

Written Testimony of Jonathan Nez, President of the Navajo Nation

Prepared for The House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Hearing on “Examining the Need to Expand Eligibility Under the Radiation Exposure Compensation Act”

March 24, 2021

Dear Chairman Cohen, Ranking Member Johnson, and Subcommittee members, I appreciate the opportunity to testify before this Subcommittee on the Radiation Exposure Compensation Act (RECA), passed by Congress in 1990 and amended in 2000. I am here today to represent Navajo downwinders, uranium workers, and many other Navajo families and descendants who deserve fair compensation and healthcare for the risks they took and the sacrifices they made for this country. My testimony will focus on the Navajo Nation’s experience with Federal uranium extraction initiatives and the need to expand eligibility under RECA and extend the life of the Radiation Exposure Compensation Program.

The Navajo Nation is the largest land-based American Indian tribe in the country encompassing over 27,000 square miles that spans Arizona, New Mexico, and Utah with nearly 320,000 enrolled members, half of whom reside on the Navajo Nation. With such a broad land base and areas that lie within multi-jurisdictional boundaries, the Navajo Nation encounters some of the most challenging obstacles when it comes to providing for and meeting the needs of its communities.

The legacy of uranium mining began with Federal efforts to extract uranium from our tribal lands and continues to this day as we work to ensure that the parties who managed the mines are held responsible for cleaning up the mess they left behind. The failure to clean up and restore the contaminated areas i.e., the air, soils, and groundwater, hinders our ability to grow our economy and develop our lands. Therefore, we need to ensure that our lands are remediated back to their original natural state.

I. Legacy of Uranium Mining

Unfortunately, the Navajo people continue to suffer from the legacy of uranium mining on the Navajo Nation and surrounding areas. Uranium mining began on the Navajo Nation in 1944 to support the U.S. Federally-led Manhattan Project. Following World War II, uranium mining on Navajo lands increased due to the Cold War through the Atomic Energy Commission, which purchased all the uranium ore mined in the United States until 1970.¹ These Federal initiatives led to the creation of hundreds of mines, many transfer stations, and mill sites on the Navajo Nation. From 1970 – 1986, uranium mining continued to supply the nuclear power industry. According to the U.S. EPA, approximately 30 million tons of uranium ore were extracted from

¹ Brugee, Doug, Timothy Benally, and Esther Yazzie-Lewis. *The Navajo People and Uranium Mining*, Albuquerque: University of New Mexico Press, 2006.

Navajo lands from 1944 to 1986.² Approximately 525 uranium mines are still abandoned today on the Navajo Nation, and not a single one has been cleaned up properly. That said, I'm happy to report that cleanup efforts are underway at some (although fewer than half) of those mine sites. When we say properly, we mean that the Navajo communities will agree that taking mine waste from one side of the road to the other, for example at Red Water Pond at Northeast Church Rock is unacceptable. Our NNEPA have made these comments during the EIS scoping meetings that USEPA has hosted. But that's a topic for another hearing as more funding is necessary to properly cleanup these sites and protect the public health and environment of our Navajo communities.

Unfortunately, there are also four uranium mill processing sites on the Navajo Nation, and another site, immediately adjacent to the Navajo Nation reservation, in Church Rock, NM. On July 16, 1979, that the largest hazardous waste spill in U.S. history occurred at the Church Rock mill site, when the earthen dam to the pond holding the mill's uranium tailings was breached.³ The spill released over 1,000 tons of radioactive mill waste and 93 million gallons of acidic radioactive tailings solution into the Puerco River and traveled downstream through the Navajo Nation to the community of Sanders, AZ, located nearly 60 miles west of the spill site.⁴ The negative effects of this spill are still being felt today by residents in the immediate vicinity, surrounding communities, and downwinders including community members and residents residing along the Puerco River. In fact, many believe that past uranium activities attributes to elevated levels of uranium in the local communities' drinking water.

