

# **No Start Up Until Clean Up: Human Rights and the Impacts of Uranium Mining and Processing in the United States**

Submission to the United Nations Universal Periodic Review of

United States of America

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SUBMITTED BY: Multicultural Alliance for a Safe Environment (MASE) with the assistance of the New Mexico Environmental Law Center. MASE consists of five core groups: Bluewater Valley Downstream Alliance, Eastern Navajo Diné Against Uranium Mining, Laguna-Acoma Coalition for a Safe Environment, Post '71 Uranium Workers Committee, and the Red Water Pond Road Community Association.

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MASE is rooted in the experiences of uranium-impacted communities of the southwestern U.S. We are communities working to restore and protect the natural and cultural environment through respectfully promoting intercultural engagement among communities and institutions for the benefit of all life and future generations. MASE does not have ECOSOC status. MASE was established in 2008.

## **I. INTRODUCTION**

1. Uranium mining and processing has left an indelible stain on the people and environment of the western United States, and communities continue to grapple with this toxic legacy.

2. In particular, the communities in the northwestern part of the state of New Mexico continue to suffer disproportionate adverse environmental and health effects from unremediated uranium mining and processing waste.

3. These wastes not only pose radioactive threats to the predominantly minority communities in northwestern New Mexico, but they are chemically toxic, which further increases the health burdens on these communities. Nevertheless, the United States government and state government continue to permit new uranium mining operations in and near these communities.

4. Uranium mining and processing waste has also contaminated untold amounts of water, perhaps the most important resource in the desert southwestern United States. Proposed uranium mines promise to contaminate even more water sources.

## **II. ISSUE SUMMARY**

5. In New Mexico, and throughout the western United States, the public health and environmental impacts from uranium mining and processing have been devastating. From the 1950s until the 1990s, uranium was mined and processed in northwestern New Mexico for atomic weapons and later, nuclear power. While millions of pounds of uranium were extracted, millions of tons of radioactive and toxic waste were left behind. Little has been done to clean up the waste. As a result, in communities in northwestern New Mexico, vast areas of land and groundwater have been contaminated with radiation and heavy metals. The resultant health impacts have already affected three generations and promise to affect many more.

6. While vast areas of contamination from historic uranium mining and milling remain unremediated, the United States government and state governments continue to permit new uranium mines. The impacts from both historic waste and new mining fall primarily on minority communities.

7. Uranium is not only radioactive, but is also a heavy metal. Uranium mining and processing waste's radioactive impacts – primarily cancer – are well documented. Emerging

research,<sup>1</sup> however, is revealing that people living in close proximity to uranium mine and processing waste suffer a broad range of adverse health effects, including hypertension, heart disease, kidney disease, and autoimmune dysfunction, all associated with the waste's toxic properties.

8. The impacts from uranium mining and processing impact MASE members' human rights in two significant ways.

9. First, uranium mine and mill waste clean-up is conducted relatively quickly in predominantly non-minority communities, but waste continues to fester in minority communities causing significant health and environmental impacts.<sup>2,3, 4</sup>

10. For example, in the predominantly minority<sup>5</sup> community of Milan, New Mexico, federal and state administrative agencies have been overseeing remediation of the Homestake uranium mill site for over 30 years. Complete remediation remains decades away, if it is even possible. Nevertheless, community demands that the mill waste piles - which are the source of elevated levels of radiation in the community's air and water - be moved, have been repeatedly rejected by federal and state agencies.

11. In contrast, uranium mill waste piles in the predominantly non-minority community of Durango<sup>6</sup>, Colorado, were moved to a site away from the town over a period of

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<sup>1</sup>All the emerging public health research has been done by uranium impacted communities along with their research partners. Neither federal nor state governments have initiated any of the studies that indicate the wide ranging adverse health effects associated with uranium mining and processing waste, although some of the studies have been supported by federal funds.

<sup>2</sup>United States Government Accountability Office, Report to Congressional Requestors, *Uranium Contamination: Overall Scope, Time Frame, and Cost Information is Needed for Contamination Cleanup on the Navajo Reservation* (GAO 14-323) (May 2014) at pp. 54, 62, 70; <http://www.gao.gov/assets/670/662964.pdf>.

