APPENDIX

to

COMMENTS OF THE NAVAJO NATION
REGARDING THE "INDIAN COUNTRY" STATUS OF
LAND WITHIN THE CHURCH ROCK CHAPTER OF THE NAVAJO NATION
INCLUDING THE SOUTHEAST QUARTER OF SECTION 8, T. 16 N., R. 16 W.

AND IN RESPONSE TO

"NOTICE OF PROSPECTIVE DETERMINATION"
70 FED. REG. 66,402 (NOV. 2, 2005) AND 70 FED. REG. 74,318 (DEC. 15, 2005)

January 30, 2006

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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HERB YAZZIE
ATTORNEY GENERAL

2

December 17, 1992

Steven J. Cary, Bureau Chief
Groundwater Protection and Remediation Bureau
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87502

RE: Proposed Modification of HRI Discharge Plan (DP-558) for In situ Uranium Mining, Churchrock, NM

Dear Mr. Cary:

The Navajo Nation objects to the proposed modification of HRI's discharge plan extending its in situ mining operation into Section 17, T 16 N, R 16 W, McKinley County, and requests a public hearing. Section 17 is Navajo trust land, and subject only to the jurisdiction of the United States and the Navajo Nation. New Mexico has no jurisdiction to authorize HRI's proposed uses of lands in Sections 17 and 8, which are within Indian Country as defined by 18 U.S.C.A. Section 1151 (1979). The state has no regulatory jurisdiction in Indian Country absent an express authorization by Congress. See Bryan v. Itasca County, 426 U.S. 373, (1976).

In addition to this jurisdictional consideration, and without recognizing state jurisdiction, the Navajo Nation objects to the proposed modification of HRI's discharge plan on technical grounds. Because the Navajo Nation was not formally notified of the proposed modification we have not completed our technical review of the plan. The Nation's initial comments pertain to the discharge plan itself as well as to the proposed modification because HRI stated that its activities on Section 17 will be essentially the same as those already permitted by the state under the plan for Section 8. Letter of September 8, 1992, from M. Pelizza of HRI to R. Ohrbom of NMED. The Navajo Nation's comments to date include:

Comments on Discharge Plan Application

1. Section 3.1, Mining Process and Equipment, Page 242, Last Paragraph. A strict schedule for monitor well sampling and reporting of results for checks on excursions from the wellfield must be designed and

App. 1

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approved for appropriate regulatory oversight. The present plan calls for periodic sampling for excursions, but this could actually mean a very low sampling rate. With the high rate of circulation (a proposed 2000 gpm) and also the high likelihood of excursions from in situ wellfields, a definite plan will be required to protect the Westwater Canyon aquifer as well as the adjacent Dakota aquifer. The Water Quality Control Commission (WQCC) regulations (3-107) require also that vadose zone monitoring and post-restorational sampling are conducted. A plan for these requirements was not found in the discharge application.

WQCC 3-107 also states:

> The sampling procedure employed will ensure that samples from each well actually represent the formation waters which the well penetrates.

The details of this portion of the plan should be presented so that oversight personnel can follow the procedures to ensure that compliance is maintained and the quality of the aquifer is actually protected. For instance, when will representative samples of the aquifer be taken? A baseline sampling program needs to be conducted well before operations begin, and each time a well is drilled a sample should be taken before injection/extraction in the vicinity proceeds. How will baseline water quality be addressed for wells that are partially penetrating? Complex problems and questions of this nature need to be addressed in a detailed monitoring well sampling plan and baseline water quality characterization program for the aquifer to be injected as well as adjacent formations.

2. <u>Section 3.2 Pond Design, Page 243</u>. During restoration, ponds will receive over 140 gpm or 226 acre feet per year. Yet there are only 2 ponds proposed, each with a capacity of less than 3 acre feet. Calculations need to be provided showing that the evaporation rate will accommodate the yearly amount of over 226 acre feet that is to be discharged to the structures.

3. <u>Figure 3.1-5, Page 245</u>. This figure shows a waste disposal well, but no text is found that describes the

functioning of this well. A waste disposal well is not mentioned in the publication of notice for the amendment.

4. Section 4.2, Pages 254 and 255. There is no discussion of how water gets from the plant to the waste ponds and from the ponds into the disposal well. What kind of equipment will convey this contaminated water and how will precautions be taken for leak detection from such equipment? Will such equipment be installed above or below ground?

5. Section 4.2.1, Last Sentence, Page 254. Some of the drill cuttings will have radioactive wastes in them from the formation penetrated for mining as well as possibly from the Brushy Basin, yet this plan says that these wastes will be buried on site. This plan seems contrary to the RCRA land ban and adverse to the protection of groundwater. The wastes should be sampled and if radioactive wastes are present they should be transported off-site for appropriate disposal. Also, the drilling mud and other fluids generated during drilling could become contaminated with radium, thorium, uranium, and other heavy metals from the Dakota, the Brushy Basin, or the Westwater Canyon formations. Provision should be made for proper disposal of these wastes instead of on-site burial.

6. Section 4.2.2, First Paragraph, Page 254. This paragraph does not describe the procedure required to regulations promulgated by the New Mexico Water Quality Control Commission (WQCC) for discharges of groundwater onto the surface of the ground[1]. Such discharge water must be sampled and analyzed for verification that it meets WQCC standards before it can be applied as irrigation water. This requirement should be stated and elaborated on in this section.

7. Section 4.2.2, Third Paragraph, Page 254. The procedure required for spills delineated here should also be required for spilled yellow cake. Navajo animals that graze this area have the potential to ingest plants and soil contaminated by spilled yellow cake. The food chain

[1] New Mexico Water Quality Control Commission Regulations as Amended Through August 18, 1991, Parts 1, 3, and 5

would be contaminated by this untreated spilled waste and Navajo people could thereby suffer impacts.

8. Section 4.3., First Paragraph, Page 255. Only two contaminates, uranium and radium, are mentioned. The lixiviant may also contain high levels of selenium, arsenic, thorium, and molybdenum, as well as others. The removal of these constituents must also take place before waste water can be applied to the land for irrigation purposes.

9. Section 4.3, Page 259, First Paragraph. The sampling plan for the irrigation water consists of only two sentences. More detail is required, particularly a showing that the WQCC standards will be met before waste water from the ponds will be applied as irrigation water. How will WQCC/NMED monitor this irrigation? What kind of lab will be required for analyzing samples and how will chain of custody requirements be met? What other kinds of quality assurance/quality control standards will be required for implementation of the sampling plan?

10. Section 56.1, Page 337. There are no actual figures provided for the volume of brine that will be generated. This section mentions that brine will be discharged into waste ponds, apparently along with the water to be used for irrigation. Are these two kinds of water mixed together or put into separate ponds?

11. Section 6.2, page 339, Last Paragraph, Fifth and Sixth Sentences. The Goliad Formation is not present in the Churchrock area; it is located in Texas. Although no text is included which discusses in detail the "deep disposal well" that is mentioned in this paragraph, presumably one is planned for the injection of brine. What formation will this waste be injected into since it cannot be the Goliad? What will the injection depth be? What UIC class will be given to the well? What section will the well be on? If it is to be drilled on Section 17, then US EPA Region IX has regulatory authority for the permit and New Mexico has none.

12. Section 6.4, Table 6.4-1 and 6.4-2, Restoration Parameters. Restoration parameters required according to Part 3 of the WQCC regulations should be listed on these tables along with the required concentration for

restoration. The two lists provided in the tables cited are an abbreviation of the WQCC standards. Restoration according to these parameters only would mean that HRI would be in default of the WQCC regulations.

13. Section 6.4, First Paragraph, Page 340. Progress on restoration needs to be reported more frequently than biannually. Also, the last sentence in this paragraph states that reports will be made to the Texas Department of Water Resources. The plan needs to be revised to reflect the NMED reporting requirements. This reference to Texas coupled with the earlier reference to the Goliad Formation indicate HRI's apparent disregard for the unique conditions present at the Churchrock site, and constitute grounds for denying the proposed modification.

Other Comments

1. The evaluation of injection wells for mechanical integrity should include a pressure test to the maximum proposed injection pressure and a logging procedure such as a temperature log and/or a cement bond log. The procedures described in this 1988 permit application do not satisfy these requirements.

2. The adequacy of the construction design of the injection well is questionable. Tubing and packers are not part of the design as a second level of protection against casing failure and subsequent leakage of injected fluids. The proposed casing material, PVC and fiberglass pipe, may not withstand the maximum injection pressures proposed.

3. HRI has stated that "[t]he interval [for which it requests a temporary aquifer designation] is a mineralized portion of the Westwater Canyon member of the Morrison formation, which does not currently serve as a source of drinking water." Letter of October 1, 1992, from M. Pelizza, HRI, to R. Ohrbom, NMED. The Westwater Canyon member does serve as a source of drinking water for both livestock and Navajo people in the Churchrock and adjacent areas.

For these reasons the Navajo Nation requests that a hearing be set to allow interested parties to address the many environmental issues raised by HRI's application. The Navajo

Nation reserves its right to contest the state's jurisdiction to approve the original discharge plan as well as the proposed modification on Sections 8 and 17, which lie within Indian Country.

If you have any questions, please call me at (602) 871-6931.

We have just been informed that the notice of modification of DP-558 was republished this week. We do not find such notice in the Gallup Independent on December 14, 15, or 16. If the notice was republished, however, the Navajo Nation reserves the right to supplement these comments during the extended comment period.