Navajo people who worked at these mines and mill sites and were not told about the dangers to their health until years after the Federal government was aware of the health impacts. Many of our uranium workers were never informed of the potential harms of radiation exposure, and there are reports of disreputable managers and companies that evaded meaningful regulation from Federal agencies such as the Occupational Safety and Health Administration. When the mines closed, many of the mining companies simply walked away from them and left the abandoned sites as they were. No clean-up efforts ever occurred.

Over time, many Navajo uranium mine and mill workers, ore transporters, core drillers, and many other Navajo uranium industry workers became ill and many died from diseases associated with their work-- in particular from cancer. Cancer is now the second leading cause of disease and death for the Navajo people.⁵ There are stories told by our Navajo uranium workers, their families, and other community members about the times before they knew of the grave impacts of uranium exposure. Some common examples include individuals who as children played in abandoned uranium mines or on mill tailing piles, herders who watered their sheep in un-reclaimed open pit uranium mines, elderly women who for many years washed the dust-coated clothing of their uranium miner husbands, and families who obtained their drinking water from a stream that ran through or near a uranium mine, or a shallow livestock well, as it was the only

² Navajo Nation: Cleaning Up Abandoned Uranium Mines (April 12, 2019). <https://www.epa.gov/navajo-nation-uranium-cleanup>

³ Community Involvement Plan (2016). https://www.epa.gov/sites/production/files/2017-11/documents/cip_northeast_churchrock_kerr-mcgee_quivira.pdf

⁴ *Id.*

⁵ Navajo Nation Mortality Report, 2006-2009. <http://www.nec.navajo-nsn.gov/Portals/0/Reports/Vital%20Statistics%20Report%202006%20to%202009%20FINAL.pdf>.

water source in the community. There are also people who have had to struggle to survive following the deaths of the main breadwinners in their families.

II. Health Impacts

Navajo Birth Cohort Study

In 2010, the first longitudinal study “Navajo Birth Cohort Study (NBCS) to understand the impacts of exposures to uranium and other heavy metals and metalloids on birth outcomes and early developmental delays among Navajo Children. The study has found elevated urine concentrations for uranium, manganese, cadmium, and lead among NBCS pregnant women compared to pregnant and non-pregnant women in National Health and Nutrition Examination Survey (NHANES).⁷ Navajo pregnant women with uranium concentrations exceeded the NHANES observations by 2.6 – 3 fold causing continued uranium and toxic metals in the environment as a primary concern.⁷ While some Navajo infants are born with uranium in the urine greater than is seen in 95% of adults in the US NHANES studies.⁷

Navajo Uranium Workers Program

The Navajo Uranium Workers Program (NUWP) is a Navajo Generally Funded Program under the Navajo Nation Department of Health within the Executive Branch of the Navajo Nation. NUWP provides information and education about Uranium-related United States government Radiation Exposure Compensation Act (RECA) benefits and processes the enrollment paperwork for eligible clients for Radiation Exposure Compensation Act (RECA) benefits. Currently, our NDOH-NUWP has processed the following client claims between 10/1/2019-12/15/20: 21 RECA Miners/Millers/Former Uranium workers, 46 RECA Downwinders victims, 17 USDOL Part B Clients former uranium workers, 18 USDOL Part E clients former uranium workers have been paid out a total of \$6,718,705.05. Our Shiprock office currently has assisted a total of 1,500 clients with their claims.

In determining the actions to take or recommend, NUWP draws on the foundation of U.S. RECA Act and the statues written and described therein. The current RECA Act will expire on July 10, 2022 along with all its components and Federal Trust Fund.

In review of the RECA Act, there are two deadlines that appear to be a discrepancy or in conflict with one another. The two issues were brought before the U.S. Department of Justice and noted the argument appears relevant. However, there are no conditions provided at the U.S. Federal level to accommodate any form of adjustment and therefore, intake processing institutions may have to set their own deadline to avoid future claim disqualifications.