<sup>3</sup> U.S. Department of Energy, Office of Legacy Management, Durango, Colorado Processing and Disposal Sites Fact Sheet, [www.lm.doe.gov/Durango/Fact\\_Sheet\\_Durango.pdf](http://www.lm.doe.gov/Durango/Fact_Sheet_Durango.pdf).

<sup>4</sup> <http://www.wise-uranium.org/udusahs.html>.

<sup>5</sup> According to 2012 U.S. census estimates, Milan is 69.3% Latino. [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05).

<sup>6</sup> According to 2012 U.S. Census estimates, Durango is 88.1% non-Hispanic white. [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05).

four years.<sup>7</sup> Similarly, in predominantly non-minority Moab, Utah,<sup>8</sup> mill wastes are being moved to a permanent location 30 miles away from the community.<sup>9</sup>

12. The unequal speed at which uranium mining and processing waste is remediated in minority compared to non-minority communities, results in minority communities suffering significantly higher risks of death and disease attributable to exposure to uranium mining and processing wastes. MASE members live near the Homestake site as well as other unremediated mines and mills throughout New Mexico and many suffer illnesses because of their proximity to the radioactive waste.

13. Moreover, the unequal speed at which uranium mine and mill waste is remediated in minority communities aggravates widespread and ongoing water contamination.<sup>10</sup> In a region of the United States where potable water is already scarce, every potential water source is important. Further, projections indicate that water in the southwestern United States, including New Mexico, will become even scarcer in the future due to global climate disruption.<sup>11</sup>

14. Second, even in light of the extensive radioactive and toxic contamination in communities throughout the western U.S., the U.S. government and state governments continue to issue licenses and permits for new uranium mining and processing operations in impacted communities.

15. In New Mexico, the U.S. Nuclear Regulatory Commission licensed a new solution uranium mine, in spite of the fact the community where the mine is to be located is already heavily contaminated by waste from past uranium mining.<sup>12</sup> MASE members and their families also live in these communities threatened by planned uranium mining and processing.

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<sup>7</sup> [www.lm.doe.gov/Durango/Fact\\_Sheet\\_Durango.pdf](http://www.lm.doe.gov/Durango/Fact_Sheet_Durango.pdf).

<sup>8</sup> Moab's population is 90.33% non-Hispanic White. <http://censusviewer.com/city/UT/Moab>.

<sup>9</sup> <http://www.moabtailings.org/>.

<sup>10</sup> [http://www.emnrd.state.nm.us/mmd/marp/Documents/MK023ER\\_20081212\\_Marquez\\_NNELC-Acoma-Comments-AttachmentE-UExposureSummary.pdf](http://www.emnrd.state.nm.us/mmd/marp/Documents/MK023ER_20081212_Marquez_NNELC-Acoma-Comments-AttachmentE-UExposureSummary.pdf).

<sup>11</sup> <http://www.epa.gov/climatechange/impacts-adaptation/southwest.html#impactswater>.

<sup>12</sup> <http://www.wise-uranium.org/upusanm.html#CHURCHR>.

16. Further, U.S. administrative agencies responsible for managing federal land, much of which in northwestern New Mexico contains uranium deposits, interpret the General Mining Act of 1872, 30 U.S.C. §§ 22 *et. seq.*, as a blanket prohibition on interfering with mining.<sup>13</sup>

### III. LEGAL FRAMEWORK

17. Uranium mining and processing and its remediation are regulated pursuant to the following federal laws: Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et. seq.*; General Mining Act of 1872, 30 U.S.C. §§ 22-42; Safe Drinking Water Act, 42 U.S.C. §§ 300f *et. seq.*; Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et. seq.*; Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*; Clean Water Act, 33 U.S.C. §§ 1251 *et. seq.*; and Uranium Mill Tailings Radiation Control Act, 42 U.S.C. §§ 7901 *et. seq.*

18. States may regulate some or all aspects of uranium mining and processing and its remediation. Laws governing uranium mining and processing and its remediation vary from state to state. Local governments - for example, municipalities and counties - may regulate some aspects of uranium mining and processing pursuant to their police powers.