Sincerely,

Charlotte Benson Crossland

Charlotte Benson Crossland
Attorney
Natural Resources Unit
(602) 871-6931

CBC/dly/1106

xc: Sadie Hoskie, Director
Navajo Environmental Protection Agency

: Peg Rogers, Staff Attorney
Natural Resources Unit, Department of Justice

6

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HERB YAZZIE
ATTORNEY GENERAL

RECEIVED
MAY 29 1993
EPA, OFFICE OF
REGIONAL COUNSEL

May 27, 1993

VIA FEDERAL EXPRESS

Mark Chandler, Esq.
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Environmental Protection Agency
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Dallas, TX 75202-22733

RE: Response to Your Letter Dated May 14, 1993 - Submission of Evidence to Support Assertion of Indian Country

Dear Mr. Chandler:

The Navajo Nation appreciates the willingness of the Environmental Protection Agency to consider the facts which relate to the "Indian country" status of land subject to class III permit modification requests and a request for an aquifer designation by Hydro Resources, Inc. (HRI). This letter complies with your request for such facts.

Attached as Exhibit 1 is the Declaration of Jerry DeGroat, Realty Officer for the Eastern Navajo Agency of the Bureau of Indian Affairs. Mr. DeGroat's declaration shows that: (1) the 200 acre area upon which HRI seeks to expand its Church Rock operations, located in section 17 of Township 16 North, Range 16 West, N.M.P.M. is tribal trust land (declaration, ¶10) and (2) HRI's proposed Crownpoint operations encompass twelve quarter-section Navajo trust allotments, six quarter-sections of tribal trust land, one quarter-section of former allotted land now administered for grazing purposes by the Navajo Nation, one section of land reserved for "Indian purposes" by Executive Order, and one quarter section of private fee land. Copies of the relevant deeds and patents are attached to the DeGroat declaration.

Thus, 100% of the land in the Church Rock area involved in the permit modification request is "Indian country." Indeed, this tribal trust land is equivalent to "reservation" land as a legal matter. Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505 (1991); Oklahoma Tax Comm'n v. Sac and Fox Nation, No. 92-259, ___ S. Ct. ___ (May 17, 1993).

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Moreover, of the approximately 3,840 acres shown on HRI's most recent map of proposed operations in the Crownpoint area, only 160 acres--roughly 4%--is private fee land. The rest, about 3680 acres or 95.8% of the total land area, is devoted exclusively to Indian purposes. The United States Supreme Court has spoken unequivocally on the status of these lands--they are "Indian country." Oklahoma Tax Comm'n v. Sac and Fox Nation, supra (off-reservation trust allotments, tribal trust land and "informal reservations" are "Indian country" and within the tribes' territorial jurisdiction).

New Mexico excepted all "Indian lands" from its UIC program. 40 C.F.R. §147.1603(a) (1992). "Indian lands" is defined as "Indian country." 40 C.F.R. §144.3 (1992). See also 40 C.F.R. §124.2(a) (1992). EPA is required to administer the relevant programs on "Indian lands" in New Mexico. 40 C.F.R. §147.1603(a) (1992). Under the 1991 three-Region/Navajo Memorandum of Agreement, Region 9 should administer the programs related to HRI's requests and application. New Mexico has no authority over these lands.

Your letter dated May 14, 1993 states that "[i]f all or the largest measure of the land is Indian country, Region 6 will forward the files to Region 9." As the DeGroat declaration indicates, almost all of the land is "Indian country" by definition. The Navajo Nation therefore requests that Region 6 forward the files to Region 9 and inform New Mexico that it has no authority over HRI's requests and application, in a similar manner as Region 6 informed Oklahoma. See Letter from Robert E. Layron, Jr., Regional Administrator, to Mark S. Coleman, Deputy Commissioner, Oklahoma Environmental Health Services (Sept. 8, 1991) (attached as Exhibit 2).

Your letter also refers to the possibility that the area in question is within a dependent Indian community. Although we believe that the facts reflected in the DeGroat declaration fully satisfy the conditions for transfer of authority to Region 9, we recognize that HRI or New Mexico may predicate a contrary position on the presence of a relatively small amount of fee land. Therefore, the Navajo Nation submits the following additional information showing that all of the land included in HRI's proposed operations falls within dependent Indian communities.

HRI's proposed mining activities will occur in the Church Rock and Crownpoint chapters of the Navajo Nation. The Nation maintains that both chapters are dependent Indian communities within the meaning of 18 U.S.C.S. §1151(b) (1979), as is the entire

Eastern Navajo Agency. Letter from Herb Yazzie, Navajo Nation Attorney General, to Dan McGovern, EPA Region 9 Administrator (Nov. 25, 1992) (attached as Exhibit 3). Relevant factors in the dependent Indian community analysis include the nature of the area, the relationship of the residents to the tribal and federal governments, the treatment of the area by government agencies, the cohesiveness of the community, and whether the area has been set apart for Indian use and occupancy. United States v. Martine, 442 F.2d 1022 (9th Cir. 1971); United States v. Morgan, 614 F.2d 166 (8th Cir. 1980); Weddell v. Meierhenry, 636 F.2d 211 (8th Cir. 1980).

Attached as Exhibit 4 is the declaration of Melvin Bautista, Director of the Office of Navajo Land Administration.[1] The Bautista declaration at paragraph seven reveals that approximately 77 percent (more than three-quarters) of the land in the Church Rock and Crownpoint chapters has been set aside for the use and occupancy of the Navajo Nation and its members as individual or tribally-owned trust or fee land. Furthermore, most state lands are leased by the Navajo Nation for grazing purposes.

The nature of both chapters is distinctly Indian, as indicated by the declaration of Larry Rodgers (attached as Exhibit 5), a statistician employed by the Navajo Division of Community Development. The overwhelming majority of Church Rock and Crownpoint chapter residents are American Indian: 94.6 percent in Crownpoint Chapter, and 92.9 percent in Church Rock Chapter. Rodgers declaration ¶5. Most of the non-Indian residents are married to Navajo Indians. Affidavit of Charles Damon, ¶4 (attached as Exhibit 6).

Residents of both chapters maintain close ties with the Navajo and federal governments. The Bureau of Indian Affairs considers the Church Rock Chapter, and presumably other chapters in the Eastern Agency, distinct Indian communities dependent on federal (rather than state) services and protection. Affidavit of Wilfred Bowman, ¶¶ 6-8 (attached as Exhibit 7). The Damon affidavit at paragraph 8 states that almost all government services available to residents of the Church Rock Chapter come from the Navajo Nation or the United States. State and county services are virtually non-existent. Affidavit of Charles Damon, ¶10.

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[1] The Bautista declaration will be sent under separate cover.

The same is true for the Crownpoint Chapter, according to the DeGroat declaration. The town of Crownpoint has housed the BIA Eastern Agency headquarters since 1907, as well as a BIA school, several tribal offices and a tribal public water supply system. See DeGroat declaration, ¶7.

The residents of the Eastern Agency enjoy the same rights, responsibilities, and privileges under Navajo law as those living within the formal reservation boundaries. See Affidavit of Edward T. Begay, ¶5 (attached as Exhibit 8). Most chapter residents share the common livelihood of stock raising, Id. at ¶3; Affidavit of Charles Damon, ¶11. The Navajo language unites chapter residents, and is spoken almost to the exclusion of English at chapter meetings. Id. In short, the Church Rock and Crownpoint chapters form distinct, cohesive units qualifying as dependent Indian communities for the purpose of determining Indian country jurisdiction.

As the courts have observed, the trust duty arose largely from the need to protect Indian tribes from jurisdictional incursions by the states. Washington Dept. of Ecology v. U.S. Environmental Protection Agency, 752 F.2d 1465, 1470 (9th Cir. 1985). As EPA's Indian policy recognizes, EPA and Indian nations have a fiduciary relationship. Nance v. U.S. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir.), cert. denied, 454 U.S. 1081 (1981). The Navajo Nation has defined its territorial jurisdiction consistent with federal law. 7 N.T.C. §254 (1984-85 supp.). The Navajo Nation looks to its trustee to accord a presumption of propriety of Navajo legislative acts, to abide by EPA regulations and cooperative agreements, and to respect the clear holdings of the Supreme Court. To meet these responsibilities, Region 6 should inform HRI and New Mexico that EPA administration of HRI's requests and applications is being transferred to Region 9, because HRI's proposed operations are within Indian country outside of both state and Region 6 authority.

Please contact me if additional information or analysis is desired.

Very truly yours,

NAVAJO NATION DEPARTMENT OF JUSTICE

Peg Rogers, Attorney
Natural Resources Unit
(602) 871-6931

PR/rj/525
Enclosures

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HERB YAZZIE
ATTORNEY GENERAL

OCT 28 1996

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October 21, 1996

Ms. Felicia Marcus
Regional Administrator
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

RE: Permitting of HRI Uranium Solution Mining Project

Dear Ms. Marcus:

We met last June in Flagstaff with you and the New Mexico Environment Department to discuss jurisdictional issues involving the HRI Crownpoint Uranium Solution Mining Project. In particular, we discussed permitting issues with regard to the Church Rock In Situ Uranium Mine that is a part of this larger project. There was some discussion at the time about the possibility of a joint or cooperative permitting process to be implemented by the federal and state governments with regard to this facility, which is located about 11 miles northeast of Gallup, New Mexico in the heart of Navajo Indian country. I understand that Region 9 has continued to have discussions with the New Mexico Environment Department on this issue. However, after looking further at the nature of the lands in question, the Navajo Nation can not agree to any form of state permitting of this project.

The Church Rock facility is located in the southeast quarter of Section 8 and the northeast quarter of Section 17, T16N, R16W. Apparently, New Mexico is still having discussions with you regarding some form of federal-state joint permitting of Section 17. Section 17, however, consists entirely of tribal trust land, as you can see on the enclosed map. I have also enclosed the affidavit of Mark Leutbecker, of Nicklason Research Associates, a firm specializing in archival retrieval of United States documents. As you can see from the affidavit, the trust status of Section 17 is unquestionable. It is therefore Indian country, see e.g., Oklahoma Tax Comm'n v. Potawatomi Tribe, 498 U.S. 505 (1991), over which the Navajo Nation has civil jurisdiction, particularly with regard to conduct that "threatens or has some direct effect on the . . . health or welfare of the tribe." Montana v. U.S., 450 U.S. 544, 566 (1981).