Specifically, from the RECA Act, SEC.3. Trust Fund. (d) Termination, and SEC. 8. Limitations of claims. The Trust Fund will expire on July 10, 2022, the same day “A Claim” could still be filed. The question is if a claim is filed on July 10, 2022 and deemed eligible for compensation later, how would the claimant be compensated when the Trust Fund had expired. Furthermore, we recommend that an extension of RECA will be necessary, to allow many of our Navajo clients to still be allowed to process their claims, since the pandemic has caused a delay of

providing them services as the Executive orders and Public Health orders required the people to shelter in place and stay home.

III. Radiation Exposure Compensation Act (RECA)

The passage of RECA in 1990 (as amended in 2000) acknowledged the sacrifices by uranium workers including the Navajo people who worked in the uranium mines that pepper our lands, by providing compensation. Unfortunately, RECA does not adequately cover the breadth of individuals injured as a result of radiation exposure.

1) Eligibility: Current RECA law only covers pre-1971 uranium workers; Post-1971 are ineligible

Under current RECA laws, *only* uranium workers who worked up until 1971 are eligible to receive compensation. Perhaps this date was timed to end when the Federal government stopped being the sole purchaser of uranium, but it must be remembered that, on the Navajo Nation and elsewhere, the United States: (1) conducted the initial uranium exploration, by performing airborne surveys, mapping, and exploratory drilling and developing access roads to uranium sites; (2) increased the number of uranium mines and the supply of uranium ore by purchasing the ore at government-operated ore-buying stations, guaranteeing uranium ore prices, and offering various bonuses for production; (3) expanded the production of concentrated uranium ore by entering into procurement contracts for concentrated uranium, and so also prompted the development of uranium mills; and (4) conducted research into uranium ore sampling, testing, assaying, and processing methods, all of which led to these now-abandoned mines.⁶ Besides, post-1971 mine workers suffer the same ailments as those working before 1971, and they need to be treated the same. The RECA coverage period should be extended to 1990 to provide fair compensation and healthcare for the risks and sacrifices these workers and their families made for this country.

2) Downwinders are ineligible

Coverage under RECA also needs to be expanded to include all “downwinders” who have suffered from uranium exposure. These areas should include all counties in Arizona, Nevada, and Utah, as well as being expanded to cover Montezuma County in Colorado and San Juan and McKinley Counties in New Mexico. These counties are adjacent to the counties in the Four Corners area that are currently eligible. As of February 2018, the Navajo Nation has had 2,038 downwinder claimants approved by the RECP,⁷ and we support full and fair assistance to all downwinders.

We also support Navajo downwinders suffering the impacts from abandoned uranium mines. RECA does not address the impacts of the now elevated levels of radiation in Navajo homes and drinking water sources. For example, water sites ranging from the Colorado River to artesian wells have been contaminated due to downwind tests and uranium mining. Even low-level

⁶ “Summary and Chronology of the Domestic Uranium Program” by Neilsen B. O’Rear, Public Information Officer, Grand Junction Office, U.S. Atomic Energy Commission (“AEC”) (May 1966).

⁷ Native American Radiation Exposure Compensation System Claims to Date Summary of Claims (by Tribe). February 1, 2018. Department of Justice Civil Division. Page 3.

exposure can cause cancer,⁸ and sadly Navajo residents still experience radiation exposure on a daily basis.

3) Extend RECA's 2022 Deadline

The Radiation Exposure Compensation Program under RECA also must have its deadline extended to allow all workers and downwinders injured from uranium exposure to benefit from the program. The program currently is set to end in 2022, and this deadline must be extended to provide adequate time for claims to be filed. In addition, a deadline extension is essential for Navajo Nation because of the unique difficulties experienced by Native individuals in satisfying the documentation requirements of the program. For example, under the current program, uranium workers must verify their employment and provide proof of residency. Often, the company – if it still exists – is not able to verify employment or provide workers with the necessary details, including the location of their job. Proof of residency (which downwinders as well as uranium workers must provide) raises additional problems. First, it can take up to one year to process, during which time the claimant may have passed away. Further, there need to be additional documents that can be used for proof of residency, such as the following: grazing permits, Bureau of Indian Affairs natural resources records, Navajo Nation Office of Vital Records files, census records, state or county records, trading post records, and documentation from religious organizations, traditional practitioners, and other Navajo social and cultural organizations. The pandemic has also caused additional delays and urgency, as the COVID-19 disease ran rapid through our Navajo Communities, those who worked in mines and lived down wind were among the most vulnerable population and many have passed from COVID-19 before compensation.

