



THE NAVAJO NATION

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**TESTIMONY OF THE VICE PRESIDENT OF THE NAVAJO NATION JONATHAN NEZ
FOR THE SENATE COMMITTEE ON JUDICIARY HEARING ON JUNE 27, 2018 TITLED,
“EXAMINING THE ELIGIBILITY REQUIREMENTS FOR THE RADIATION EXPOSURE
COMPENSATION PROGRAM TO ENSURE ALL DOWNWINDERS RECEIVE
COVERAGE”**

Yá’á’tééh, thank you, Senator Crapo and Senator Booker, for inviting me to testify before the Senate Committee on Judiciary. Senator Crapo, we appreciate your efforts to schedule a hearing on the Radiation Exposure Compensation Program (RECP). Thank you, Senator Udall, for both you and your father’s long history of leadership on this critical issue. I am here today to deliver the message that the Navajo Nation downwinders and uranium workers stand with the many others who are here today who deserve fair compensation and healthcare for the risks and sacrifices they and their families made for this country. For generations, the Navajo people have proudly served this country. Our men and women who worked in the uranium industry from the 1940s to the 1980s, several of whom are here today, are excellent examples of our heroes who deserve recognition. We are fortunate to be accompanied by Navajo uranium workers such as Leslie Begay, a former Marine who was unable to fly due to health reasons, so he drove across the country to be here. We are joined by workers such as Larry King who is a post-1971 uranium worker who was working on July 16, 1979, when he witnessed the largest radioactive material spill in U.S. history at the Churchrock Mine in the Navajo Nation’s backyard. I would also like to acknowledge Marie Kirley who has been fighting for justice for uranium workers like herself alongside her fellow mine worker husband – sadly he recently passed away and is represented by their daughter. Phil Harrison, Tommy Reed, and Harry Desiderio are all former uranium mine workers and strong advocates for fair compensation for all uranium workers’ sacrifices. With limited options for employment, these and many other skilled Navajo workers went to work long hours for many years in the mining sites. Many of our uranium workers were never told of

the harms of radiation exposure, and there are many reports of some 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 walked away from them, just as they walked away from the many abandoned mines across the Navajo Nation. Now our people are suffering from many ailments and diseases brought on by radiation exposure. Now is not the time for hesitation, now is the time to act and bring them justice.

Our Navajo uranium advocates are here and available to tell their first-hand stories about the conditions they worked in, the sacrifices they made and the improvements that can be made to the RECP program. The Navajo Nation supports S. 197 introduced by Senator Crapo and H.R. 2049 proposed by Congressman Lujan. We look forward to working with Congress to get these bills enacted into law.

Downwinders

The United States conducted above-ground atomic weapons tests from 1945 to 1962. Downwinders from the Nevada Test Site are eligible for the RECP.¹ As of February 2018, the Navajo Nation has had 2,038 downwinder claimants approved by the RECP.² We support full and fair assistance for all downwinders.

Uranium Miners

The Navajo Nation, which expands across Arizona, New Mexico, and Utah, was the site for many uranium mines from 1944 to 1986³ that were places of employment for many people living on the Navajo Nation. As of February 2018, the Navajo Nation has had 1,430 uranium miners, millers, and

¹ Radiation Exposure Compensation Act of 1990 Pub. L. No. 101-426, 104 Stat. 920 (Oct. 15, 1990). RECA recognizes that the amount of money paid does not completely compensate for the burdens placed upon such individuals. The RECA trust fund is set to expire in 2022.

² Native American Radiation Exposure Compensation System Claims to Date Summary of Claims (by Tribe). February 1, 2018. Department of Justice Civil Division. Page 3.

³ Environmental Protection Agency. Website accessed on June 23, 2018: <https://www.epa.gov/navajo-nation-uranium-cleanup>.

ore transporter claimants approved by the RECP.⁴ According to the EPA, there are currently over 500 abandoned uranium mines on the Navajo Nation.⁵ The federal government has assisted in obtaining funds to clean up 219 of those mines.⁶ However, even with this assistance, the majority of these abandoned mines, more than 300, will remain as open toxic sites in our communities where our animals eat and our children play.