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The Navajo Nation has not yet developed a permitting program for facilities such as HRI's. However, it is the responsibility of the federal government to fill this gap; the state government simply does not have the jurisdiction. The Navajo Nation therefore can not consent to any plan that would involve state permitting of activities on this tribal trust land, and requests that the federal government fulfill its obligations to conduct this permitting.

Incidentally, HRI has applied directly to the state for a permit with regard to activities taking place within Section 8. The Navajo Nation also maintains that Section 8 is Indian country, and that HRI should be seeking a federal permit for Section 8 activities as well. The Leutbecker Affidavit also demonstrates the pattern of continuous Navajo use and occupancy of the lands surrounding Section 8, and demonstrates the exclusive nature of that use and occupancy since at least the turn of the century.

As the Nation notes in its comments to New Mexico, these lands are tied inextricably to the life and traditions of the Navajo Nation. The community of reference is the Church Rock Chapter. The residents, who are almost exclusively Navajo, look to the Chapter, the Navajo Nation and the federal government for the provision of government services. The Community's religious and cultural ties are again to the Navajo Nation. As the Nation's comments to New Mexico take pains to point out, all of these factors add up to demonstrate conclusively under the law of the Tenth Circuit, that Section 8 is within a dependant Indian community, and is thus not subject to the jurisdiction of the State of New Mexico.

Since the other portions of the Crownpoint project are also located in Indian country (they are located almost entirely on Navajo trust lands and allotted lands) there really is no reason for the state to be involved with this project. I have enclosed a copy of the comments we plan to submit to New Mexico in this regard, for your information.

Finally, regardless of the technical jurisdictional issues regarding the HRI project, almost all the people living in the community surrounding the HRI project are Navajo, and the project will have a substantial impact on them and their well-being. The Navajo Nation believes its interests and the interests of its people will be better protected by federal oversight of the

project, rather than state oversight, since it is the federal government that has a trust relationship with the Nation.

Very truly yours,

NAVAJO NATION DEPARTMENT OF JUSTICE

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Enclosures

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PRESIDENT

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October 11, 1996

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RE: COMMENTS REGARDING DP-558, HYDRO RESOURCES INC.
CHURCHROCK PROJECT

Dear Mr. Ohrbom:

Attached are concerns of the Navajo Nation Department of Justice (DOJ) and Navajo Nation Environmental Protection Agency (NNEPA), pertaining to Discharge Plan 558 Churchrock Project. NNEPA has reviewed and made comments regarding the applications that Hydro Resources, Inc. submitted. Additional comments will be following within the next week.

If you have any questions regarding the issues raised from the NNEPA comments, please contact my staff, Yolanda Barney, Environmental Specialist III, or Elisa Arviso, Environmental Specialist II, at (520) 871-7755.

Sincerely,

Bennie Cohoe, Executive Division Director
Navajo Nation Environmental Protection Agency

xc: Thomas Atcitty, Navajo Nation Vice President
Lorenda B. Joe, Deputy Executive Director
Navajo Nation Environmental Protection Agency
James R. Bellis, Assistant Attorney General
Navajo Nation Department of Justice
Jim Walker, USEPA Region 9
Wilson Barber, BIA Area Director

NNEPA COMMENTS REGARDING DP-558, HYDRO RESOURCES INC. CHURCHROCK PROJECT

JURISDICTION

HRI's Church Rock In Situ Uranium Mine is located approximately 11 miles northeast of Gallup, New Mexico (6 miles north of Church Rock) in portions of Sections 8 and 17, T16N, R16W. This mine is part of the larger Crownpoint Uranium Solution Mining Project (see page 2 of "Churchrock In Situ Leach Project UIC Technical Report"), which also covers areas near Crownpoint, New Mexico.

HRI's proposal to review and modify its discharge plan for its Church Rock In Situ Uranium Mine states that it is deleting any mining in Section 17, which consists of entirely tribal trust land, from the discharge plan, HRI apparently believes that it can receive a permit from the State of New Mexico for its project rather than having to go to the Navajo Nation EPA and the U.S. EPA, Region 9, which is required for any such project taking place within Indian Country. See, e.g., 42 U.S.C. § 300j-11(b)(1)(B); 18 U.S.C. § 1151; DeCoteau v. District County Court, 420 U.S. 425, 427 n.2 (1975); Pittsburg and Midway Coal Mining Co. V. Watchman, 52 F.3d 1531 (10th Cir. 1995). It is the Navajo Nation's position, however, that Section is also Indian country, and that therefore New Mexico does not have the jurisdiction to issue the requested permit but rather HRI should apply to Region 9.

Indian country is defined in the 18 U.S.C. § 1151 as:

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patents, and, including rights of way running through the reservation, (b) all dependent Indian communities within the boarders [sic] of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The portion of Section 8 for which HRI seeks permit (the southeast quarter), although it is owned by HRI, is within a "dependent Indian community: and thus is Indian country under Section 1151(b).

The Tenth Circuit (the circuit of relevance here) has set forth the test for determining what constitutes a dependent Indian Community:

> Whether a particular geographical area is a dependent Indian community depends on a consideration of several factors. These

> include: (1) whether the United States has retained "title to the lands which it permits the Indians to occupy" and "authority to enact regulations and protective laws respecting this territory,"; (2) "the nature of the area in question, the relationship of the inhabitants in the area to Indian tribes and to the federal government, and the established practice of government agencies toward the area,"; (3) whether there is "an element of cohesiveness. . . manifested either by economic pursuits in the area, common interests, or needs of the inhabitants as supplied by that locality,"; and (4) "whether such lands have been set apart for the use, occupancy and protection of dependent Indian peoples."

52 F.3d at 1545 (citing United States v. South Dakota, 665 F.2d 837 (8th Cir. 1981), cert. Denied, 459 U.S. 823, 839 (1982)). The Tenth Circuit has also held that a court should not look solely at a mine site as the community of reference, since a community "connotes something more than a purely economic concern." Id. At 1544. The court went on to explain that "[a] community is a mini-society consisting of personal residences and an infrastructure potentially including religious and cultural institutions, schools, emergency services, public utilities, groceries, shops, restaurants, and the other needs, necessities, and wants of modern life." Id.

In determining whether Church Rock Mine site in Section 8 is within a dependent Indian community, therefore, one can not look solely at the facility site in the southeast quarter of Section 8, since this is clearly not a community but simply an "economic concern." Pittsburg and Midway, 52 F.3d at 1544. Instead, one must look at the larger surrounding community, which better meets the concept of a "mini-society." Looked at in this way, the Church Rock Mine is within a community that satisfies the Tenth Circuit's tests for a dependent Indian community.

To begin with, Section 8 is virtually surrounded by Navajo Nation trust land and allotted land (a form of trust land), with some sections of public domain land which are for the large part managed by the BLM and used by Navajo families for grazing their livestock. (See attached map showing land status for Section 8 and attached list of Navajo Individuals with BIA - issued grazing permits for sections 8 and 17) The community thus satisfies the first and fourth prongs of the Tenth Circuit's four-prong test, namely, the area is one in which "the United States has retained title to the lands which it permits the Indians to occupy and authority to States has retained title to the lands which it permits the Indians to occupy and authority to enact regulations and protective laws respecting this territory" and where the land has "been set apart for the use, occupancy and protection of dependent Indian peoples." Moreover, the area is overwhelmingly Navajo; indeed, the population of the Church Rock Chapter, in which

Section 8 is located, is almost 95% Navajo[1]. Also, services to the community are provided by Navajo Nation offices of employment, child development, social services and community health, and there is a Navajo Police district office serving the area.[2] In addition, many of the residents graze livestock in the area in question, as noted above. The area thus satisfies the second and third prongs of the dependent Indian community test as well (regarding the Indian nature of the area, the provision of services by the tribal government, and the common interests of the inhabitants). Finally, it is generally accepted that non-Indian lands within dependent Indian communities should be treated as subject to tribal jurisdiction. Felix S. Cohen, Handbook of Federal Indian Law (1982 ed.) At 39. Indeed, in Pittsburg and Midway the court looked only at whether the larger area surrounding the mine in question was a dependent Indian community, even though 40% of the mine site area was owned by the mining company.

Even applying for a permit on the basis of Section 8, therefore, HRI is required to apply to Region 9 of the U.S. EPA (since the Navajo Nation has not yet developed a UIC permit program). This requirement makes all the more sense because the rest of the Crownpoint Uranium Solution Mining Project is also located in Indian country. With regard to the Church Rock facility itself, Section 17 is entirely trust land, and tribal trust land has been held by the Supreme Court to constitute Indian country. Oklahoma Tax Comm'n v. Potawatomi Tribe, 498 U.S. 505, 511 (1991).[3] Similarly, the remainder of the project is located almost exclusively on trust lands (the Crownpoint site) and allotted lands (the Unit 1 site). Allotted lands are Indian country by definition under §1151 (c). Thus, HRI will have to apply for federal permits for these sites in any event. Surely it makes the most sense and would be the most efficient for everyone involved to have one permitting agency with regard to all the sites comprising the project.

The subject document is riddled throughout with references to State of New Mexico standards or regulatory oversight that HRI will need to adhere to (i.e., well plugging bond, well injection perit, irrigation levels, leak/spill notification, submission of analytical data and reports). If Navajo Nation has jurisdictional authority, NNEPA and USEPA Region 9 will be the referenced regulatory agencies.

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[1] This percentage is based on figures from the 1990 Census. See 1990 Census, Population and Housing Characteristics of the Navajo Nation, at 60.

[2] Chapter Images, 1992 ed., at 210

[3] Although HRI has excluded Section 17 from its current application, the proposed discharge plan acknowledges on page 1 that "Mining could be located on one or both parcels of land owned or leased to HRI on Sections 8 and 17, T16N, R16W."

