

Court denies review of uranium mining permit in NM

By SUE MAJOR HOLMES

ALBUQUERQUE, N.M.

A federal appeals court has upheld a Nuclear Regulatory Commission decision that allows a company to leach uranium at an aquifer that supplies drinking water to thousands of Navajos in northwestern New Mexico.

A 10th U.S. Court of Appeals panel concluded in a 2-1 opinion Monday that the NRC took the "hard look" required by the National Environmental Policy Act and its decision to issue a license was not arbitrary.

Eastern Dine Against Uranium Mining, the Southwest Research and Information Center, and ranchers Grace Sam and Marilyn Morris challenged the NRC's approval of permits for Hydro Resources Inc. to do in-situ leach mining near the Navajo communities of Crownpoint and Church Rock.

The opponents contended the NRC violated federal law in issuing the permits.

Attorney Eric Jantz of the Santa Fe-based Environmental Law Center, which represents mining opponents, said his clients were disappointed, but it's not the end of the road.

"If this project is allowed to continue, the folks in the Crownpoint and Church Rock communities are going to be left holding a very toxic bag," Jantz said.

The opponents will evaluate their options, but "every one of them is committed to continuing to challenge the mining company in every forum available," he said.

Rick Van Horn, senior vice president of operations for HRI's parent firm, Uranium Resources Inc., said Tuesday the company is pleased by the court decision.

"It basically says the NRC's licensing is upheld in all respects. In all respects. That's the important part," Van Horn said.

HRI believes the mining is safe and environmentally friendly and will bring economic benefits to the Navajo community, he said.

Judge Carlos Lucero, who voted to review the NRC decision, said in a strongly worded dissent that the surrounding community was left "vulnerable to the ill effects of dangerous radiation." Lucero said his colleagues compounded the error by failing to adequately review the action.

The decision will compromise the health and safety of area residents, who presented evidence that HRI's mining "will ultimately produce radiation many times the permitted limit," Lucero wrote.

The Denver court heard arguments in 2008 in what lawyers called the first-ever challenge to NRC approval of licenses for an in-situ uranium mining operation.

HRI applied in 1988 for a license to mine at four McKinley County sites near Church Rock and Crownpoint.

The majority opinion concluded the NRC correctly interpreted the Atomic Energy Act to require consideration only of airborne radiation from the licensed operation. It also said the NRC's consideration of the cumulative impact of airborne radiation met National Environmental Policy Act requirements.

The court rejected arguments that the NRC violated NEPA by failing to adequately consider the impact if the company cannot restore groundwater quality at one site. The court said the project's environmental impact statement considered that possibility as well as contamination during mining and addressed

how to contain and eventually remediate any contamination.

NRC regulations require restoration of groundwater quality once mining ends.

The impact statement acknowledged no operation has fully restored groundwater quality after in-situ mining. Nonetheless, the court said, the NRC was convinced based on pilot demonstrations and small-scale tests that Hydro Resources could restore the groundwater.

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