

Dear Mr. Albright:

REGARDING: *Safe Drinking Water Act* Determination, Underground Injection Control Program, Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting – FRL-7992-9

The Northwest New Mexico Council of Governments (COG) is a statutory association of local governments in the counties of Cibola, McKinley and San Juan. We serve as a planning agency and, while we have continuity, experience and expertise in regional and local planning and policy development, we do not have regulatory authority or jurisdiction.

On behalf of McKinley County, the COG facilitated a comprehensive planning process beginning in 2002 and involving two phases, with the most recent phase conducted with the consultant assistance of Architectural Research Consultants, Inc. (ARC), resulting in a white paper drafted in August 2005 and a Comp Plan implementation document adopted by the County in December 2005 (not yet final-printed and published). This plan includes clear reference to McKinley County's jurisdiction over both (a) unincorporated private lands outside of the checkerboard area and (b) unincorporated private lands within Chapter boundaries and within the checkerboard area.

As a result the research and planning conducted in connection with these comp plan processes, the consultants, County officials and our staff came to "working conclusions" regarding the intricacies of the County's "checkerboard" lands, which are characterized by inter-mixed land status and jurisdiction. Notwithstanding the need for clarity in such matters, the County's plan, with our wholehearted support, incorporates the underlying principle of intergovernmental consultation and cooperation in promoting the safety, health and welfare of all citizens within McKinley County.

The land section in question, comprising fee lands lying north-northeast of Churchrock, New Mexico, is surrounded in general by a variety of land types inhabited predominantly by citizens of the Navajo Nation. However, in the particular case of Section 8, which is on McKinley County's tax rolls, it appears inescapable that this property does not satisfy the criteria established by the Supreme Court in the "Venetie" case, i.e., that: (a) it must be set aside by the federal government for the use of Indian tribes; and (b) the land must be under the superintendence of the federal government. The land in question meets neither of these standards. Moreover, the preponderance of public services to this property is provided by the McKinley County government. Services to tax-paying residents on fee lands within the County include road maintenance, emergency medical services, police and fire protection, public schools and public school transportation. Thus, the County opposes the designation of such fee lands as being part of "Indian

Country,” which would have the effect of removing such lands from the County’s tax rolls and thus inhibit and diminish the County’s ability, as well as jurisdiction, to provide such public services. The County government also provides many such services to County residents who reside on federal trust and Indian allotment lands, either solely or by cooperative agreement with tribal and federal agencies.

It is our understanding that the above interpretation has achieved the concurrence of all parties involved with respect to checkerboard lands, and we are not aware of documentation to the contrary.

Please feel free to contact our office if further consultation would be helpful.

***Jeffrey G. Kiely***

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