THE
NAVAJO
NATION
P.O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

ALBERT A. HALE
PRESIDENT

THOMAS E. ATCITTY
VICE PRESIDENT

MEMORANDUM

September 20, 1996

RECEIVED
SEP 24 1996
PUBLIC WATER SYSTEMS
NAVJO EPA

TO: Yolanda Barney, Environmental Specialist III
Public Water Systems Supervision Program
Navajo Nation Environmental Protection Agency

THRU: Melvin F. Bautista, Division Director
Division of Natural Resources
Registered Land Surveyor-NM & AZ

FROM: Genevieve J. Hardy, Engineering Technician II
NLD / Drafting Section

SUBJECT: Verification of Land Status of HRI Mineral Lease Areas.

Per your request for verification of **land status** in the States of New Mexico for land sections containing and surrounding the Hydro Resources, Inc. (HRI) mineral lease areas in Church Rock and Crownpoint, New Mexico:

Mineral Lease Area	Township/Range/Section/Quarter/BaseMeridian			Land Status
Church Rock mineral lease	T16N, R16W, Sec. 8	SE/4	NMPM	Private Land
	T16N, R16W, Sec. 17	NE/4 & NW/4 SE/4	NMPM	US (Held in Trust)
Crownpoint mineral lease	T17N, R12W, Sec.19	S/2	NMPM	US (Held in Trust)
	T17N, R12W, Sec.29	W/2	NMPM	US (Held in Trust)
	T17N, R13W, Sec.15	SW/4	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.16	SE/4	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.21	E/2	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.22	W/2 & NE/4	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.23	NW/4	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.24	NW/4	NMPM	Individual Indian Allotment
	T17N, R13W, Sec.24	SW/4	NMPM	Public Domain
	T17N, R13W, Sec.24	SE/4	NMPM	Private Land
	T17N, R13W, Sec.25	NE/4	NMPM	TNT Trust

In addition, attached are land status maps illustrating the status of the land sections containing and surrounding the mineral lease areas.

The areas described above were verified by the Navajo Nation Environmental Protection Agency, Window Rock, Arizona, and are shown on **U.S.G.S. 7.5-minute topographic map**, List as Follows:

Mineral Lease Area	USGS Quad Maps	District	Chapter, County, State
Church Rock Mining Site	Hard Grounds Flat, NM & Church Rock, NM	16	Church Rock, McKinley, NM
Crownpoint Mining Site	Crownpoint, NM	15	Crownpoint, McKinley, NM

In addition, the Mineral Lease Areas are within the Boundary of the Eastern Navajo Indian Reservation, as Established by the Executive Order No. 709 of November 9, 1907, and Executive Order No. 744 of January 28, 1908; the Information was taken from the **"Anatomy of the Navajo Indian Reservation, How It Grew"**. *(Map No. 10 of the Anatomy of NIR, page 24)*

The Mineral Lease Areas mentioned above are located within the boundary of the Eastern Navajo Agency, and are within McKinley County, State of New Mexico.

Should additional information be required, please contact our office in Window Rock, Arizona at (520) 871-6401, 6402.

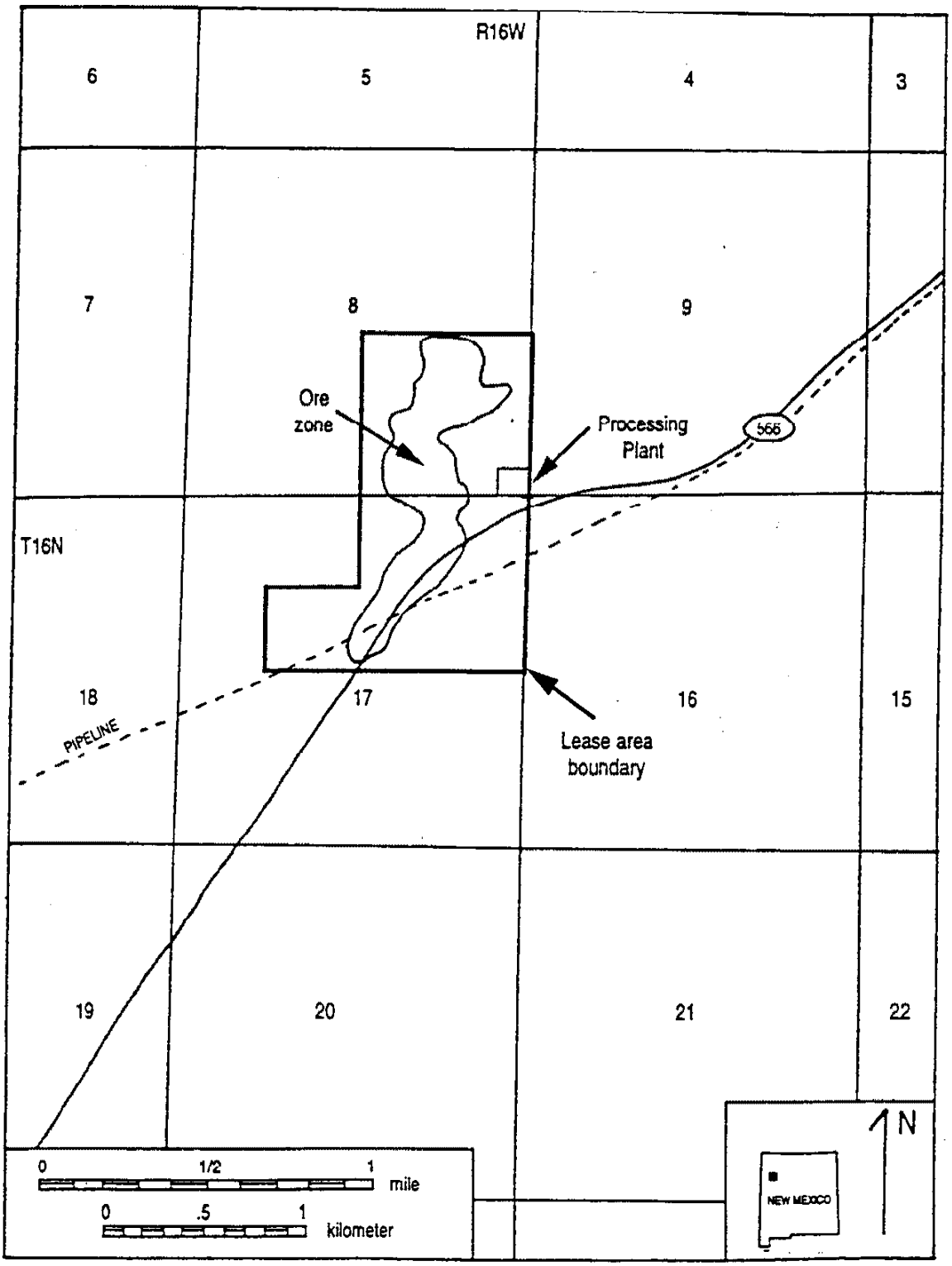
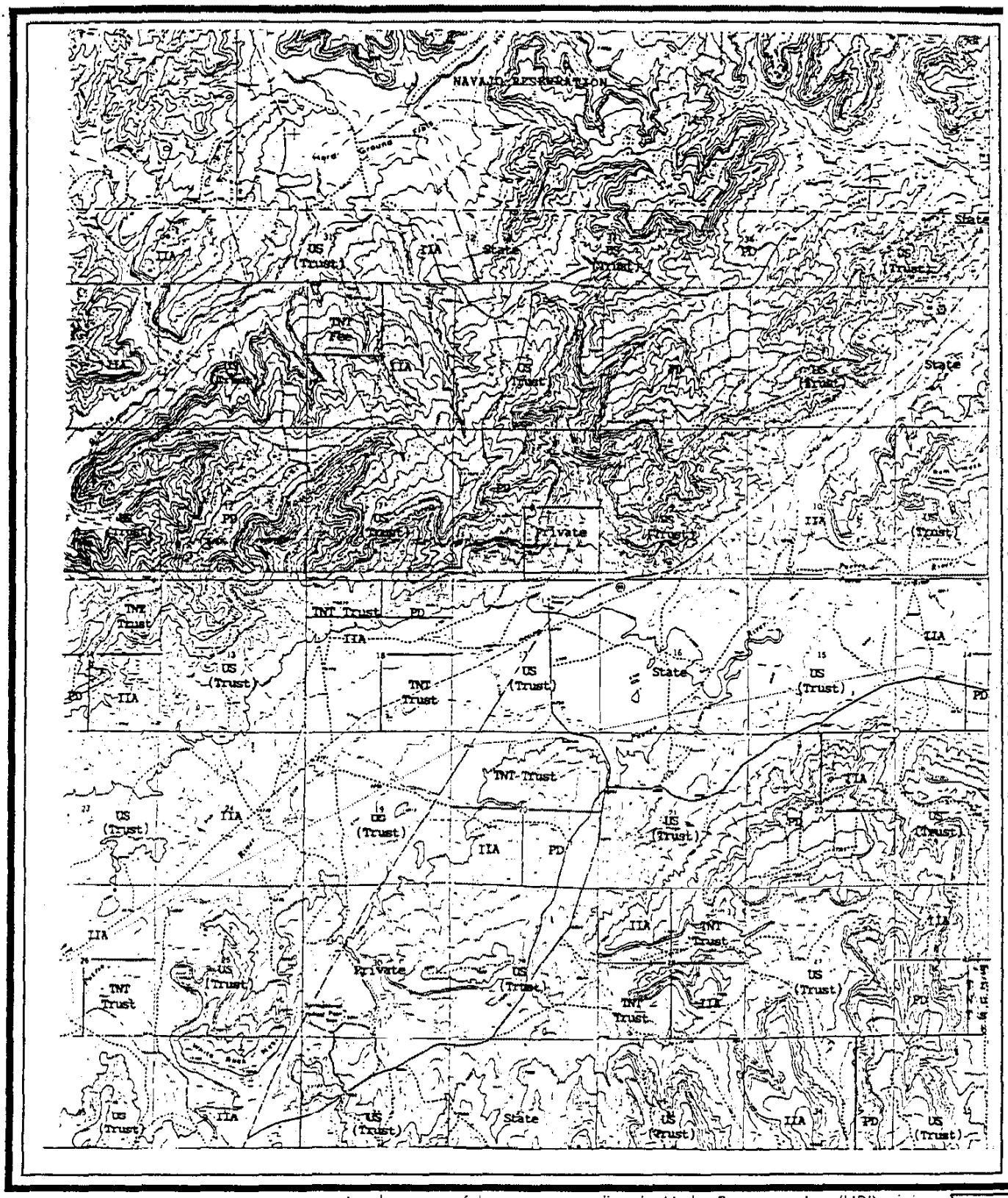


Figure 1.2 Lease Area, Ore Zone, and Processing Plant Locations at the Church Rock Site

App. 20



Land statuses of the area surrounding the Hydro Resources, Inc. (HRI) mining operation at Church Rock, New Mexico.

