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Appellate court upholds HRI's mining permit

By Cindy Yurth
TsÁ©yi' Bureau

CHINLE, March 8, 2010

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The U.S. 10th Circuit Court of Appeals Monday upheld Hydro Resources Inc.'s license to mine for uranium on private land within the boundaries of the Navajo Nation.

The 2-1 ruling upheld the license the Nuclear Regulatory Commission issued to HRI in January 1998, after which a lengthy administrative hearing that lasted through 2006 considered the scientific and legal validity of the license.

Eastern Navajo DinÁ© Against Uranium Mining, Southwest Research and Information Center, and two Navajo women from Pinedale Chapter intervened in the case in 1995, arguing that the in-situ leach mining proposed by HRI could contaminate groundwater used by the Crownpoint and Church Rock, N.M. communities, and release radioactivity into the air.

After the NRC awarded the license they filed an appeal - the first time an NRC decision on uranium mining has been appealed in a federal court.

The court in Denver heard oral arguments May 12, 2008.

The judges acknowledged that the license will not guarantee that the groundwater will be restored to its original state after mining, but ruled that the NRC had rational basis to issue the license.

Judge Carlos F. Lucero dissented, writing, "The NRC's erroneous decision and the majority's endorsement of that decision will expose families [living near the mines] to levels of radiation beyond those deemed safe by the NRC's own regulations, jeopardizing their health and safety."

"We are very disappointed in the court's decision," stated Eric Jantz, staff attorney of the New Mexico Environmental Law Center and lead attorney on the appeal, in a press release. "The majority passed up the opportunity to protect the health and safety of the people of Crownpoint and Church Rock - because the NRC won't."

Jantz noted that while the license authorizes in-situ leach mining at all four sites (two in Church Rock and two in and near Crownpoint), the panel's ruling on groundwater restoration and financial assurance mentioned only the Church Rock Section 8 site, and its ruling on radioactive air emissions applied only to Church Rock Section 17, which is contiguous to Section 8. He noted that at least 850 people live within

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five miles of the two proposed Church Rock ISL sites.

"We remain concerned that HRI seeks to mine uranium within one-half mile of two of Crownpoint's municipal water supply wells, a proposal that is unprecedented in the ISL industry in the U.S.," said Jantz. "So despite the Court's decision, the people of Crownpoint and Church Rock will continue to resist any attempts to conduct uranium mining in their communities."

In response to an e-mail query, Jantz said the plaintiffs have not decided whether to appeal the decision to the U.S. Supreme Court.

Richard A. Van Horn, executive vice president and CEO for HRI's parent company, Uranium Resources Inc., said Monday he had not had time to read the decision and would reserve comment.

It does not mean HRI can start mining, he said.

"You realize there is still another question before the courts, and that is whether this land is part of Indian Country," he said.

The Navajo Nation has argued that allotted land in the checkerboard area of the Navajo Nation is still part of "Indian Country," and protected under the nation's 2005 ban on uranium mining.

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