4) Expand Eligibility to Include Additional Categories of Workers and Cancers

RECA coverage also should be expanded to include additional categories of uranium mine workers, such as core drillers and DOE Remediation workers. Currently, only underground and surface workers are included. RECA should also cover additional types of cancer, particularly prostate and uterine cancer, as well as lung disease and kidney failure, all of which are at a high incidence in the Navajo population.

5) Increase Compensation Cap to a \$150,000 Minimum

Finally, the caps on compensation should be increased. For one thing, health care costs continue to increase and there is a greater appreciation now for the true extent of injuries that these uranium miners and their families suffered. The original cap of \$100,000 per individual must be increased to at least \$200,000 to provide any fair measure of compensation, as recommended in previously proposed legislation.

IV. Conclusion

The disproportionate suffering of the Navajo people as a result of past uranium mining and processing on Navajo lands is well-documented and has been acknowledged by Congressional

⁸ GAO Report, Low-Dose Radiation: Interagency Collaboration on Planning Research Could Improve Information on Health Effects, September 2017. <https://www.gao.gov/assets/gao-17-546.pdf>

leaders of both parties⁹ The tragic legacy of uranium mining on the Navajo Nation continues to this day, perhaps to an extent that would not have occurred if it weren't taking place in a rural, American Indian community. However, now Congress has the opportunity to rectify at least some portion of this situation through amendments to RECA. In doing so, moreover, Congress will be fulfilling the goal articulated in Section 1-101 of Executive Order 12898 (Feb. 11, 1994)¹⁰ "by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of [federal] programs, policies, and activities on minority populations and low-income populations in the United States."

In 2005, the Navajo Nation adopted legislation stating "No person shall engage in uranium mining and uranium processing on any sites within Navajo Indian Country." In that legislation, the Navajo Nation Council found a "continuing need for full monetary compensation of former Navajo uranium workers and their family members for their radiation and mining-induced diseases." The Navajo Nation also has adopted legislation conditionally prohibiting transportation of "any equipment, vehicles, persons or materials for the purpose of exploring for or mining, producing, processing, or milling any [uranium or radioactive products] on or under the surface of or adjacent to the Navajo Nation lands, or where such Activities may affect surface or ground waters of the Navajo Nation."

Congress should make sure that all individuals who worked around the mines and who are downwinders are covered fairly in the ways that I've outlined. Because former uranium workers and downwinders' health continues to deteriorate, there is very limited time for Congress to act, this is the right thing to do, and now is the time to act.

I want to thank Secretary of the Interior Debra A. Haaland. Congratulations. We look forward to working with you. We thank former Senator Tom Udall, Senator Ben Ray Lujan, Senator Heinrich, Sen. Crapo, Sen. Booker, and the late Honorable Sen. John McCain for all of their efforts and supporting bills in years prior in attempts to address these urgent needs in Indian Country. We look forward to working with the new 117th Congress on legislation and policies that will protect the public health and environment of our tribal communities.

Thank you.

⁹ See, e.g., Health and Environmental Impacts of Uranium Contamination in the Navajo Nation: Hearing Before the House Comm. on Oversight and Legislative Reform, 110th Cong. (Oct. 23, 2007) (Opening Statements of Rep. Waxman, Chairman, and Rep. Davis, Member, H. Comm. on Oversight & Legis. Reform).

¹⁰ 59 FR 7629; February 16, 1994