App. 21

T16N, R16W, Section 08 SE/4 NMPM
T16N, R16W, Section 17 NE/4, NW/4 SE/4 NMPM

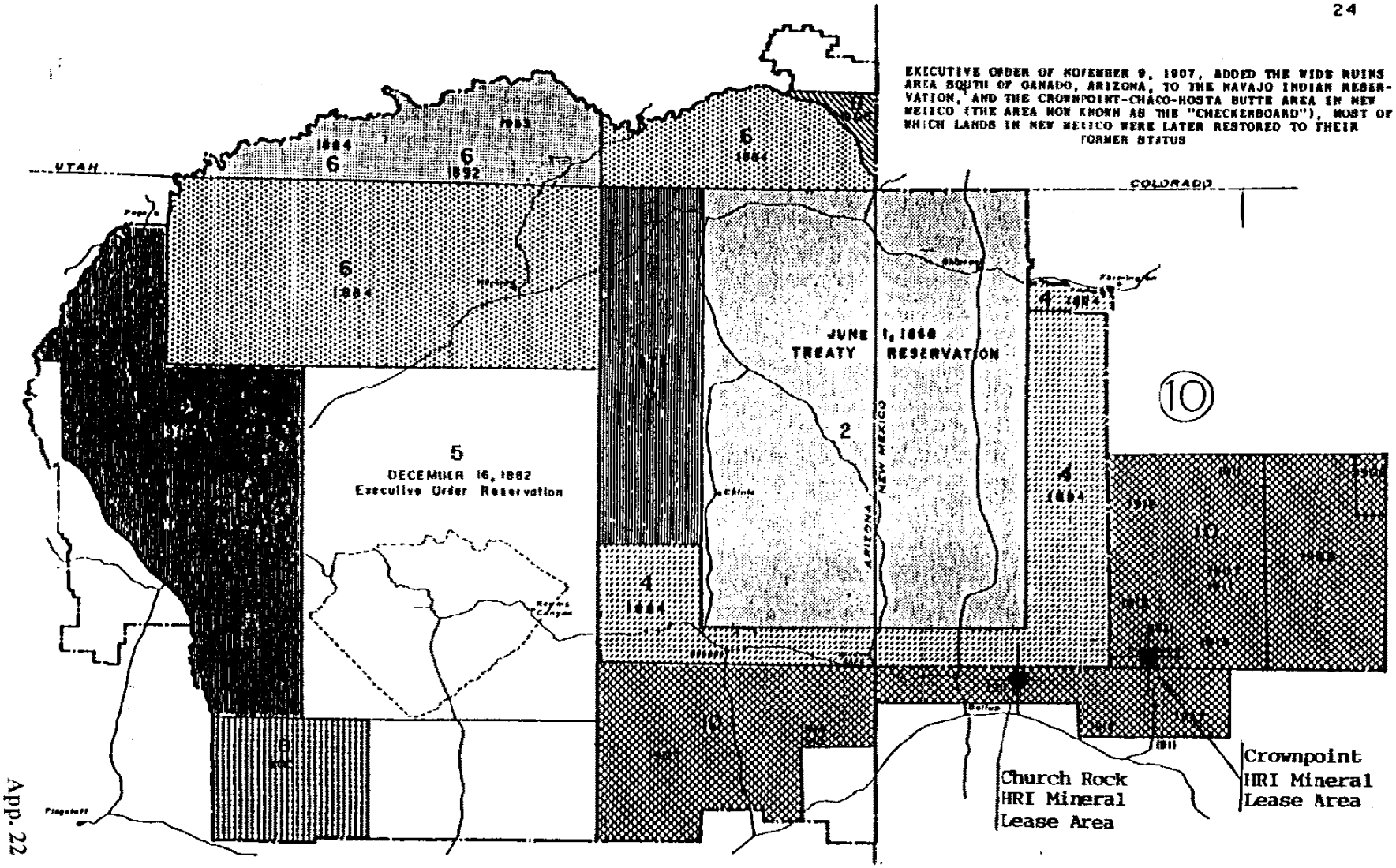
District 16, Church Rock Chapter, McKinley County, State of New Mexico
7.5 USGS Quads: Hard Ground Flats, NM & Church Rock, NM

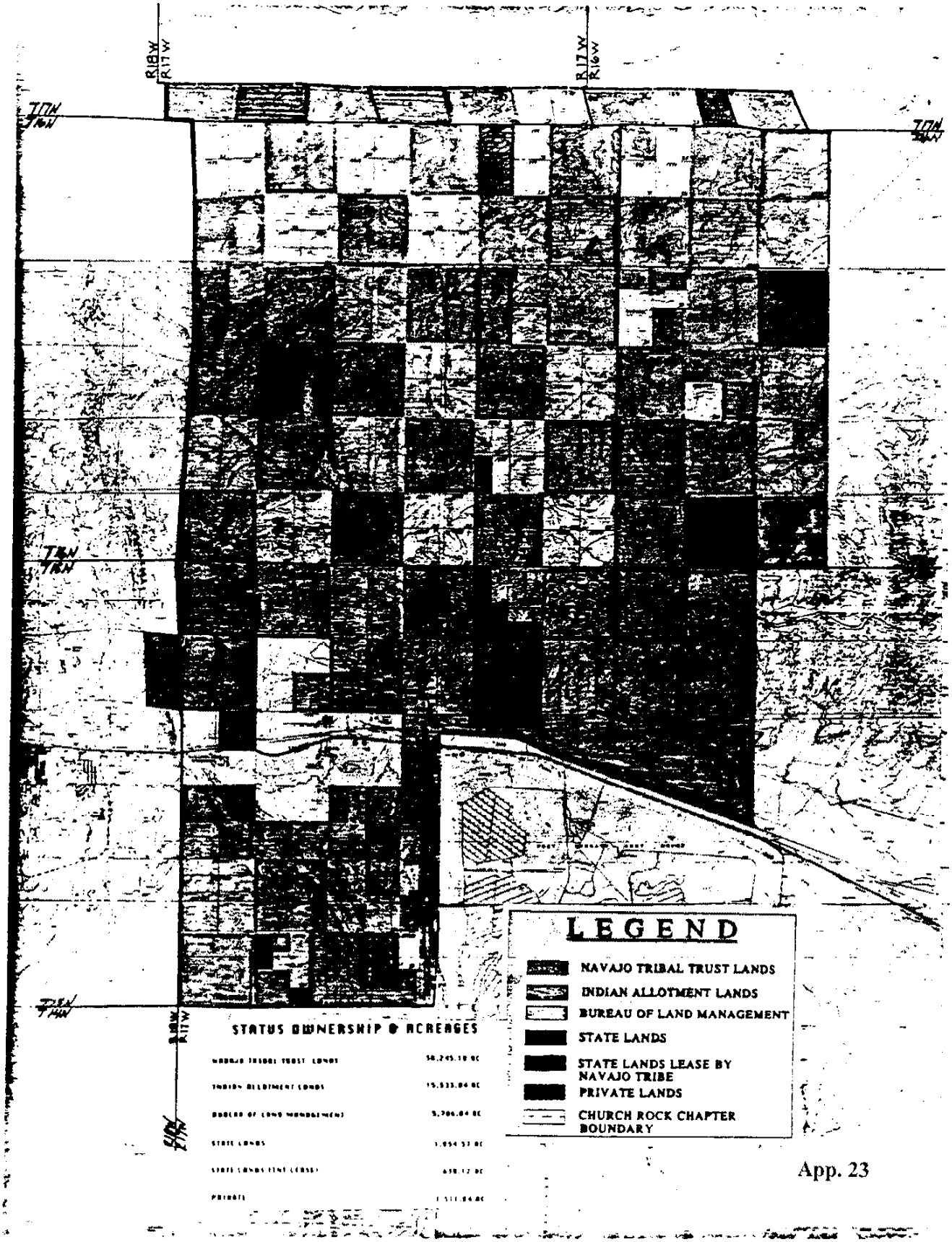
THE NAVAJO NATION

PO Box 9000
Window Rock, AZ 86515
Telephone: 520-871-6401,02

North

EXECUTIVE ORDER OF NOVEMBER 9, 1907, ADDED THE WIDE RUINS AREA SOUTH OF GANADO, ARIZONA, TO THE NAVAJO INDIAN RESERVATION, AND THE CROWNPOINT-CHACO-HOSTA BUTTE AREA IN NEW MEXICO (THE AREA NOW KNOWN AS THE "CHECKERBOARD"), MOST OF WHICH LANDS IN NEW MEXICO WERE LATER RESTORED TO THEIR FORMER STATUS