Types of Radiation Exposure

While clean-up is an ongoing effort, it does not address the impacts of the exposure to uranium workers, downwinders, their families, and other residents of the Navajo Nation to the now elevated levels of radiation in homes and drinking water sources. For example, water sites from the Colorado River to artesian wells have been contaminated due to downwind tests and uranium mining. Even low-level exposure can cause cancer,⁷ and Navajo residents still experience radiation exposure on a daily basis. The RECP does not provide federal assistance to the dependents of parents that were exposed to uranium or for the health issues that may occur because of parent exposure, such as permanently altered genetics. Since Congress stated in its Sense of Congress in H.R. 2810 that the U.S. Government should appropriately compensate and recognize the employees, contractors, and other individuals, we now urge Congress to take the next step to protect downwinders, uranium workers and those families who unknowingly live near abandoned uranium mines.

We appreciate Congress' efforts to provide fair support to those exposed to radiation as part of the original RECA law and the subsequent RECA Amendments. After speaking with our downwinders and uranium workers, it is clear that there is still more to be done to help our people and that there is more that RECP can do to assist in bringing them justice.

⁴ Native American Radiation Exposure Compensation System Claims to Date Summary of Claims (by Tribe). February 1, 2018. Department of Justice Civil Division. Page 3.

⁵ EPA Website accessed on June 23, 2018: <https://www.epa.gov/navajo-nation-uranium-cleanup/cleaning-abandoned-uranium-mines>.

⁶ Ibid.

⁷ Cited EPA by the Government Accountability Office Website accessed on June 22, 2018: <https://www.gao.gov/assets/690/687366.pdf>.

Issues with the current Radiation Exposure Compensation Program

The following items need to be addressed by Congress:

Post-1971 Uranium Workers. Currently, post-1971 uranium workers are allowed to file claims, but there is no compensation. It is critical to extend coverage beyond 1971 because uranium mining did not end on the Navajo Nation until 1986. People involved in uranium mining during the entire active mining period need to be eligible for compensation under the RECP.

Types of Workers. The current program only covers underground and surface workers but fails to cover ground workers and core drillers. The program needs to be expanded to include ground workers and core drillers.

Types of Cancer. The current program covers 20 different types of cancers but does not include prostate cancer, all lung sicknesses, kidney failure, renal failure, or uterine cancer. The Navajo Nation appreciates that S. 197 extends eligible diseases and illness to renal cancer or any other chronic renal disease, but it does not extend to cancer of reproductive systems. The Navajo Nation requests that S. 197 include uterine and prostate cancer for all uranium workers. In addition, the Energy Employees Occupational Illness Compensation Program, which compensates uranium miller, miners and ore transporters⁸, needs to include beryllium disease as eligible for compensation.

Lack of Coverage For Key Uranium Industry Areas. The current program does not cover all the areas that were affected by the uranium industry. The RECP does not cover downwinders in New Mexico. The Navajo Nation supports the expansion of eligible downwinders for compensation under RECP to the counties of Montezuma County in Colorado and San Juan and McKinley Counties in New Mexico,

⁸ “The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 mandated that uranium millers, miners, and ore transporters (those who are the highest cost claimants entitled to \$100,000) be compensated through the Energy Employees Occupational Illness Compensation Program administered by the Department of Labor, although RECP would continue to adjudicate their claims.” Access website on June 22, 2018, <https://www.gao.gov/assets/100/95160.pdf>.

which are adjacent to the counties in the Four Corners area that are currently eligible. Including these counties in the Nevada Test Site, fallout area could help reduce the one year waiting period for proof of residency because many claimants received mail in Shiprock, New Mexico. The Navajo Nation also supports examining downwinders of abandoned uranium mines.