19. There were no recommendations specific to uranium mining and processing or radioactive waste in the United States' last review. Nor were there any recommendations with respect to the unequal burden of radioactive waste in minority communities or access to water in those communities. Paragraph 92.215 of the Working Group report (recommendation 215 [Cuba]), recommends putting an end to the actions that prohibit indigenous peoples from realizing the right to a healthy environment.

20. The United States did not accept recommendation 215.

### IV. U.S. COMPLIANCE WITH ITS HUMAN RIGHTS OBLIGATIONS

#### A. Remediation of Historic Waste

21. The United States' and state governments' continuing failure to commit adequate financial and other resources to remediating radioactive waste from historic uranium mining and processing represents an ongoing violation of community members' and MASE members' rights to life, health and access to clean water as guaranteed by the Universal Declaration of Human

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<sup>13</sup> See, e.g., United States Department of Agriculture, *Draft Environmental Impact Statement for Roca Honda Mine* at p. 356 (Feb. 2013) (noting that General Mining Law of 1872 eclipses the Religious Freedom Restoration Act ("RFRA") and that RFRA only applies to Federal, not state, actions, citing *City of Boerne v. Flores*, 521 U.S. 507 (1997)). [http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880\\_FSPLT2\\_383483.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880_FSPLT2_383483.pdf).

Rights,<sup>14</sup> the International Covenant on Civil and Political Rights,<sup>15</sup> the American Declaration of the Rights and Duties of Man,<sup>16</sup> and the General Assembly's Resolution No. 64/292 recognizing the right to water and sanitation.<sup>17</sup>

22. The United States' and state governments' failure to remediate radioactive waste from uranium mining and processing in minority communities, while achieving remediation in non-minority communities also represents the United States' failure to realize its obligations to provide equal treatment under domestic laws pursuant to the International Covenant on Civil and Political Rights<sup>18</sup> and the International Convention on the Elimination on All Forms of Racial Discrimination.<sup>19</sup>

23. Moreover, the Special Rapporteur on the human right to water and sanitation (then Independent Expert) submitted a report on disparate access to clean water in the United States to the UN Human Rights Council in September 2011.<sup>20</sup> In paragraphs 30-40 of her report, the Special Rapporteur expressed her concern about the pattern of discriminatory impacts on low-income and minority populations in the United States, regarding those communities' access to safe drinking water.

24. In paragraphs 61-69, the Special Rapporteur expressed concern about the disproportionate burden that lack of access to clean drinking water has on indigenous populations in the United States. Paragraph 69 specifically expresses concern about the impacts of mining on indigenous populations' access to clean water.

25. In paragraph 92(b) the Special Rapporteur recommended that the United States Adopt a comprehensive federal law on water and sanitation guaranteeing the rights to safe water

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<sup>14</sup> Article 3 (Right to life)

<sup>15</sup> Article 6(1) (Right to life)

<sup>16</sup> Article 1 (Right to life), Article 11 (Right to health)

<sup>17</sup> A/Res/64/292 (Aug. 3, 2010)

<sup>18</sup> Article 26 (Equal rights under the law)

<sup>19</sup> Article 1 (Definition of discrimination to include unequal treatment under the law); Article 5(e)(iv) (Right to health)

<sup>20</sup> UN Doc. A/HRC/18/33, Report of the Special Rapporteur on the human right to Safe Drinking Water and Sanitation, U.S. Mission Report, 2011.

and sanitation without discrimination and clearly delineating the responsibilities of public officials at the federal, state and local levels.

26. In paragraph 92(f), the Special Rapporteur recommended that the United States strengthen the regulatory system on water and sanitation to prevent upstream pollution (agricultural, industrial, chemical, including pharmaceutical, stormwater run-offs, etc.) as well as ensure adequate regulation of the bottled water industry.

27. Although the United States has taken modest steps to identify and assess some historic uranium mining and processing waste<sup>21</sup> as well as conduct preliminary health assessments,<sup>22</sup> those efforts have failed to result in actual remediation of radioactive waste in impacted communities.<sup>23</sup>

28. Consequently, MASE members in impacted communities continue to suffer disease associated with exposure to uranium mining and processing waste, a situation at which the Committee on Elimination of Racial Discrimination recently expressed concern.<sup>24</sup>

## **B. Permitting of New Uranium Mining and Processing**

29. Despite the United State's failure to adequately address the problem of radioactive waste from historic uranium mining and processing, permitting of new uranium mining and processing projects continues.