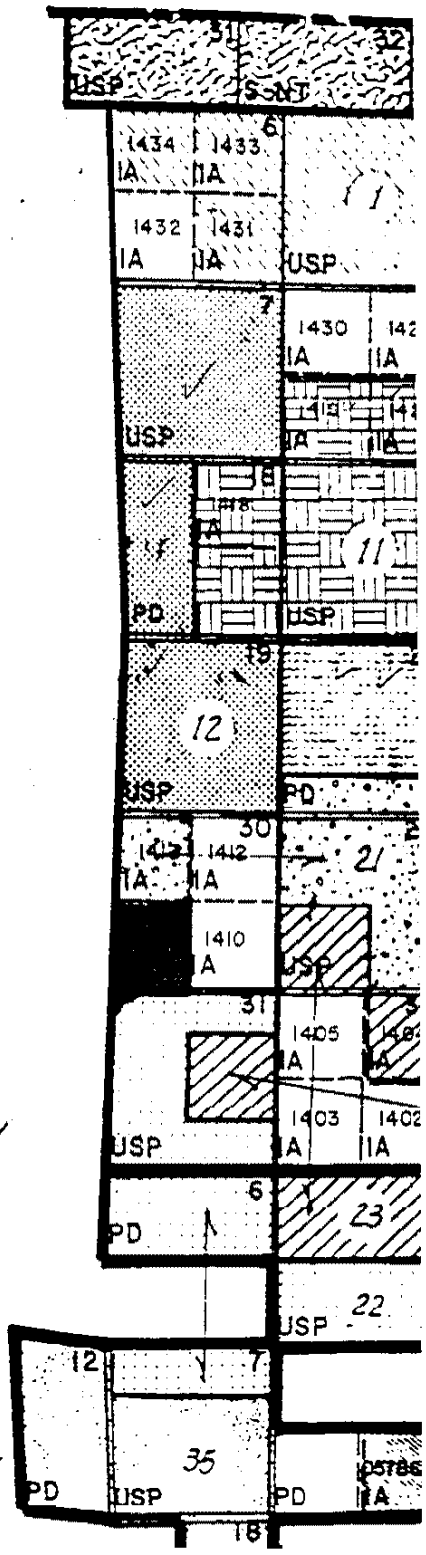



R18W
R17W
R17W
R16W
T17N
T16N
T15N
T14N
LEGEND
NAVAJO TRIBAL TRUST LANDS
INDIAN ALLOTMENT LANDS
BUREAU OF LAND MANAGEMENT
STATE LANDS
STATE LANDS LEASE BY NAVAJO TRIBE
PRIVATE LANDS
CHURCH ROCK CHAPTER BOUNDARY
STATUS OWNERSHIP & ACREAGES

CH ROCK

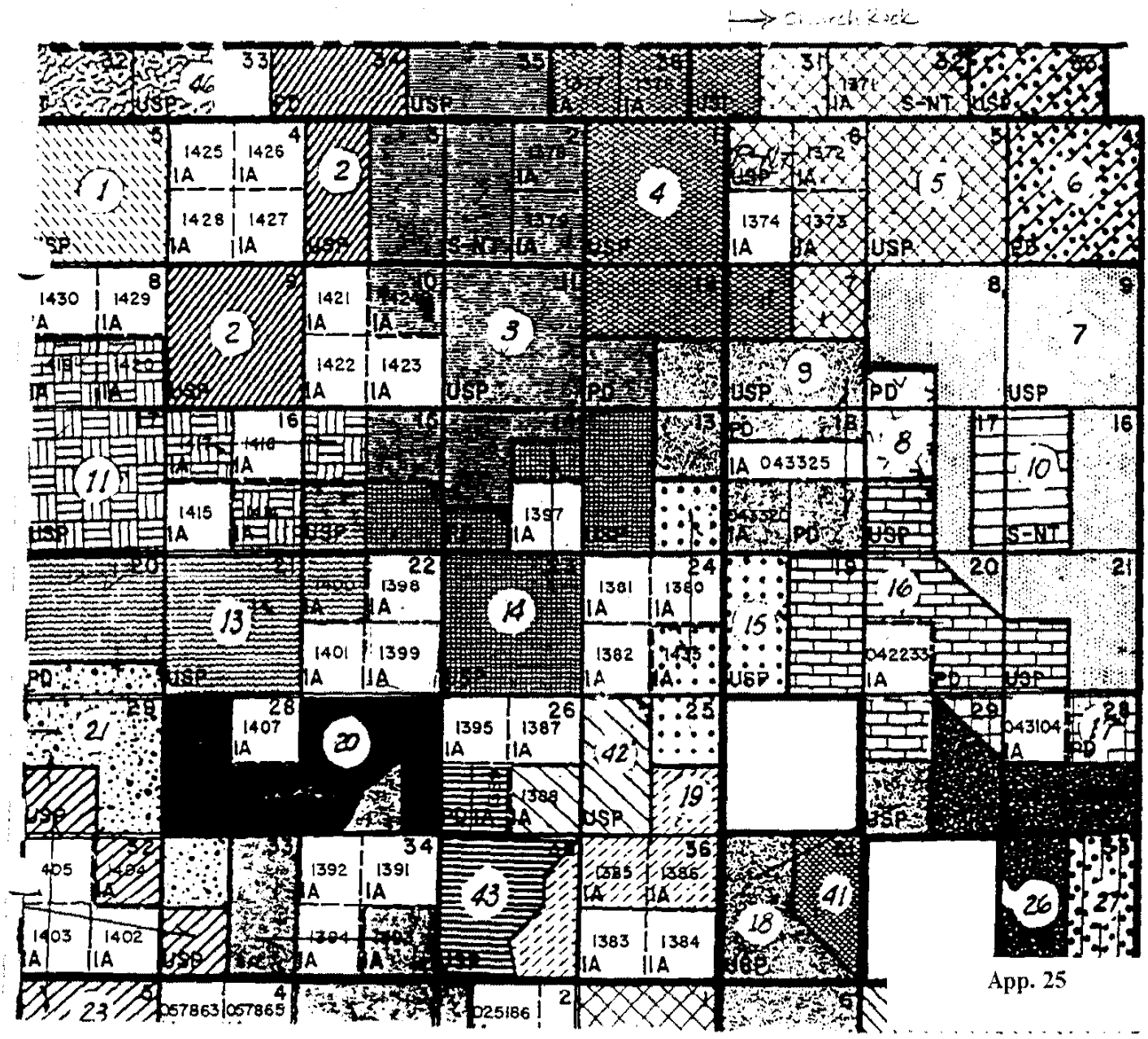
Donald "
Harrison "
Billie Yazzie
Julie Yazzie
Gladys Wood
Rosemary Wood
(3) Leonard T Daniels
Ben Daniels
Neswood Daniels
Alleta D Peterson
Chester Johnson
(4) Alice Benally
Priscilla A Hood
Tom C Joe
(5) Earnest Becenti
Fannie Ben
(6) Harrison Benally
Mike Benally
Elsie Hood
Lucita Wilketo
Peter Bell
Rebecca Duncan
Harry Benally
Tom Benally
Bennie Duncan
Larry King
(7) Valerine R Chee
Velma H Nakai
Mr Mrs Lewis Eskeets
Mr Mrs Ben Benally
Louise Benally
(8) Leonard Yazzie
Wayne
Maggie J
(9) Harry Touchine
Ben Touchine
Dorthy Livingston
(10) Rita Howard King
Larry King
Rita Jean King
Dorothy King
(11) Margaret Chischilly
Jean Jesus
Fred Eskeets
(12) Mr Mrs Edward T. Begay
(13) Mary B Yazzie
Nellie J. Tyler
Ernest R Yazzie
(14) - Mr Mrs Leo Livingston
Arnold Johnson
Chee Livingston
Louise
(15) Adelaine Livingston
Alice Sam
Fred B Ashley
Etta Lee
Glenn Y. Livingston
Frances Billy
(16) Nana Bah Arviso
Alice Daniels
Elsie James
Christine Hoskie
(17) Frank [illegible]

NAVAJO



R.17 W. R.16

VAJO INDIAN RESERVATION



ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF MCKINLEY
STATE OF NEW MEXICO

UNITED NUCLEAR CORPORATION,

Appellant,

vs. No. CV 92-72

ELUID L. MARTINEZ, NEW MEXICO
STATE ENGINEER,

Appellee,

THE NAVAJO NATION,

Appellee.

AFFIDAVIT OF MARK LEUTBECKER

I, Mark Leutbecker, being first duly sworn, state that:

1. I am employed by Nicklason Research Associates as the Associate Director at 6323 Utah Avenue NW, Washington, D.C.

2. I have a B.A. Degree with honors from Ohio University, that I received in 1970. And, I have a M.A. Degree in history from Louisiana State University in Baton Rouge, Louisiana I received in 1973.

3. Nicklason Research Associates (hereinafter "NRA") is a professional firm of historians. Since 1972, NRA has provided a historical research service concerning the claims of Native American tribes and individual Indians.

4. I conducted archival research on the 1929 conveyance of lands from the Santa Fe Pacific Railroad Company to the United States Government in trust for the

EXHIBIT 1

benefit of the Navajo Tribe of Indians, as authorized by the Act of May 29, 1928, 45 Stat. 883, 899-900.

5. Under my supervision and direction, Ms. Vickie Killian, an Associate of NRA, also performed archival research on this study.

6. Ms. Killian and I located and copied documents at the National Archives of the United States in Washington, D.C. related to the justification for, and history and construction of the legislation that authorized the 1929 purchase.

7. The documents attached to this affidavit are true and accurate copies of the original documents located at the National Archives, and are representative of the entire body of documents available at the National Archives on this issue.

