 28 U.S.C. §1746:

1. I am the Community Service Coordinator for the Churchrock Chapter. This position is funded by the Navajo Nation. I was appointed to the position on November 1, 1999. I have served in the position for 6 years and 2 months; and

2. Prior to my appointment as Community Services Coordinator, I worked for the Navajo Area Office of the Bureau of Indian Affairs as: Personnel Management Specialist, Indian Self-Determination Specialist, Tribal Operations Officer and Agency Superintendent. I served as Chinle Agency Superintendent for Indian Programs from about March 1984 to May 1994; and

3. Our Churchrock Chapter staff consists of a Community Services Coordinator and Office Specialist. Generally, we help Council Delegates, Chapter Officers and Committees in planning, organizing and implementing local government, community and economic development initiatives. We are responsible for identifying community needs, preparing budgets, conducting program operations and maintaining the related accounting, personnel, property and records management systems; and

4. Based upon my knowledge of the community needs assessment for the Churchrock Land-Use Plan and my participation in the Churchrock Uranium Monitoring Project, I am familiar with the needs, limited resources of the Chapter membership and the economic initiatives of the Chapter government and the extent of services provided by the tribal, state and federal governments; and

5. I am familiar with the 2004 edition of Chapter Images that provides data from the 2000 census. According to the census, Churchrock chapter had a total population of 2,802; a combined American Indian and Alaska Native population of 2,718 and a combined Native American race population of 2,737. The census data gives a non-Indian Chapter population of 65. It is my opinion that the Churchrock Chapter non-Indian population has declined in the last 10 years. Most of the non-Indians who live in Churchrock Chapter are married to Navajos.

6. The Churchrock Chapter is one of the first ones established by the Navajo Nation and recognized by the Bureau of Indian Affairs. The original Chapter House was built in 1946. The present one was built in 1963. The Churchrock Chapter was one of the original Navajo election precincts. It was established by Navajo Tribal Council Resolution, CJ-20-55, on December 5, 1955.

7. The following programs, services or offices are located at Churchrock:

A. Churchrock Chapter
- Administration & Finance
- Personnel
- Procurement
- Property Management
- Records Management
- Housing Discretionary Assistance
- Elections
- Scholarships
- Public Employment
- Youth Employment
- Emergency Relief
- Churchrock Uranium Monitoring Project

B. Senior Citizens Center
- Senior Lunch Program
- Meals on Wheels
- Transportation Dental and Eye Care
- In-Home Assistance
- Four Staff Members

C. Head Start
- Three regular Classroom Programs
- One Home Based Program for the Handicappped
- Bus Transportation
- Breakfast and Lunch Programs
- 16 Staff Members

D. Community Health Representative Program

E. Veterans Program

F. Navajo Police Substation

G. Land Board

8. The Navajo Nation provides funding for the Churchrock Chapter administrative activities. The Bureau of Indian Affairs provides funding for the Housing Assistance, Police and Scholarship programs through Indian Self-Determination Grants.

9.. Due to the multiple programs involved with the Head Start Programs, it is funded by BIA Education, Social Services, Children, Youth and Families, Health Services and Department of Agriculture.

10. The Indian Health Service and Environmental Health provide funding for domestic and livestock water systems and the Chapter Health Representative Program. The domestic and livestock water systems, windmills, wells and distribution lines are maintained by the Navajo Tribal Utility Program.

11. **The Churchrock Chapter relies on the Navajo Nation for all environmental protection related services.**

12. **The Churchrock Chapter relies on Navajo Tribal Utilities to provide water for Chapter residents.**

13. **The Navajo Nation and the Bureau of Indian Affairs provide almost all of the government services to the Churchrock community.**

14. **The Navajo Nation provides the vast majority of all law enforcement and dispute resolution services for the Chapter.**

15. The Churchrock Chapter is a Navajo traditional rural community. The economy is centered around livestock raising. The livestock and grazing programs are funded by the Navajo Nation Department of Agriculture. **The residents look primarily to the Chapter (either with its own resources or through the Navajo Nation and BIA) to meet their various needs.**

16. Due to the environmental health problems generated by previous uranium mining and processing, the Churchrock Chapter opposes further uranium mining and processing. Churchrock Chapter resolution, CRC-030720, Reaffirms Churchrock Chapter Opposition to Uranium Mining and Requests Health and Social Services, Resources, and Intergovernmental Relations Committees to enact an Energy Policy Banning Uranium Mining within Navajo Indian Country and Providing Legal Services to Chapters and individuals adversely affected by uranium mining, milling, transportation, accidents and weapons-testing. Churchrock Chapter Resolution, CRC-066-06/00/2000, Requests Expeditious Cleanup of Abandoned Uranium Mines and Mill sites and Funding for Environmental and Public Health Assessments in Churchrock Chapter and Recommends Against Any New Uranium Development in Churchrock Chapter at Least Until Such cleanup and Assessments are Completed. Churchrock Chapter Resolution, CRC-050417-G, requests Agencies and Officials of the Navajo Nation, State of New Mexico and United States Government to Provide Notification and the Direct Participation of Churchrock Chapter on Site Assessments and Close-out Plans for the United Nuclear Corporation Northeast Churchrock Mine.

