

**Before the United States Environmental Protection Agency**

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

**DECLARATION OF JOHNNY LIVINGSTON**

I, Johnny Livingston, 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 Johnny Livingston. My mailing address is P.O. Box 549, Churchrock, N.M., 87311. I am employed by the McKinley County Transportation Department. I am also the elected president of Churchrock Chapter of the Navajo Nation.

2. I am giving this declaration on behalf of Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") related to administration and enforcement jurisdiction of the federal 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. I grew up in Churchrock and have spent most of my life there. I am currently 48 years old.

4. My home is located at T16N, R16W, northeast 1/8 of Section 18. That land is administered by the U.S. Bureau of Land Management ("BLM"). My family has grazed livestock on this land as long as I have been alive.

5. My relatives live adjacent to me in the Livingston Family Camp, T16N, R16W, northwest ¼ of Section 18. That land is held in trust by the United States government for the Navajo Nation. It is commonly referred to as “tribal trust land.” My relatives have lived on that land about five generations.

6. Both my relatives and I graze livestock on our land. Currently, I have about two dozen sheep. We also grow corn, beans and pumpkins on approximately 2-3 acres adjacent to my home. That land is also tribal trust land. Our crops are irrigated with water that runs off the mesa to the north. We use the corn, beans, and pumpkins for food.

7. My relatives and I also gather ceremonial and medicinal herbs on our land and on the mesas north of our homes.

8. I get my drinking water from the Navajo Tribal Utility Authority (“NTUA”). NTUA’s water lines were extended to my home several years ago. My relatives also get their drinking water from NTUA. We also occasionally haul water from water stations in Gallup. For livestock watering, we haul water from local windmills operated and maintained by the Navajo Nation Department of Water Resources (“NNDWR”).

9. In 2002, I was appointed to the vacant position of Chapter President by the community members. In November of 2004, I was elected to this position for a four-year term.

10. As Chapter President, I do not receive a salary; my only compensation is a standard stipend paid to all elected chapter officials for attendance at two official meetings per month — a planning meeting and a general chapter meeting at which

decisions are made and resolutions adopted by direct vote of the community members present. My responsibilities as Chapter President include:

- a. Planning, policy-making, implementation, monitoring, evaluation and assuring completion of the Chapter's goals and projects;
- b. Presiding over Chapter and committee meetings, maintaining order and resolving disputes;
- c. Directing, assigning, evaluating and assuring completion of the Chapter's administrative work;
- d. Working with the Chapter Vice President and Secretary/Treasurer to ensure that programs are conducted according to approved policies and procedures and are within the annual budget allocation to the Chapter;
- e. Visiting local residents at their homes to help them obtain services, maintain and improve roads, drainages and grazing lands, resolve boundary and fencing disputes, and secure funding and approval for home improvements;
- f. Assuring that the Chapter coordinates all contracts and programs consistent with local, state and federal regulations and guidelines; and
- g. Representing the Chapter at local, state, tribal and federal meetings, including at quarterly meetings of the Navajo Nation Council, to ensure that the Chapter obtains funding, contracts and grants it is eligible for and to ensure that all programs and projects are done in a timely manner.

11. The Chapter receives an operating budget of approximately \$200,000 per year from the Navajo Nation. This money is generated from the Navajo Nation's General Fund, which is derived from mineral royalties, excise taxes, business activity taxes, and

fees paid to the Navajo Nation. This money pays for general operation of the Chapter, costs of holding two official chapter meetings per month, stipends for elected Chapter officers, scholarships for Chapter members, home repairs, home purchases (called the Housing Discretionary Fund), and economic development. The Chapter budget also pays the salaries of two administrative employees, the Community Service Coordinator and office specialist. The Chapter's maintenance supervisor and other temporary employees are funded through the Navajo Nation's public employment program.

12. In addition to those positions paid from the Chapter's annual budget, the Chapter also receives services from personnel employed by the Navajo Nation but stationed in offices at the Chapter House or in separate buildings adjacent to the Chapter House. These personnel include the Senior Citizens Program coordinator and cooks for the daily senior meals, which are paid from state funds passed through the Navajo Nation, and the Chapter's Community Health Representative, who is an employee of the Navajo Division of Health.

13. The Chapter maintains one standing committee, which is the Community Land Use and Planning Committee, the members of which are local residents and which has overseen development of the Chapter's Land Use Plan. The Chapter also elects a member of the local Land Board, which addresses livestock and grazing issues in Churchrock, Red Rock, Bread Springs and Chichiltah chapters.

14. Other service programs at Churchrock Chapter include Head Start, a preschool program, Meals on Wheels, and the Churchrock Uranium Monitoring Project ("CRUMP"). Head Start and Meals on Wheels receive funding from the Navajo Nation, the state of New Mexico, and the United States Government. Money for these programs

is given to the Navajo Nation through grants from the state of New Mexico or various Federal agencies. CRUMP, which was initiated in 2003 to conduct environmental monitoring and environmental health assessments of residential areas of Churchrock affected by past uranium mining and milling, is funded by grants from a private foundation in Washington, D.C., and the New Mexico Department of Health.