8. The need underlying the 1928 Act which authorized the purchase of railroad lands in Arizona and New Mexico for the Navajo Tribe was to secure lands and federal protection for the so called "public domain" Navajos living in what is now referred to as the checkerboard area. Several documents reflect this justification for the 1928 Act and the purchases of land made thereunder. For example, the letter dated November 8, 1926 from Mr. Samuel F. Stacher, Superintendent, Eastern Navajo Agency, to the Commissioner of Indian Affairs states "[w]e have been able to protect Indians in certain Townships by leasing railroad sections but this is unsatisfactory and is only a temporary measure," and "[t]his appropriation will admit of something definite being done to properly protect the Public Domain Navajo Stockman." **(Attachment A)** Similarly, in February 1927, the Secretary of the Interior wrote to Scott Leavitt, Chairman, Committee on Indian Affairs, House of Representatives, stating "[t]he odd numbered sections are

railroad grant lands and these sections in many of the townships have been leased by the Indians themselves and paid out of their private funds, or have been leased by the Government on their behalf. The railroad lands should be bought for the Indians as it is the only way to give them permanent relief" and "[t]his Department is satisfied that the Indians need additional lands for grazing purposes in order to continue one of their main sources of support." **(Attachment B)** See also, the letter dated November 4, 1927 from Mr. Aug. F. Duclos, Superintendent, Southern Navajo Agency, to Mr. E.B. Meritt, Assistant Commissioner of Indian Affairs declaring that "[w]ithout question, there is full justification for all the different [land] purchases desired [by the Navajo Tribe], however, the most urgent need as I see it is in the Crown Point and Southern Navajo Jurisdictions." Mr. Meritt further states, "[t]he land owned by the Santa Fe [Railroad Company] will gradually pass out of their hands as it is for sale, and unless steps are taken to purchase it, the time will come when the Navajos occupying it will have to move off." **(Attachment C)** Letters from Navajo representatives are consistent with those of the Department of the Interior. In letters dated December 9, 1927 and December 10, 1927 from Mr. Chee Dodge, Chairman of the Navajo Tribal Council to the Hon. Carl Hayden, U.S. Senate and Mr. Chas. H. Burke, Commissioner of Indian Affairs, Mr. Dodge states, "[w]e are only trying to buy with our own money realized from oil, lands which members of our tribe have been occupying and using from time immemorial," and "[t]his land problem is without doubt the most important thing that is worrying us at the present time and I am confident you will again be glad to do whatever you can to help us." **(Attachments D and E)** Furthermore, in a letter dated January 5, 1928 from

Superintendent Stacher to the Commissioner of Indian Affairs, Mr. Stacher comments on the Navajo Tribe's critical need for additional land and recommends that the Department fully support the Navajo Tribal Council's efforts to request from Congress a loan for the purpose of securing additional land for the tribe. Accordingly, Mr. Stacher states, "[a]s the success of such a loan is of vital importance to the Public Domain Indians of this jurisdiction, we wish to inquire if a new bill will be introduced at the present session of Congress," and recognizing that "[p]erhaps opposition will develop against such a bill, but if members of Congress once fully understood our predicament and the necessity for constructive protection, they would give aid." **(Attachment F)**

9. The legislative history behind the 1928 Act reveals that the purpose of the 1928 Act was to acquire additional lands for the protection and exclusive use and benefit of the Navajos living on public domain lands. For instance, in a letter dated February 1927 to Scott Leavitt, Chairman of the Committee on Indian Affairs, House of Representatives, the Secretary on the Interior states that the Department fully supports the passage of H.R. 16346, a bill which authorizes the purchase of railroad lands for the Navajo Indians in Arizona and New Mexico and whose appropriation will be reimbursed from oil royalties and bonuses belonging to the Navajo Indians. **(Attachment B)** Furthermore, in the Congressional Record of the Senate, House Report 13873, dated May 24, 1928, four days before the Act's passage, Congressman Hayden, sponsor of HR 13873, inserted in the Record a December 9, 1927 letter from Chairman Dodge which describes the tribe's land problem and requests Congressional assistance in securing additional lands to address "the most urgent problem confronting the tribe." **(Attachment G)** Similarly, Mr. Edgar B.

Meritt, Assistant Commissioner of Indian Affairs testified before the U.S. Congress House Subcommittee on Appropriations and acknowledged that Congress' intent behind the 1928 Act was to address the problems of the public domain Navajo Indians. **(Attachment J)**

10. The Department of the Interior's post-legislative construction of the legislation establishes that the land purchased under the Act's authority were for the exclusive use and benefit of the Navajo Tribe and under the authority of the United States Government. For example, a letter dated June 4, 1928 from Assistant Commissioner E.B. Meritt to Superintendent Stacher informs Stacher that land in the Eastern Navajo Agency will be purchased pursuant to the Act and will fall under the jurisdiction of the Eastern Agency and states, "[y]ou are requested to submit a report at the earliest possible date as to the total number of Indians on the public domain under your jurisdiction for whom we should purchase lands and the estimated acreage needed for their use." **(Attachment H)** Correspondingly, a letter dated September 5, 1928 from Commissioner Burke to the Land Commissioner of the Santa Fe Pacific Railroad Company notifies the Company that the 1928 Act authorizes the purchase of lands and water rights for the use and benefit of the Navajo Indians and that "Superintendent S. F. Stacher of the Eastern Navajo Agency, Crown Point, New Mexico, has recommended that we consider the purchase of about 75,000 acres belonging to your company and now leased for the Indians of his jurisdiction." **(Attachment I)**

In a letter dated February 3, 1930 from Superintendent Stacher to Commissioner Rhoads, Stacher sets out the specific purpose behind the Act of 1928, "[t]he primary purpose of this land was to secure control of that area for the exclusive benefit of those

[Navajo] Indians within the several townships which were purchased" and "I wish to suggest and urge that all steps be taken to effect regulations which will withdraw the Government sections within these townships from all forms of entry or settlement and the same regulations to apply to Government lands within any township or part of townships, which might be acquired in the future for the benefit of the [Navajo] Indians." (Attachment Q)

11. The Section 17 lands are included in the 1929 purchase which was authorized by the Act of 1928. To illustrate, on page two of the 1929 deed under the heading "Township sixteen north, range sixteen west," Section 17 lands are specifically included in the 42,099.71 acres of land in McKinley County, New Mexico that the Santa Fe Pacific Railroad Company conveyed to the United States in trust for the Navajo Tribe. (Attachment K) Subsequently, the Solicitor examined the 1929 deeds, which included the Section 17 lands as part of the 42,099.71 New Mexico conveyance, and concluded that they "appear to be properly executed in accordance with the laws of the States of Arizona and New Mexico and I see no reason why they may not be accepted by [the Secretary of the Interior] as conveying good title to the United States." (Attachment L) See also the Solicitor Opinion M. 26205, which confirms that the 1928 Act authorized the 1929 purchase of 42,099.71 acres in New Mexico as described in the 1929 deed, which includes the Section 17 lands. In addition, the Interior Department Appropriation Bill reflects that the 1928 Act authorized the consideration the United States paid for the 1929 conveyance of 42,099.71 lands in McKinley County, New Mexico. (Attachment R) Furthermore, the Comptroller General of the U.S. notified the Secretary of Interior that a sum

$94,233.08 had been approved on the Certificate of Settlement No. 0217555 for the purchase 94,233.08 acres of land from the Santa Fe Pacific Railroad Company, including 52,133.37 acres in Coconino County, Arizona and 42,099.71 acres in McKinley County, New Mexico, as described in the May 14, 1929 deeds. (Attachment M) Similarly, the General Accounting Office issued a check in the amount of $94,233.08 payable from the appropriation "Indian Moneys, Proceeds of Labor, Trust Fund (Navajo Indians, Oil, royalties & Leases, Lands and Water Rights, 1928-29)" to the Santa Fe Pacific Railroad Company for payment in full for the purchase of 52,133.37 acres of land in Coconino County, Arizona and for 42,099.71 acres of land in McKinley County, New Mexico, more fully described in deeds dated May 14, 1929. (Attachment N) On November 15, 1929, Commissioner Rhoads transmitted the check to E. L. Copeland, Treasurer, Santa Fe Pacific Railroad Company as payment in full for 52,133.37 acres of land in Coconino County, Arizona and 42,099.71 acres of land in McKinley County, New Mexico, more fully described in the deed dated May 14, 1929. (Attachment O) And, on November 22, 1929, Mr. Copeland acknowledged receipt of the U.S. Treasury check in the amount of $94,233.08 as payment in full for 52,133.37 acres of land in Coconino County, Arizona and 42,099.71 aces of land in McKinley County, New Mexico. (Attachment P)

12. Based on the historical record of the Congressional purpose of the Act of 1928, its construction by the Department of Interior, and the fact that the section 17 lands were purchased under the authority of the 1928 Act, I conclude that the United States Government validly set apart the Section 17 lands for the use of the Navajo Tribe of Indians under the superintendence of the Government.

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

Mark Leutbecker
MARK LEUTBECKER

State of Virginia)
) ss.
County of Arlington)

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME on this 4th day of April, 1995.

Willett K. Vogt
Notary Public

My Commission Expires:

July 31, 1996

INDEX TO ATTACHMENTS

A. Letter dated November 8, 1926 from Mr. Samuel F. Stacher, Superintendent, Eastern Navajo Agency, to the Commissioner of Indian Affairs.

B. Letter dated February 1927 from the Secretary of the Interior to Scott Leavitt, Chairman, Committee on Indian Affairs, House of Representatives.

C. Letter dated November 4, 1927 from Mr. Aug. F. Duclos, Superintendent, Southern Navajo Agency, to Mr. E.B. Meritt, Assistant Commissioner of Indian Affairs.

D. Letter dated December 9, 1927 from Mr. Chee Dodge, Chairman, Navajo Tribal Council to the Honorable Carl Hayden, U.S. Senate.

E. Letter dated December 10, 1927 from Mr. Chee Dodge, Chairman, Navajo Tribal Council, to Mr. Chas. H. Burke, Commissioner of Indian Affairs.