17. Navajo Nation Council Resolution, An Act Relating to Resources and Diné Fundamental Law; Enacting the Diné Natural Resources Protection Act of 2005; Amending Title 18 of the Navajo Nation Code, bans uranium mining and processing within Navajo Indian Country.

18. The documents attached to this Declaration are all accurate copies of Resolutions duly passed by the Churchrock Chapter.

19. No one is currently living on the Section 8 land where HRI is trying to obtain an environmental permit.

20. The nearest residents to the above-referenced Section 8 land are Navajos.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of January, 2006.

Edward Carlisle

CHURCH ROCK
CHAPTER

Navajo name: Kinlitsoh sinili
Interpretation: Group of yellow houses
Indian Population:

1980 Census:	1,633
1990 Census:	1,684
2000 Census:	2,737

Estimated land size: 52,719.15 Acres
Land Management District: 16

GOVERNMENT
Number of Chapter NTC delegate(s): 2
Delegates shared with: Bread Springs
Number of police officer(s): 3
Navajo Police district office covering Chapter:
Crownpoint District
Tribal offices that provide services within Chapter:
Churchrock Chapter Administration
Navajo Aging Services Senior Program
Navajo Department of Workforce
Department of Head Start
Division of Social Services
Community Health Representative
Department of Behavioral Health
Navajo Veterans Administration
Navajo Environmental Protection Agency
Navajo Division of Water Resources

MEDICAL
Hospital(s) & clinic(s) where most Chapter people go:

Hospital	Town
Gallup Indian Medical Center	Gallup, NM

Clinic	Town
Fort Wingate Dental Clinic	Ft. Wingate, NM

EDUCATION
Total enrollment by school (Fall of 2003):

School	Enrolled
Church Rock Elementary Sch.	nr
Gallup High School	nr
JFK Middle School	nr
Wingate Elementary School	nr
Wingate High School	nr
Church Rock Head Start Cntrs	70

COMMUNICATIONS
Regular TV reception; stations received:

Call Letters	Town
KOAT	Albuquerque, NM
KRQE	Albuquerque, NM
KOB	Albuquerque, NM
KNME	Albuquerque, NM

Clear AM radio stations received:

Call Letters	Town
KYVA	Gallup, NM
KGAK	Gallup, NM
KTNN	Window Rock, AZ

Clear FM radio stations received:

Call Letters	Town
KKOR	Gallup, NM
KQNM	Gallup, NM
KGLX	Gallup, NM

Newspaper received within the Chapter:

Name of Paper	Town
The Independent	Gallup, NM
Navajo Times	Window Rock, AZ

CIVIC
Churches:

Name of Church
Catholic Church
Christian Reform
Pentecostal
Church of God
Harvest Time

Indigenous:
Traditional Navajo Religion
Native American Church

COMMERCIAL
Available establishments in the Chapter:

Gas Station	1
Convenience Store	1
Trading Post	1
Red Rock State Park	1

TRANSPORTATION
Paved roads through the chapter area:
Interstate 40
State of New Mexico Route 566
U. S. Historic 66

Distances to:

Agency: Crownpoint	50 miles
Window Rock	35 miles
Gallup, NM	10 miles

MAJOR EMPLOYERS

Indian Plaza	nr
Thompson's Store	nr
Rehoboth Christian School	nr
Mustang	nr
Red Rock State Park	nr
Church Rock Academy	nr
Church Rock Mine	nr

Pre-Schools	nr
Navajo Nation/Chapter Officials	nr
Meridian Oil Co.	nr
Hamilton Construction Co.	nr
Bureau of Indian Affairs	nr
Indian Health Service	nr

LOCAL NATURAL RESOURCES

Sand &. Gravel
Uranium
Coal
Scenery (tourism)

COMMUNITY/COOPERATIVE FARMING

None.

BRIEF OVERVIEW OF CHAPTER

The Church Rock Chapter House is located north of the junction between State Route 56 and the old U.S. Route 66, generally within 6 miles east of Gallup, New Mexico. Church Rock Estates Housing Subdivision has replaced the Indian Village once located in the Church Rock Community that housed employees at the Ft. Wingate Army Depot during World War II. The Fort Defiance Housing Corporation built the new housing units around 2001. The Chapter received its name from the old village "Kinlitsoh sinili", or "group of yellow houses" in English.

The now famous Red Rock State Park is within the boundaries of the Chruch Rock Chapter, however is situated on State land. Annually, the "Indian Ceremonial" is held during the second weekend of August. Other major events like the Gallup Lions Club Rodeo and National High School Rodeo Finals are held there annually. Often conferences are held the state park due to relatively large-scale accommodations.

Church Rock Chapter has 10 units of low rent NHA housing east of the chapter house; 60 more units are located west of State Route 566 and 40 more units at the Sundance sub-division south of I-40.

Some of the remote areas of the community have significant archaeological sites such as ancient petroglyphs, kiva circles and remnants of Anasazi ruins. Land within the Church Rock Chapter consists of different ownership status, including Tribal trust lands, individual Indian allotments, federal, state and private lands with large corridors of right-of-way for utility lines, roads, etc. Being located adjacent to Red Rock State Park and the City of Gallup enable the chapter to generate revenues through related activities and provides some access to employment.

