

Before the United States Environmental Protection Agency

Comments on Safe Drinking Water Act Jurisdiction Over Church Rock Section 8
pursuant to *Federal Register* Notice, 70 Fed. Reg. 66402 (Nov. 2, 2005)

DECLARATION OF MITCHELL W. CAPITAN

I, Mitchell W. Capitan, do hereby swear that the following is true to the best of my knowledge. I am qualified and competent to give this declaration, and the factual statements herein are true and correct to the best of my knowledge, information and belief.

1. My name is Mitchell W. Capitan. My mailing address is P.O. Box 471, Crownpoint, N.M., 87313. I am employed by the Navajo Tribal Utility Authority (“NTUA”) at its regional office in Crownpoint, N.M. My current job title is customer service supervisor. I was born and raised in Coyote Canyon Chapter of the Navajo Nation and have lived most of my adult life in Crownpoint.

2. I am giving this declaration on behalf of Eastern Navajo Diné Against Uranium Mining (“ENDAUM”) and Southwest Research and Information Center (“SRIC”) in support of their comments on administration and enforcement of the Safe Drinking Water Act (“SDWA”) for the southeast quarter section of Section 8, Township 16 North, Range 16 West (“Section 8”). Specifically, I am commenting on issues related to the Indian Country status of Section 8.

3. NTUA provides public water supply and wastewater service to individual Navajo homes and Navajo communities, called “chapters,” throughout the Navajo Nation. NTUA also provides electricity and natural gas service in certain areas of the

Navajo Nation. Generally, NTUA is the principal water and sewer provider to Navajo communities, and is established and organized as a Navajo tribal enterprise corporation.

4. I have been employed by NTUA for 20 years. During that time, I served as a water meter reader for 15 years, visiting Navajo homes throughout the Eastern Navajo Agency, of which Church Rock is one of 31 chapters. In my present capacity, I represent NTUA at community meetings and in consultation with individual customers. I discuss plans for utility expansion, explain to elderly Navajo customers how to read and interpret utility bills, and work with chapters to troubleshoot utility service problems. In my 20 years of continuous employment with NTUA, I have gained an intimate knowledge of the Eastern Agency service area, including the Church Rock Chapter area.

5. I am also familiar with the political, economic, demographic and environmental characteristics of Navajo chapters in the Eastern Agency through my past service as the elected president of Crownpoint Chapter from 1999 through 2004. In that capacity, I interacted on a regular basis with elected officials from other chapters, including those from Church Rock. I also met scores of residents who live in the region, and I became familiar with community needs and concerns as a result of those contacts.

6. NTUA's public water supply service is regulated by the Navajo Nation Environmental Protection Agency's ("NNEPA's") Public Water Supply Supervision Program, and the drinking water we supply to Navajo homes must meet all applicable Navajo Nation and U.S. Environmental Protection Agency ("USEPA") primary and secondary drinking water standards promulgated pursuant to the federal SDWA and the Navajo Safe Drinking Water Act. NTUA works closely with the U.S. Indian Health Service's ("USIHS's") Office of Environmental Health and Engineering to identify

locations for new public water supply wells and to install and expand existing water lines. USIHS funds these projects. Once the wells are completed and the lines installed, NTUA takes ownership of these facilities and pays for their operation and maintenance. I am knowledgeable in all of elements of NTUA's water system in the Eastern Agency.

7. In Church Rock Chapter and surrounding areas, NTUA is the sole provider of drinking water to Navajo families in Church Rock. I estimate that NTUA serves 800 homes in Church Rock Chapter, including homes in the White Cliffs, Church Rock Village, Wingate, and Sundance-Hogback communities. About 50 homes in Church Rock are not yet connected to the NTUA system. With one exception (see ¶ 11 below), the only other sources for drinking water and domestic-use water in the area are unregulated water sources operated by the Navajo Nation (see ¶ 9 below) and water stations in Gallup, Rehoboth and Crownpoint from which families haul water.

8. The drinking water provided by NTUA in the Church Rock area comes from two wells located in Mariano Lake Chapter located about 15 miles east of Church Rock Village. Water flow westward from Mariano Lake through Pinedale Chapter and into Church Rock Chapter and Church Rock Village is maintained by gravity flow and intermittent pumping stations.

9. As mentioned above, some residents haul water for domestic and livestock uses from unregulated water wells and developed springs that are located in the Church Rock area. (See map titled, "Water Sources in Church Rock and Surrounding Chapters.") None of these water sources are used or maintained by NTUA, but all but one of them is owned and maintained by the Navajo Nation Department of Water Resources ("NNDWR"). The only water source in the area not owned by NNDWR was a well

located at the United Nuclear Corporation (“UNC”) uranium mill in Section 2 of Township 16 North, Range 16 West. My understanding is that well, which was used for domestic purposes at the mill, was abandoned a few years ago.

10. NTUA is the sole provider of centralized wastewater collection and treatment services for Navajo families in the Church Rock area. Sewage from homes in the area is treated and disposal in lagoons located west of the Church Rock Chapter House, between Red Rock State Park and the railroad tracks to the south. These lagoons are located on tribal trust lands. The only other sewer services in the area are those provided by individual homeowners who have installed on-site liquid waste systems.

11. I am aware of only two private water and sewer facilities still operating in the Church Rock area. One of these facilities is adjacent to the Mustang gasoline and convenience store in the Springstead area on State Route 566 about five miles north of Church Rock Village in Section 30, T16N, R16W. To my knowledge, this system serves only the store and has no facilities from which local Navajo families could haul water or dispose of septage. The other facility is located in the White Cliffs area on the southwest corner of the chapter northwest of the Conoco-Phillips natural gas processing plant in approximately T15N, R17W, Sections 6 and 8. I believe this community has its own water source and sewage treatment and disposal system.

12. With respect to electricity, NTUA provides electricity to areas starting roughly at the Navajo Reservation boundary and extending northward from there. In the Church Rock area, NTUA’s electric lines begin in the area where Church Rock, Pinedale, Nahodishgish and Coyote Canyon chapters meet. These lines serve Navajo homes in the Red Water Pond Road and Pipeline Canyon Road communities, and in the past provided

electricity to the UNC mill, UNC Northeast Church Rock Mine in Section 35, T17N, R16W, and Kerr-McGee Corporation Church Rock Mine in this same area. NTUA also provides electricity to three homes in the Sundance community south of Interstate-40. These homes are powered by an 880-watt solar photovoltaic panel. My understanding is that electric service to most of the Navajo homes in the Church Rock area is provided by Continental Divide Electric Co-op, and in some cases by the city of Gallup.

13. NTUA does not provide natural gas service in the area. Much of the natural gas service is provided by Public Service Company of New Mexico. Many Navajo families that are not connected to natural gas lines use wood, coal or propane for home heating.

14. Based on the fact that I was born and raised in the area, on my experience with the Navajo Nation's only tribal utility service, and on my observations as I routinely visit all of the communities in the Eastern Agency, including Church Rock, I believe that the area in general and Church Rock Chapter in particular is "Indian Country". The vast majority of people who live in these areas are Navajos and the vast majority of land uses are those by Navajo families.

Pursuant 28 U.S.C. §1746, I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Signed on the 25th day of January, 2006 at Crownpoint, Navajo Nation, New Mexico.

Mitchell W. Capitan