15. The Chapter's infrastructure is provided and maintained by the following:

- a. Drinking water is provided to about 90 percent of homes in the community by NTUA, an enterprise of the Navajo Nation. Some residents supplement their NTUA water with water from local windmills (that is, drilled wells that are not regulated as public water supplies), developed springs and central water stations in Gallup and other surrounding communities. NTUA maintains the water distribution system and insures that it meets federal and tribal standards. Wells that serve the NTUA system are drilled and completed by the U.S. Indian Health Service ("USIHS"), which also constructs the distribution lines; once installed, these facilities are turned over to NTUA, which is responsible for their operation, maintenance and replacement.
- b. Livestock owners obtain water from windmills, developed springs, and stock ponds. These facilities are maintained by NNDWR. Livestock owners also haul water from other nearby communities.
- c. Most electrical services are provided by Continental Divide Electric Co-Op and Gallup Joint Utilities under a joint service agreement.
- d. Sanitation and sewage treatment services for Churchrock Estates, Global, Navajo Housing Authority ("NHA"), Sundance and Coalmine subdivisions are provided by NTUA. NTUA maintains the Chapter sewage lagoons located in the

Churchrock Industrial Park on land held in trust for the Navajo Nation by the U.S. government. These systems are built by USIHS's Office of Environmental Health and Engineering and are turned over to NTUA for ongoing operation and maintenance.

e. NHA is the principal housing agency for Navajo communities, including Churchrock. NHA receives funds from the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture to build homes for enrolled members of the Navajo Nation and other tribes. Some individual families obtain their own home financing or receive housing assistance from such nonprofit agencies as the Southwest Indian Foundation based in Gallup. Several housing developments are located within Churchrock's boundaries. They are Churchrock Estates, the NHA subdivision in Churchrock Village, and the Sundance and Coal Mine subdivisions.

f. The major highways that cross Churchrock Chapter, such as Interstate 40 and State Highway 566, were built and are maintained by the State of New Mexico. New Mexico receives state and federal funds to construct and maintain major highways. Other roads in the community are built and maintained by the U.S. Bureau of Indian Affairs and McKinley County. Many of these roads are just for bus routes for local school children. The Navajo Nation contributes to maintaining McKinley County roads through its gasoline excise tax.

g. Health care for the majority of the Churchrock population is provided by the Indian Health Service at the Gallup Indian Medical Center in Gallup. Dental care is primarily provided by the U.S. Public Health Service dental clinic in Ft. Wingate, N.M. Chapter members who have private health insurance obtain health care from private physicians or at Rehoboth Christian-McKinley Health Care Services

facilities.

h. Fire protection is provided by the McKinley County White Cliffs Fire Department. The Chapter is currently working with McKinley County and the State of New Mexico to obtain its own fire department. The White Cliffs Fire Department has direct access to rural homes in the northern half of the Chapter, but does not have a direct access to housing areas south of Interstate 40.

i. Police protection is provided primarily by the Navajo Nation Police Department. The Churchrock police substation houses one police officer. Navajo Nation police protection is funded by the BIA. Officers from the McKinley County Sheriff's Department and the New Mexico State Police are cross-deputized across jurisdictions and also provide a measure of police protection.

j. Judicial services and tribal enrollment services are provided by the Navajo Nation Courts through a contract with the BIA. Civil cases are tried in the courts of the Navajo Nation in the Crownpoint judicial district, located in Crownpoint, New Mexico. Appeals from this court are heard by the Navajo Supreme Court located in Window Rock, Arizona. Non-Indian criminal cases are tried in State courts unless the case falls under federal jurisdiction.

k. Social services and general assistance are provided by the Navajo Nation Division of Social Services through a contract with the BIA.

l. Several privately owned businesses are located in Churchrock Chapter. These businesses include Transwestern Pipeline Co.; Thompson's Store and Gas Station in Churchrock Village; the Mustang Convenience Store and Gas Station on State Route 566; Southwest Cabinets, a domestic cabinet manufacturing company, and a

storage shed manufacturer located in the Churchrock industrial park. These businesses depend on state and county roads, NTUA utilities, Navajo Nation Communications for telephone service, and easements through Navajo Indian Country to conduct their businesses. Companies that locate within Churchrock boundaries must obtain business leases and easements from the Navajo Nation and pay Navajo Nation business taxes and lease fees. The Chapter gets a portion of that tax revenue. Businesses usually ask the Chapter for supporting resolutions and guarantee a certain degree of employment for Chapter residents.

16. Churchrock Chapter falls under the administrative jurisdiction of the Agency Superintendent for the Eastern Navajo Agency of the Bureau of Indian Affairs. The Superintendent's duty includes protecting Navajo Nation trust lands, natural resources, and water rights, and administering various trust funds. The Superintendent approves business and mineral leases, mission sites, homesite leases, residential leases, uses of allotted lands, grazing permits, gravel permits, and certain tribal contracts that involve the use of tribal trust assets and resources.

17. The Churchrock Land Use Plan (Exhibit 21 on page B-45) shows active BIA grazing permits on Sections 8, 9, 17 and 16 of T16N, R16W. Based on my knowledge of the community and its members, I know that Grazing Permit No. 7, which is held by Ms. Velma Nakai, includes the east half of Section 16, all of Section 9, most of Section 8, including the southeastern quarter, and a quarter of Section 17. Another Navajo family, Mr. Larry King and his sisters, holds grazing permit No. 10, which covers the west half of Section 16 and the eastern quarter of Section 17.

18. Livestock owned by these and other Navajo families have grazed on



Section 8 and its contiguous sections for as long as I can remember, including to this day. In fact, the people have a Navajo term for the canyon at the north end of Section 8; they call it “the cattle’s home in their canyon,” or “Cattle Canyon.” There is a trail that the old people said they used for cattle drives many years ago, and you can still see that trail going up the side of the mesa in Section 8.

19. This concludes my statement.

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 this \_\_\_\_ day of January 2006 at Churchrock, Navajo Nation, New Mexico.

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Johnny Livingston