Proof of Residency. Under the current program, uranium workers must verify their employment and provide proof of residency. Often, the company is not able to verify employment or provide workers with details including the location of their job. Downwinders must also provide proof of residency, which can take up to one year to process. It is essential to reduce the waiting time for proof of residency to be established so that claimants do not pass away before they are compensated.

Further, one of the problems with certain uranium workers and downwinders is that they have difficulty in locating documentation to provide proof of residence. There need to be additional documents that can be used for proof of residency and the Navajo Nation requests making the following documents eligible: 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 or places of business records. Furthermore, we also understand that non-Natives can provide proof of residency through records from Veterans of Foreign Wars (VFW) organizations or their rotary clubs. Similarly, Navajos should be allowed to present evidence through documentation from religious organizations, traditional practitioners, and other Navajo social and cultural organizations.

Affidavits. Currently, if a worker is not able to provide the correct employment verification information or proof of residency, then an affidavit must be obtained to be used to verify employment. This requirement often transpires into a former uranium worker using their resources to locate a former co-worker with the hope that this co-worker has the goodwill to provide an affidavit and any other information to the Department of Justice (DOJ).

The DOJ will check the affidavit against the Social Security Administration (SSA) system or Internal Revenue Service (IRS) records. However, the information that is provided on the affidavit is not

verifiable in the SSA system or the IRS system because the SSA and IRS systems do not offer the same level of detail that is required by affidavit. For example, an affidavit can require the correct name for a prior supervisor employed by a uranium company, however; that cannot be verified with the SSA or the IRS.

The DOJ requirements for claimants are not easily obtainable. Claimants and their advocates, including the Navajo Nation Department of Health have an excruciatingly difficult time locating vital records. It is fundamental that uranium companies put forth their best resources to provide the site locations of uranium workers and level of radiation exposure of individuals that worked on a uranium site and to assist in residency verification while Navajo uranium workers wait for the law to change. One solution may be to create a public-private partnership between companies and the Navajo Department of Health to create a database to streamline all employment information for the RECP claimants.

In regards to verification of residency for downwinders, we urge Congress to allow local community leaders such as Navajo Nation Chapter Officials to sign affidavits verifying residency in their respective communities.

Appeals Process. The appeals process is cumbersome, and often, the appeals process takes so long that claimants pass away before the appeals process is completed. When a claimant wins the appeal, the appeals process results in providing no more level of detail in the information than what was originally provided by the claimant. Thus, the whole appeals process ends up wasting time while claimant's health deteriorates.

Extension of Fund. It is apparent many improvements need to be made to the RECP to ensure that all who deserve assistance receive their benefits. Given the looming trust fund expiration in 2022, the fund should be extended as S. 197 and H.R. 049 require. This will allow for due process and help ensure that those who deserve assistance for their injuries and illnesses receive fair treatment.

Conclusion

The Navajo people have been waiting for justice for far too long. The Chruchock Spill, the Shiprock Spill, and the 500-plus abandoned uranium mines all have not been sufficiently addressed as we believe they would have been if they were not located in the rural Navajo Nation. However, now Congress has the opportunity to bring some justice to rural downwinders and rural post-71 workers through RECA. The law and program to administer the law can and should be improved so that all individuals who worked around the mines and who are downwinders are covered fairly. Because former uranium workers and downwinders' health continues to deteriorate, there is no time for Congress to hesitate, this is the right thing to do, and now is the time to act. Core drilling and transport workers must be covered, all uranium workers with renal cancer, prostate cancer, uterine cancer, lung sicknesses, beryllium disease, and chronic kidney disorders need to be eligible for assistance with medical expenses, all downwinders need to be covered, and the fund must be extended beyond 2022. As Navajo Nation Vice President I urge you to act now, our people here deserve the fair help outlined in S. 197. I look forward to working with you to advance the bill to bring justice to all individuals and families who have been harmed and continue to be damaged by radiation exposure. Thank you.