F. Letter dated January 5, 1928 from Superintendent Samuel F. Stacher to the Commissioner of Indian Affairs.

G. Congressional Record of the Senate, H.R. 13873, May 24, 1928, p.10057.

H. Letter dated June 4, 1928 from Assistant Commissioner E. B. Meritt to Superintendent Samuel F. Stacher.

I. Letter dated September 5, 1928 from Commissioner Burke to the Land Commissioner, Santa Fe Pacific Railroad Company.

J. Interior Department Appropriation Bill, 1930, Hearing before the U.S. Congress House Subcommittee on Appropriations, 70th Congress, 2d Session, November 19, 1928 p.638.

K. June 17, 1929 (May 14, 1929) deed and abstracts from Santa Fe Pacific Railroad Company to the United States (Deed conveys 42,099.71 acres of land in McKinley County, New Mexico to be held in trust by the U.S. for the Navajo Tribe.

L. September 13, 1929 Opinion M. 25205, United States Department of the Interior, Office of the Solicitor addressed to the Secretary of the Interior.

M. Letter dated November 8, 1929 from the Comptroller General of the U.S. to the Secretary of the Interior.

N. Indian Settlements and Claims, Claim No. 061497(1), Certificate 0217555, from the General Accounting Office dated November 9, 1929.

O. Letter dated November 15, 1929 from Commissioner Charles J. Rhoads to E. L. Copeland, Treasurer, Santa Fe Pacific Railroad Company.

P. Letter dated November 22, 1929 from E. L. Copeland to Commissioner Charles J. Rhoads.

Q. Letter dated February 3, 1930 letter from Superintendent Samuel F. Stacher to Commissioner Charles J. Rhoads.

R. Interior Department Appropriation Bill, 1932, Hearing before the U.S. Congress House Subcommittee on Appropriations, 71st Congress, 3d Session, November 17, 1930.

L-A
38847-26

6-1142

UNITED STATES
DEPARTMENT OF THE INTERIOR
INDIAN FIELD SERVICE

Pueblo Bonito Agendy,
Crown Point, New Mex.
Nov.8,1926.

NOV 16 1926
52663

The Commissioner Of Indian Affairs,
Washington, D.C.

Dear Mr. Commissioner:

Reference is made to your letter of Aug.24,1926 above reference file, based upon a proposal to sell certain, leases and improvements to the government, for the use of the Indians and which Mr. W.F.Pitts has some interest but heavily mortgaged to the First National Bank, of Albuquerque. His holdings consist of Annual Leases from the Santa Fe R.R.Company for 4 Townships of land as shown on attached plat. The improvements include about 60 miles of 3 wire fence, houses and corrals, two artesian wells on Railroad sections two pumping wells on school sections and without title and for this he asks $30,000. The annual rental to the R.R.Company is about $288. for their odd numbered sections in each townships amounting for the 4 townships to $1152. Add to this for the school sections at 3¢ per acre. 4 sections to the Township and more than $280! is required to pay the school land lease.

The public Domain Navahos in New Mexico are very unfortunately situated. In 1907 and Executive Order Reservation covering many Townships immediately east and south of the present reservation for the purpose of allotting Indians living with this area but before the work could be completed the whitestockmen and politicians brought pressure to have the surplus land reopened, we protested but it did no good and the land was restored in 1911 by Executive Order. Later on an attempt was made by Secretary Lane to create an Extension to the reservation to include a large portion of what had been restored but a vigorous protest by the powers of this state at that time prevented anything being done in this direction so the Indians received no protection.

We urged regulations which would permit the exchange of allotments, School Land, R.R.Lands and government land and the result was the regulations contained in Circular 850, dated Sep. 19,1922. No exchanges have been made as there is no provision made for payment of any improvements that may be located on the lands we need for the Indians and the procedure is complex.

REPRODUCED AT THE NATIONAL ARCHIVES

You will remem[illegible] Mr. Commissioner the me[illegible] at Santa Fe, New Mexico, immediately after the sale of oil land, with yourself, Mr. Engle of the Santa Fe R.R. Howel Jones, Land Commissioner For the Santa Fe. Senator Bursum. Gov. Hagerman Special Indian Commissioner., and Lt. Gov. of the State as well as State Land Commissioner Mr. J. Baca and a number of other interested parties and the proposal of exchange of lands in sundry townships needed for the Indians. It seemed that all parties at interest were agreed and the only thing that remained was to get an appropiation from Congress for something like $200,000. Senator B was favorable to the entire proposition provided all interests gould agree. The sheepmen were not represented and at a subsequent meeting the Sheep growers of New Mexico made a decided stand against the proposition and of course nothing further could be accomplished and our range situation remains as before, tho further restricted and the Indian Stockman is hampered in every direction.

We have been able to protect Indians in certain Townships by leasing railroad sections but this is unsatisfactory and is only a temporary measure. The foundation of the livestock industry is range protection and control. Mr. Engle and Jones made it plain at Santa Fe, that their Company desired that their land be used judicially in such manner as to conserve, protect and produce maximum livestock and the business of the Santa Fe Company be increased in this developement. Thru opposition to date we have not been able to present any plan for adjustment of range, that a few of the big men of the state would block. Things are rotten when one or two selfish men can prevent legislation or action that will benefit two to three thousand Navahos and prevent them from getting control of lands they need simply because a few want free range over the state and particularly what the Indians need. Some have much government land under fence, and the Indians now use less than half of what they used 15 years ago. Not very satisfactory and so far but little promise for betterment for the future and I feel that I have reached the limit except for one more proposition which I will present.

At the last Council meeting held at Fort Defiance by Commissioner Hagerman July 7, 1926. the situation was presented to the council for setting aside a part of the oil royalties for use in making adjustments of range conditions thru purchase of land, lease, and improvements owned by white men and the council was favorable to having 20 per cent of each years royalties be set aside for this purpose. I should like to have seen them use at least 50 per cent of this money to relieve the Public Domain situation.

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The Indian Office is quite familiar with our ituation and the difficulty in securing appropiation from Congress needed in such cases, but it seems that we cannot get much further unless a substantial sum of money is provided, to purchase such improvements, Railroad lands, state lands, private interests including fencing wells or reservoirs for the use of the Indians. It is my reccommendation that 40 to 50 townships of Railroad lands be purchased from the Santa Fe R.R.Company and from the New Mexico and Arizona Land Company at a price of $1. to $2# per acre and include such land as is now urgent for the Navahos east of Zuni Reservation; for the Navahos in Canoncito country under Southern Pueblo Agency. This will require an appropiation of $750,000. but in our opinion we are justified in asking for this amount. This appropiation to be asked of Congress and to be made reimbursable to the government and repaid annually from Oil sale and lease money now derived by the Navaho tribe from production that now seems to be on the increase and to be repaid at the rate of 20 to 50 per cent of what is annually available from this source and continue until entirely repaid.

This appropiation will admit of something definite being done to properly protect the Public Domain Navaho Stockman, it will be good business to adjust our range in this way and Congress should be willing to loan us the money ~~in this way~~ as it would not be a gratuity appropiation. I should here say that the R.R.Companies would wish to reserve the oil and mineral rights but this would not be objectionable.

Perhaps some of the Navaho Superintendents would register objections in bahlf of his Indians where they may not have Indians residing upon the Public Domain. It is not a question of jurisdiction but of dping the things that will assist the greatest number of Indians in any given community and as stated in former letters thousands of dollars have been spent upon the reservation for water developement, but as yet there are several thousand Indians on the public domain who have not received any benefit and cannot compete or hold his own with his white neighbor and it is conclusive that white man and Indian cannot use the same range and get along.

It is a waste of time to attempt range adjustment now with so many difficulties in the way and no funds to make adjustments with. Should the Office feel favorable to asking Congress for assistance in the direction indicated and be successful, perhapsn Special Commissioner Hagerman and District Superintendent Mr. Faris and another could make an appraisement of such property that might be decided upon for the Indians.

There is no chance to accomplish anything now with Mr. Pitts, who has written you or any other party until we are in position to do so. An appropiation is the only remedy and judicially expended.

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In this connection it should here be stated that,provision should be made,that in any township that is acquired for the Indians use, thru the purchase of Railroad lands, which as you know comprise the odd numbered sections in each township for 50 miles north and south of the Santa Fe Right of way except where they have already been disposed of, all governmet land in such townships acquired should be withdrawn from all forms of entry.

It is not possible to definitely state just what can be purchased but I have indicated on the attached map some very important townships that we should have. Some people within the area seem to think that they should have a big price for what they hold in this way tho they cannot give to anything or but little so it will require close bargaining to get them down to fair values.

Copies of this letter have been sent to Commissioner Hagerman and Superintendent Faris with request that they write you further in the premises.

Very respectfully.

S. F. Stacher

S.F.Stacher.
Superintendent.

Write you reports

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Undated Feb 1937

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THE SECRETARY OF THE INTERIOR
WASHINGTON

File

Hon. Scott Leavitt,
Chairman, Committee on Indian Affairs,
House of Representatives.

My dear Mr. Leavitt:

Further reference is made to your letter of January 17 transmitting for report copy of H. R. 16346, a Bill "To authorize the purchase of land for the Navajo Indians in Arizona and New Mexico."

By the terms thereof the Secretary is authorized to purchase the surface and water rights of railroad grant lands for the Navajo Indians in Arizona and New Mexico, and there is authorized an appropriation therefor of $1,000,000, "to be reimbursed from oil royalties and bonuses belonging to the Navajo Indians, at the rate of 50 per centum of the total royalties and bonuses annually received * * *" It is noted also that by the first proviso beginning on page 2, line 1, that not to exceed $100,000 of the amount authorized may be expended for the purchase of land and water rights in private ownership within or adjacent to the Western and Northern Navajo Reservations. Reference is also made to the provision beginning on page 2 of the bill at line 5, which authorizes the payment of a tax to the states of Arizona and New Mexico on the lands to be purchased for the Indians equal to the taxes levied by said states on lands of similar.