30. As noted in paragraph 15, above, the United State Nuclear Regulatory Commission ("NRC") is continuing the licensing process for a solution uranium mining project in the Navajo village of Churchrock, in New Mexico, despite the fact the NRC acknowledges that groundwater at the mine site will be irreparably contaminated. Several MASE members live in Churchrock and would be directly impacted by the proposed uranium mine, in addition to the impacts they are already suffering due to unremediated historic mining and processing waste.

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<sup>21</sup> U.S. EPA, *Federal Actions to Address Impacts of Uranium Contamination in the Navajo Nation: Five Year Plan Summary Report* (Jan. 2013) <http://www.epa.gov/region9/superfund/navajo-nation/pdf/NavajoUraniumReport2013.pdf>.

<sup>22</sup> U.S. EPA, *Assessment of Health and Environmental Impacts of Uranium Mining and Milling: 5 Year Plan Grants Mining District, New Mexico* (March 2014), [http://www.epa.gov/earth1r6/6sf/newmexico/grants/nm\\_grants\\_5yr\\_plan-3-2014.pdf](http://www.epa.gov/earth1r6/6sf/newmexico/grants/nm_grants_5yr_plan-3-2014.pdf).

<sup>23</sup> United States Government Accountability Office, Report to Congressional Requestors, *Uranium Contamination: Overall Scope, Time Frame, and Cost Information is Needed for Contamination Cleanup on the Navajo Reservation* (GAO 14-323) (May 2014) at pp. 54, 62, 70; <http://www.gao.gov/assets/670/662964.pdf>.

<sup>24</sup> *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, CERD/C/USA/CO/7-9 at ¶ 10(c) (Aug. 29, 2014)

31. Likewise, the United State Forest Service has taken the position that the General Mining Law of 1872 prohibits it from withholding the permit for a proposed uranium mine on Mt. Taylor, near the predominantly minority villages of San Mateo and Milan, New Mexico, even though it acknowledges the proposed mine will significantly impact water resources and irreversibly damage the Mt. Taylor Traditional Cultural Property.<sup>25</sup>

32. Finally, the state of New Mexico continues to permit uranium exploration and mining projects throughout the communities impacted by radioactive waste from past uranium mining and processing.<sup>26</sup>

## V. SUGGESTED RECOMMENDATIONS

33. The United States, including state and local governments, should cease permitting new uranium mining and processing operations until waste from historic uranium mining and processing has been remediated to standards consistent with the human rights to life and health.

34. The United States should require and fund, consistent with the human rights to life, health, and access to clean water, comprehensive studies analyzing and evaluating the public health and environmental impacts from historic uranium mining and processing in communities impacted by uranium mining and processing, prior to permitting or licensing any new uranium mines or mills.

35. The United States should endeavor to repeal the General Mining Law of 1872, 30 U.S.C. 22 *et.seq.*, or amend it to clarify that it is subject to the provisions of all other domestic laws protecting public health, cultural and religious rights, and the environment.

36. The United States should ensure, consistent with its obligations under international human rights instruments, that state and local governments are implementing and enforcing domestic environmental law consistent with human rights standards, in particular the rights to life, health and access to clean water.

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<sup>25</sup> United States Department of Agriculture, *Draft Environmental Impact Statement for Roca Honda Mine* at p. 356 (Feb. 2013); [http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880\\_FSPLT2\\_383483.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/31880_FSPLT2_383483.pdf).

<sup>26</sup> New Mexico Mining and Minerals Division, *Annual Report to the New Mexico Mining Commission 2011-2012* at 8-9 (2012), [http://www.emnrd.state.nm.us/MMD/MARP/documents/2011-2012AnnualReportPresentation\\_FINAL.pdf](http://www.emnrd.state.nm.us/MMD/MARP/documents/2011-2012AnnualReportPresentation_FINAL.pdf).