A Church Rock Land Use Plan has been developed with technical assistance implemented of Architectural Research, Inc. of Albuquerque, NM and development according to the plan is being aggressively pursued.

This community has established partnerships and cooperative activities with other organizations to develop solutions to underlying problems and to promote small business development and jobs through its Tourism Action Corporation.

This Chapter information was updated by:

	Name	Telephone No.
2004	Edward Carlisle, CSC	505/488-5949
		Fax: 505/488-6561
'92/'96	Charles Damon II; CSC	

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DECLARATION OF STEPHEN B. ETSITTY

I, Stephen B. Etsitty, do hereby declare pursuant to 28 U.S.C. §1746:

1. I currently serve as Executive Director for the Navajo Nation Environmental Protection Agency.

2. In my capacity as Executive Director for the Navajo Nation Environmental Protection Agency I oversee the operations of various agency programs and departments including the Waste Regulatory & Compliance Department, the Surface and Groundwater Protection Department and the Public Water Systems Supervision Department.

3. Through my work in overseeing the operations of the above-described Departments I have became aware of how the Navajo Nation Environmental Protection Agency interacts with the Church Rock Chapter Community. I have also observed how the United States Environmental Protection Agency interacts with the Church Rock Chapter Community.

4. A meeting held on January 20, 2006 at the Church Rock Chapter House typifies, in my opinion, the way in which the Navajo Nation Environmental Protection Agency (NNEPA) and the United States Environmental Protection Agency (USEPA) interact with and treat the Church Rock Chapter. This meeting was designed to provide Church Rock Chapter leaders with the opportunity to give input regarding a planned "removal" action at the former Northeast Church Rock Uranium mine site. The Northeast Church Rock mine site is a few miles north of the Section 8 parcel that is the subject of this proceeding. The USEPA has recently taken over the site lead regarding remediation activities at Northeast Church Rock mine site. (See attached letter dated November 7, 2005 from Keith Takata, USEPA Region IX to me). The meeting was jointly sponsored by NNEPA and USEPA. The NNEPA Coordinator was Lillie Lane and the USEPA Coordinator was Pui Man Wong. The Church Rock Chapter House was chosen as the location for this meeting because, in my opinion, the Church Rock Community is the most appropriate community of reference, for public involvement purposes, regarding matters of environmental concern in the Church Rock area. The NNEPA treats the Church Rock Chapter as a distinct Indian community.

5. In addition to the Section 8 parcel where in situ uranium mining is being proposed, and the abandoned site of the former Northeast Church Rock mine, there is also a federal Superfund site located in the vicinity of the other sites. This Superfund site, located within a few miles of the Section 8 parcel and the abandoned Northeast Church Rock mine, is known as the former United Nuclear Corporation site. The NNEPA adopts the conclusions of the Navajo Division of

Natural Resources as evidenced in the Declaration of John Leeper and believes that all of the above-referenced areas are connected hydro-geologically.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed this 26 day of January, 2006.

Stephen B. Etsitty

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 7, 2005

Mr. Steven Etsitty
Executive Director
Navajo Nation
Environmental Protection Agency
P.O. Box 9000
Window Rock, AZ 86515

Dear Mr. Etsitty:

Thank you for your letter of March 22, 2005 requesting the United States Environmental Protection Agency (EPA) Region 9 take the lead for cleanup of the Northeast Church Rock Mine (NECR) Site near Gallup, New Mexico.

Pursuant to your request, EPA Region 9 will proceed as the lead regulatory Agency for the Northeast Church Rock Mine site in New Mexico. This action is also consistent with my May 11th letter and the general consensus developed by all State and Federal agencies and other parties at the June 23rd meeting in Albuquerque. The EPA has recently received a letter from the New Mexico Environment Department (NMED) requesting assistance from EPA Region 9 to conduct a response action at the NECR site. The EPA recognizes this letter as the formal request from the State of New Mexico to assume the lead for this site. The EPA Region 9 will assume the lead for this site using our authority under CERCLA on all lands recognized as Navajo Nation land.

It is our hope to proceed with response actions at this Site by working on legal and technical issues in addition to collaborating on and finalizing the consultation plan. We look forward to working with NNEPA in the near future on response actions and are eager to carry the project forward. Thank you for your help in this matter.

