



New Mexico Oil & Gas Association

03 January 2006

David Albright
Groundwater Office Manager
U. S. Environmental Protection Agency
Region 9
75 Hawthorne Street, Mail Code: WTR-9
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RE: Safe Drinking Water Act Determination; Underground Injection Control Program, Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting. FedReg/Vol. 70, No. 211/November 2, 2005 [FRL-7992-9]

The New Mexico Oil and Gas Association (NMOGA) was organized in 1929 and represents over 300 member companies, ranging from independent to major oil and gas producers, pipeline companies, well servicing and field services companies, refineries and processing plants, all doing business in the state of New Mexico. NMOGA is responsible for working with the state and federal regulatory agencies, Indian Nations and tribes as well as the New Mexico Legislature and congressional delegation to address and promote the orderly development of the mineral estate within the state of New Mexico.

Since December of 1999, NMOGA has submitted numerous comments to the Environmental Protection Agency (EPA) on various Navajo Nation programs (Clean Air Act and the Clean Water Act) and determinations by EPA that try to establish definitions of "Indian country" and who has jurisdictional precedence. NMOGA continues to stand opposed to a regulatory agency making a decision on the definition of "Indian country" which we feel is clearly defined by federal law and the U.S. Supreme Court.

Numerous cases have established the criteria by which the jurisdiction status of Section 8 should be determined. (See *Alaska v. Native Village of Venetie*

Tribal Government 522 U.S. 520, 527 (1998); *Blatchford v. Sullivan*, 904 F.2d 542, 543 (10th Cir. 1990,); New Mexico Supreme Court, *State v. Frank*, 53 P.2d 404 (NM202))

In *State v. Frank*, 53 P.2d 404 (N.M. 2002) the New Mexico Supreme Court declined to incorporate a community of reference test into New Mexico case law. *Ibid.* at 549. The court stated that under New Mexico law, it is error to require a community of reference threshold inquiry. *Ibid.* at 549.

Given that the 160 acre tract in Section 8 is owned in fee (surface and mineral rights) by Hydro Resources, Inc., (HRI) the Venetie two-prong test redirects the focus to land and its title and removes the more nebulous issue of community cohesiveness. *Ibid.* at 549.

NMOGA supports the New Mexico Environmental Department's position that *Alaska v. Native Village of Venetie Tribal Government* 522 U.S. 520, 527 (1998) determines the criteria by which the jurisdiction status of Section 8 should be established. NMOGA believes the "non-Indian Country" status of HRI's fee land is the only sound and legal decision for EPA to make.

The New Mexico Oil and Gas Association (NMOGA) appreciates the opportunity to submit comments on the Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting.

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