Sincerely,

Keith Takata,
Superfund Division Director

Enclosure

cc: Samuel J. Coleman, Director
Superfund Division, U.S. EPA Region 6

Derrith Watchman-Moore
Deputy Secretary
New Mexico Environment Department

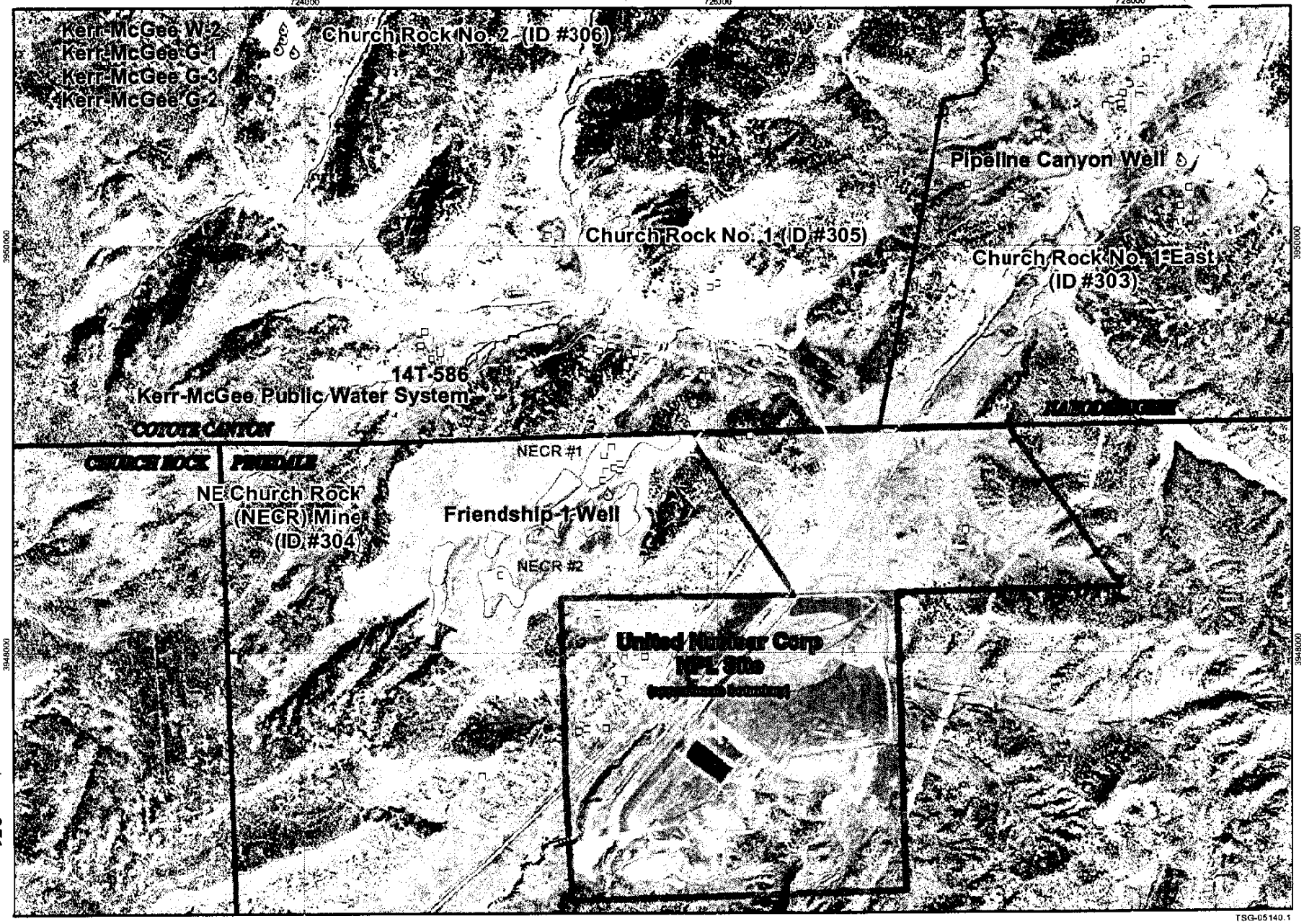
Arlene Luther, Department Manager
Waste Programs Regulatory Compliance
Navajo Nation Environmental Protection Agency

David Taylor, Attorney
Natural Resources Unit, Navajo Nation Department of Justice

Bill Brancard, Director
New Mexico Mining and Minerals Division

Elouise Chircharello, Regional Director
Navajo Regional Area, BIA

Steven Spencer, Regional Environmental Officer
U.S. Department of the Interior



Preliminary Review Draft Map
prepared June 13, 2005

N

CHURCH ROCK ABANDONED URANIUM MINES AND MILL

0 0.25 0.5 1 Miles

Legend

AUM Sites
AUM name and (Mine ID #) from Combined Pathways Score Table

Structures
Wells
Drainages

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DECLARATION OF RAYMOND ETCITTY

I, Raymond Etcitty, do hereby declare pursuant to 28 U.S.C. §1746:

1. I am the Chief Legislative Counsel at the Navajo Nation Office of Legislative Counsel.

2. In my capacity as Chief Legislative Counsel I am familiar with the Legislative process at the Navajo Nation regarding the passage of Navajo Nation Council Resolutions.

3. The attached Resolutions are accurate copies of Resolutions passed by the Navajo Nation Council. These resolutions typify the way the Navajo Nation Council interacts with the various Navajo Nation Chapters.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed this 27th day of January, 2006.

Raymond Etcitty

CMY-60-99

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Approving a One-Time Waiver of 12 N.N.C. §820 (O) Distributions to Chapters, by Allowing the Navajo Housing Services Department (NHSD) to Disburse Fiscal Year 1999 Housing Funds of $3,593,958 on an Equal Distribution System to All Navajo Nation Chapters

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), (1989 Amendments), the Navajo Nation Council is the governing body of the Navajo Nation; and

2. Pursuant to Resolution CO-89-98, the Navajo Nation Council enacted the Appropriations Act, codified at 12 N.N.C. §800 et seq., Distributions to Chapters, provides that: Where not otherwise prohibited by existing law, any appropriation intended for distribution to all chapters of the Navajo Nation shall be allocated as follows: Fifty percent (50%) of the appropriation shall be divided equally among all chapters and the remaining fifty percent (50%) shall be divided proportionately among the chapters using a percentage equal to that figure which the number of registered voters in each chapter bears to the whole of registered Navajo Nation voters as determined by the most current voter registration figures available as of the date of the appropriation; and

3. Pursuant to Condition of Appropriation No. 59, the Transportation and Community Development Committee of the Navajo Nation Council, by Resolution TCDCMA-32-99 recommended that the Government Services Committee of the Navajo Nation Council "approve and support the Revised Plan of Operation for the Navajo Housing Services Department (NHSD)" while further incorporating the applicable provision of the Appropriations Act at 12 N.N.C. §820 (O) concerning distributions to the chapters; and

4. By Resolution GSCMY-45-99, the Government Services Committee of the Navajo Nation Council amended the Plan of Operation for the NHSD, attached hereto as Exhibit "C"; and

5. The Transportation and Community Development Committee of the Navajo Nation Council, by Resolution TCDCMY-57-99 recommended that the Navajo Nation Council waive the Appropriations Act, 12 N.N.C. §820 (O), Distributions to Chapters, by allowing the NHSD to disburse the Fiscal Year 1999 housing funds in the amount of $3,592,958 from Account Numbers 3-13131, 3-13132, 3-13133, 3-13134, 3-13135, with equal distribution to all Navajo Nation Chapters, attached hereto as Exhibit "B"; and

6. The Navajo Nation Council believes it to be in the best interest of the Navajo Nation and the Navajo people to approve a one-time waiver of the Appropriations Act, 12 N.N.C. §820 (O) Distributions to Chapters, and allow the Navajo Housing Services Department to disburse the housing funds directly to the Navajo Nation Chapters for the purpose of housing services only, through equal distribution, based on the attached Exhibit "A" incorporated herein.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Council hereby approves a one-time waiver of the Appropriations Act, 12 N.N.C. §820 (O), Distributions to Chapters, to allow Navajo Housing Services Department to equally disburse the Housing funds in the amount of $3,592,958 from Account Numbers 3-13131, 3-13132, 3-13133, 3-13134, 3-13135, directly to the Navajo Nation Chapters for housing services only, based on the attached Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 69 in favor, 0 opposed and 0 abstained, this 21st day of May 1999.

Edward T. Begay, Speaker
Navajo Nation Council
MAY 24 1999
Date Signed

Motion: Ernest Hubbell
Second: Sampson Begay

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 25th day of May 1999.

Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), this ___ day of _____, 1998 for the reason(s) expressed in the attached letter to the Speaker.

Kelsey A. Begaye, President
Navajo Nation

"EXHIBIT A"

The Navajo Nation
Navajo Housing Services
Discretionary Funds - $3,592,958.00

EXHIBIT "A"

Fiscal Year 1999

#of Chp.	Chapters	#of Reg. Voters	Share Voters	# Pop. Count	Share Pop. Reg.	Amt Based on Reg. Voters	Equal Distribution	Total Amount Allocated
	CHINLE AGENCY							
1	Hard Rock	780	0.795%	1,367	0.830%	$ -	$ 32,663	$ 32,663
2	Forest Lake	518	0.528%	482	0.290%	$ -	$ 32,663	$ 32,663
3	Pinon	1,357	1.383%	2,228	1.350%	$ -	$ 32,663	$ 32,663
4	Tachee/Blue Gap	728	0.742%	1,145	0.690%	$ -	$ 32,663	$ 32,663
5	Chinle	2,656	2.707%	7,735	4.660%	$ -	$ 32,663	$ 32,663
6	Many Farms	1,188	1.211%	2,309	1.390%	$ -	$ 32,663	$ 32,663
7	Nazlini	720	0.734%	1,175	0.710%	$ -	$ 32,663	$ 32,663
8	Tselani/Cottonwood	1,169	1.191%	1,563	0.940%	$ -	$ 32,663	$ 32,663
9	Lukachukai	1,060	1.080%	2,257	1.360%	$ -	$ 32,663	$ 32,663
10	Round Rock	733	0.747%	845	0.510%	$ -	$ 32,663	$ 32,663
11	Tsaile/Wheatfields	1,110	1.132%	1,515	0.920%	$ -	$ 32,663	$ 32,663
12	Rough Rock	612	0.624%	1,108	0.670%	$ -	$ 32,663	$ 32,663
13	Black Mesa	425	0.433%	499	0.300%	$ -	$ 32,663	$ 32,663
14	Whippoorwill	819	0.835%	943	0.570%	$ -	$ 32,663	$ 32,663
	SUBTOTALS:	13,875	14.142%	25,171	15.190%	$ -	$ 457,286	$ 457,286
	EASTERN AGENCY							
1	Becenti	466	0.475%	350	0.210%	$ -	$ 32,663	$ 32,663
2	Lake Valley	374	0.381%	438	0.260%	$ -	$ 32,663	$ 32,663
3	Littlewater	628	0.640%	690	0.420%	$ -	$ 32,663	$ 32,663
4	Nahodishgish	306	0.312%	341	0.210%	$ -	$ 32,663	$ 32,663
5	Pueblo Pintado	485	0.494%	474	0.290%	$ -	$ 32,663	$ 32,663
6	Standing Rock	523	0.533%	251	0.150%	$ -	$ 32,663	$ 32,663
7	Torreon	1,002	1.021%	1,442	0.860%	$ -	$ 32,663	$ 32,663
8	Whitehorse Lake	478	0.487%	665	0.400%	$ -	$ 32,663	$ 32,663
9	Whiterock	276	0.281%	218	0.130%	$ -	$ 32,663	$ 32,663
10	Baca/Prewitt	1,055	1.075%	685	0.410%	$ -	$ 32,663	$ 32,663
11	Breadsprings	613	0.625%	1,247	0.750%	$ -	$ 32,663	$ 32,663
12	Casamero Lake	431	0.439%	610	0.370%	$ -	$ 32,663	$ 32,663
13	Chichiltah	1,048	1.068%	1,560	0.930%	$ -	$ 32,663	$ 32,663
14	Churchrock	1,240	1.264%	1,820	1.090%	$ -	$ 32,663	$ 32,663
15	Iyanbito	529	0.539%	1,053	0.640%	$ -	$ 32,663	$ 32,663
16	Manuelito	577	0.588%	693	0.420%	$ -	$ 32,663	$ 32,663
17	Mariano Lake	640	0.653%	778	0.470%	$ -	$ 32,663	$ 32,663
18	Pinedale	713	0.727%	639	0.390%	$ -	$ 32,663	$ 32,663
19	Red Rock	1,001	1.020%	1,074	0.650%	$ -	$ 32,663	$ 32,663
20	Rock Springs	741	0.755%	1,390	0.840%	$ -	$ 32,663	$ 32,663
21	Smith Lake	550	0.561%	539	0.330%	$ -	$ 32,663	$ 32,663
22	Thoreau	734	0.748%	1,442	0.870%	$ -	$ 32,663	$ 32,663
23	Tsayatoh	663	0.676%	1,399	0.850%	$ -	$ 32,663	$ 32,663
24	Huerfano	1,282	1.307%	2,493	1.510%	$ -	$ 32,663	$ 32,663

39	25	Nageezi	1,000	1.019%	1,055	0.640%	$	-	$	32,663	$	32,663
40	26	Ojo Encino	553	0.564%	683	0.410%	$	-	$	32,663	$	32,663
41	27	Ramah	998	1.017%	1,200	0.730%	$	-	$	32,663	$	32,663
42	28	Canoncito	793	0.808%	1,292	0.780%	$	-	$	32,663	$	32,663
43	29	Alamo	778	0.793%	1,338	0.810%	$	-	$	32,663	$	32,663
44	30	Crownpoint	1,013	1.033%	2,650	1.600%	$	-	$	32,663	$	32,663
45	31	Counselor	596	0.608%	1,372	0.830%	$	-	$	32,663	$	32,663
		SUBTOTALS:	22,086	22.511%	31,881	19.25%	$	-	$	1,012,561	$	1,012,561
		FORT DEFIANCE AGNECY										
46	1	Dilcon	952	0.970%	1,915	1.160%	$	-	$	32,663	$	32,663
47	2	Indian Wells	682	0.695%	1,280	0.770%	$	-	$	32,663	$	32,663
48	3	Jeddito	806	0.821%	1,140	0.690%	$	-	$	32,663	$	32,663
49	4	Teesto	895	0.912%	1,127	0.680%	$	-	$	32,663	$	32,663
50	5	Whitecone	778	0.793%	932	0.560%	$	-	$	32,663	$	32,663
51	6	Coyote Canyon	974	0.993%	1,357	0.820%	$	-	$	32,663	$	32,663
52	7	Mexican Springs	771	0.786%	753	0.460%	$	-	$	32,663	$	32,663
53	8	Naschitti	1,224	1.247%	1,671	1.010%	$	-	$	32,663	$	32,663
54	9	Tohatchi	1,125	1.147%	1,569	0.950%	$	-	$	32,663	$	32,663
55	10	Twin Lakes	1,039	1.059%	2,127	1.280%	$	-	$	32,663	$	32,663
56	11	Cornfields	754	0.769%	585	0.350%	$	-	$	32,663	$	32,663
57	12	Ganado	1,074	1.095%	2,712	1.640%	$	-	$	32,663	$	32,663
58	13	Lower Greasewood	924	0.942%	1,260	0.760%	$	-	$	32,663	$	32,663
59	14	Kinlichee	1,202	1.225%	1,437	0.870%	$	-	$	32,663	$	32,663
60	15	Klagetoh	841	0.857%	815	0.490%	$	-	$	32,663	$	32,663
61	16	Steamboat	1,021	1.041%	1,578	0.950%	$	-	$	32,663	$	32,663
62	17	Wide Ruins	814	0.830%	1,406	0.850%	$	-	$	32,663	$	32,663
63	18	Crystal	790	0.805%	805	0.490%	$	-	$	32,663	$	32,663
64	19	Fort Defiance	2,603	2.653%	6,446	3.890%	$	-	$	32,663	$	32,663
65	20	Houck	1,013	1.032%	1,447	0.870%	$	-	$	32,663	$	32,663
66	21	Oak Springs	602	0.614%	483	0.290%	$	-	$	32,663	$	32,663
67	22	Red Lake	428	0.436%	2,371	1.430%	$	-	$	32,663	$	32,663
68	23	Saint Michaels	1,750	1.784%	5,793	3.500%	$	-	$	32,663	$	32,663
69	24	Sawmill	842	0.858%	927	0.560%	$	-	$	32,663	$	32,663
70	25	Lupton	645	0.657%	934	0.560%	$	-	$	32,663	$	32,663
71	26	Low Mountain	666	0.679%	703	0.420%	$	-	$	32,663	$	32,663
72	27	Nahata Dziil	621	0.633%	920	0.560%	$	-	$	32,663	$	32,663
		SUBTOTALS:	25,836	26.333%	44,493	26.86%	$	-	$	881,908	$	881,908
		SHIPROCK AGENCY										
73	1	Mexican Water	655	0.668%	578	0.35%	$	-	$	32,663	$	32,663
74	2	Rock Point	886	0.903%	1,299	0.78%	$	-	$	32,663	$	32,663
75	3	Sweetwater	800	0.815%	1,255	0.76%	$	-	$	32,663	$	32,663
76	4	TeecNosPos	978	0.997%	1,259	0.76%	$	-	$	32,663	$	32,663
77	5	Aneth	1,199	1.222%	2,128	1.29%	$	-	$	32,663	$	32,663
78	6	Two Grey Hills	819	0.835%	888	0.54%	$	-	$	32,663	$	32,663
79	7	Red Valley	1,090	1.111%	1,039	0.63%	$	-	$	32,663	$	32,663
80	8	Sanostee	1,320	1.345%	2,244	1.35%	$	-	$	32,663	$	32,663
81	9	Sheep Springs	574	0.585%	715	0.43%	$	-	$	32,663	$	32,663
82	10	Shiprock	3,477	3.544%	8,615	5.20%	$	-	$	32,663	$	32,663
83	11	Burnham	465	0.474%	260	0.16%	$	-	$	32,663	$	32,663

84	12	Nenahnezad	797	0.812%	1,332	0.80%	$	-	$	32,663	$ 32,663
85	13	Upper Fruitland	1,036	1.056%	2,512	1.52%	$	-	$	32,663	$ 32,663
86	14	Red Mesa	803	0.818%	1,294	0.78%	$	-	$	32,663	$ 32,663
87	15	Bechabito	497	0.507%	410	0.25%	$	-	$	32,663	$ 32,663
88	16	Hogback	906	0.923%	760	0.46%	$	-	$	32,663	$ 32,663
89	17	Cudeii	503	0.513%	518	0.31%	$	-	$	32,663	$ 32,663
90	18	Cove	434	0.442%	481	0.29%	$	-	$	32,663	$ 32,663
91	19	Newcomb	571	0.582%	663	0.40%	$	-	$	32,663	$ 32,663
92	20	San Juan	408	0.416%	577	0.35%	$	-	$	32,663	$ 32,663
		SUBTOTALS:	18,218	18.568%	28,827	17.41%	$	-	$	653,265	$ 653,265
	WESTERN NAVAJO AGENCY										
93	1	Coppermine	550	0.561%	443	0.270%	$	-	$	32,663	$ 32,663
94	2	Kaibeto	1,014	1.034%	1,703	1.030%	$	-	$	32,663	$ 32,663
95	3	Lechee	743	0.757%	1,728	1.040%	$	-	$	32,663	$ 32,663
96	4	Tonalea	1,211	1.234%	2,281	1.380%	$	-	$	32,663	$ 32,663
97	5	Inscription House	703	0.717%	1,099	0.670%	$	-	$	32,663	$ 32,663
98	6	Navajo Mountain	597	0.608%	636	0.390%	$	-	$	32,663	$ 32,663
99	7	Shonto	1,076	1.097%	2,551	1.550%	$	-	$	32,663	$ 32,663
100	8	Bodaway/Gap	916	0.934%	1,814	1.100%	$	-	$	32,663	$ 32,663
101	9	Cameron	846	0.862%	1,100	0.660%	$	-	$	32,663	$ 32,663
102	10	Coalmine Canyon	577	0.588%	399	0.240%	$	-	$	32,663	$ 32,663
103	11	Tuba City	3,027	3.085%	8,041	4.840%	$	-	$	32,663	$ 32,663
104	12	Birdsprings	648	0.660%	686	0.410%	$	-	$	32,663	$ 32,663
105	13	Leupp	934	0.952%	1,638	0.990%	$	-	$	32,663	$ 32,663
106	14	Tolani Lake	583	0.594%	725	0.440%	$	-	$	32,663	$ 32,663
107	15	Chilchinbeto	683	0.696%	1,282	0.770%	$	-	$	32,663	$ 32,663
108	16	Dennehotso	865	0.882%	1,668	1.010%	$	-	$	32,663	$ 32,663
109	17	Kayenta	1,956	1.994%	5,363	3.240%	$	-	$	32,663	$ 32,663
110	18	Oljato	1,169	1.191%	2,085	1.260%	$	-	$	32,663	$ 32,663
		SUBTOTALS:	18,098	18.446%	35,242	21.29%	$	-	$	587,939	$ 587,939
		GRAND TOTALS:	98,113	100.00%	165,614	100.00%	$	-	$	3,592,958	$ 3,592,958

Source: Navajo Election Administration Office, Legislative Branch of the Navajo Nation. $ 3,592,958
Navajo Registered Voters dated March 12,1999.

Source: Equal Distribution.

CN-79-00

RESOLUTION OF THE NAVAJO NATION COUNCIL

Amending Resolution CS-67-00 by Making a Supplemental Appropriation in the Amount of $1,889,786, $550,000 for Chapters at $5,000 Per Chapter for Maintenance and Operation Costs, Navajo Nation Chapters Head Start Programs and Senior Citizens Centers and to Address the Emergency Conditions, Equally Distributing $1,000,000 for Navajo Nation Chapters Public Employment Program, $300,000 for the Department of Head Start, and $39,786 to Pay 1999 Summer Feeding Program Debt

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. §102(A); and

2. Pursuant to 12 N.N.C. §820(J), the Navajo Nation Council established the Minimum Fund Balance for the Unreserved/Undesignated Fund Balance to be maintained at a level equal to the amount required to operate the Navajo Nation Government for six (6) months based upon the Operating Budget for the prior fiscal year, excluding expenditures for Capital Improvement Projects as determined by the Controller; the Minimum Fund Balance may be amended only by 2/3rds vote of the full membership of the Navajo Nation Council; and

3. Pursuant to 12 N.N.C. §820(L), the Navajo Nation Council approved and established the Navajo Nation process for making supplemental appropriations during the fiscal year; and

4. By Resolution CS-67-00, Exhibit "E" Condition of Appropriation No. 17, the Navajo Nation Council determined that programs that receive funding adjustments during Fiscal Year 2000 supplemental appropriations shall coordinate with the Office of Management and Budget to revise the Fiscal Year 2000 program performance criteria to reflect the funding adjustments and that any such revisions shall be concurred by the oversight standing committee of the Navajo Nation Council; and

5. The Budget and Finance Committee of the Navajo Nation Council, by Resolution BFN-91-00, recommended to the Navajo Nation Council the amendment of Resolution CS-67-00 by making a supplemental appropriation in the amount of $5,000 per Chapter to assist the Navajo Nation Chapters in meeting the severe unmet maintenance and operation costs of the Chapters; and

6. The Navajo Nation Council is aware that many of the Navajo Nation Chapters have severe unmet needs in the areas of general maintenance and operations for Navajo Nation Chapters, Head Start Programs, Senior Citizens Centers and addressing emergency conditions; and shortfall funding for Public Employment Program, which are hampering their ability to successfully implement local governance; and

7. The Navajo Nation Council finds that the amendment of Resolution CS-67-00 to make a non-recurring supplemental appropriation to the Navajo Nation Chapters in the amount of $5,000 per Chapter for general maintenance and operations for Navajo Nation Chapters, Head Start Programs, Senior Citizens Centers and to address emergency conditions; and $1,000,000 supplemental appropriation for the Navajo Nation Chapters Public Employment Program, $300,000 for the Head Start Program and $39,786 to pay the 1999 Summer Feeding Program Debt. These supplemental appropriations would be in the best interests of the Navajo Nation Chapters and the Navajo People.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby amends Resolution CS-67-00 by making a supplemental appropriation in the amount of $1,889,786 from the Navajo Nation Unreserved/Undesignated Fund Balance as follows: $1,000,000 for equal distribution to the Chapters for the Public Employment Program; $550,000 for the Chapters' Utilities, Senior Citizens Centers and Head Start, at $5,000 per Chapter, $300,000 for the Head Start Program and $39,786 to pay the 1999 Summer Feeding Program Debt.

2. The Navajo Nation Council further waives by a two-thirds majority vote of the full membership of the Navajo Nation Council the provisions of 12 N.N.C. §820(J), (L) and (O) to the extent necessary to make this supplemental appropriation.

3. The Navajo Nation President, Division Directors and Staff shall analyze all the Federal, State and other funds to ensure that the funds are all expended prior to any Navajo Nation funds with the exception of matching funds and cost reimbursement.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 66 in favor, 5 opposed and 0 abstained, this 13th day of November 2000.

Edward T. Begay, Speaker
Navajo Nation Council

Nov 15, 2000
Date

Motion: Carol Bitsoi
Second: Thomas Cody