

STATEMENT BEFORE THE UN SPECIAL RAPPORTEUR, ALBUQUERQUE, NEW MEXICO,
FEBRUARY 25, 2017

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Acoma and Other Indigenous Peoples

This statement is being presented by Indigenous World Association (IWA) and the Laguna Acoma Coalition for a Safe Environment. I am Petuuche Gilbert, President of IWA. I am from Acoma Pueblo. Acoma is only one of 19 other indigenous Pueblos in New Mexico. Other indigenous nations in the state are the Navajo Nation, the Jicarilla and Mescalero Apache Nations.

New Mexico is a state with many indigenous peoples who reside on their aboriginal land with much of their former lands now public land under state and federal ownership. These lands contain a wealth of energy resources of uranium, coal, oil and gas. Development of these resources has benefitted tribes but has also caused environmental degradation. We will concentrate on the negative impacts of uranium and milling.

Previous UN Presentations

Indigenous World Association presented three shadow reports to the United Nations regarding uranium mining impacts affecting a sacred place known as Mt. Taylor in New Mexico. The first was to the International Covenant on Civil and Political Rights (ICCPR) in 2014, the second was under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD,) in 2014, and the third to the Universal Periodic Review (UPR) in 2015. These presentations have had no impact on the status of proposed uranium mining in the region and plans are still under way for new mining. All of these reports described environmental impacts from the presence of 97 abandoned uranium mines and 5 uranium mills left over after 50 years of uranium processing in the Grants Mining District.¹ These have caused severe environmental contamination of land, water, and air which have all affected the health of all people in the region. Impacts upon sacred sites and effects upon indigenous people and their land had already been presented by indigenous people in previous ICCPR and CERD reports. The ICCPR Committee in its concluding observations of April 2014 had expressed concerns about impacts to sacred areas from extractive industries and it recommended that the United States should prevent desecration and degradation of sacred areas and work to obtain free, prior and informed consent for proposed projects. Indigenous World Association asserted that Article 5 regarding property, health and culture was being violated by the United

¹ EPA Office of Solid Waste and Emergency Response, Assistant Administrator Mathy Stanislaus during a visit to Jackpile Mine, Grants Mining District, New Mexico, in October, 2011. Assessment of Health and Environmental Impacts of Uranium Mining and Milling, Five-year Plan—Grants Mining District, New Mexico (EPA: December 2011).

States. It reported that in 2008 the CERD had told the United States where activities carried out on indigenous sacred and cultural areas not to be negatively impacted. Then again in 2014 CERD in its concluding observations reminded the U.S. to remediate radioactive waste sites and to respect sacred sites of indigenous peoples during extractive mining. Environmental problems continue. Compounding this situation new mining is being proposed in the region by Roca Honda Resources, LLC (hereafter RHR Uranium Mine). Essentially, and in summary of the three reports, IWA stated that the United States through its Department of Agriculture and Forest Service are permitting the proposed Roca Honda Mine to proceed with mining. The United States by law has to permit mining based on the General Mining Act of 1872. Still, yet, indigenous sacred sites are also supposed to be protected under U.S. laws and policies. Those most directly relevant to protection of sacred areas are: the American Indian Religious Freedom Act, 42 U.S.C. 1996; the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 *et seq.*; the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bbl; and the National Historic Preservation Act (NHPA), 16 U.S.C. 470 *et seq.* Furthermore, Executive Order 13007, which directs federal agencies to “accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners,” is still in effect as well as Executive Order 13175 intended for federal government to consult with tribal governments. In summary, Indigenous World Association asserted this is a discriminatory action by applying the US’ obligation to fulfill the intent of the General Mining Act to allow mining.

Persisting Problem With New Proposed Uranium Mining and Old Mines

New and old uranium mining and milling reclamation problems persist within Indian Country like in the Grants Mining District. Two new mines are being planned around Mt. Taylor on US Forest Service land. One is at La Jara Mesa and the other is Roca Honda Mine. An old mine called Rio Grande Resources Mt. Taylor mine is being planned to come off standby status and moved for renew mining. These three mines are on or near the Mt. Taylor Traditional Cultural Property land. The Roca Honda Mine has had an Environmental Impact Statement done in 2013.² Its purpose was to study the effect of the proposed mine on the natural and human environment. Subsequently a Supplemental EIS remains in progress. A record of decision from the Forest Supervisor is being awaited. Indigenous peoples have already expressed concern over old legacy mines and mills. In this area of the Grants Mining District there are numerous legacy mines which probably have not all been recorded by state and federal agencies. There are over 500 abandoned uranium mines on the Navajo Indian Reservation. All of these produced radioactive elements into land, water and air. The federal government and state of New Mexico have attempted to clean up abandoned uranium mines but many are left

²The U.S. Forest Service has acknowledged the potential for “irreparable harm to surrounding tribes and their traditional cultural practices,” “direct physical impacts to four historic properties,” and cumulative effects that would be “adverse and significant, exacerbating loss of integrity of Mt. Taylor TCP.” The DEIS can be found at http://www.fs.fed.us/nepa/nepa_project_exp.php?project=18431.

unattended and continue to contaminate the environment. Groundwater is of utmost concern to people. A recent study by the Department of Energy SLAC National Accelerator Laboratory has been done to determine the efficacy of reclaiming old underground uranium mines. It has been found that groundwater remains affected by uranium elements.³ There have been no serious health studies performed by the state or federal government even as people have complained of high incidences of cancer. A non-governmental study states of a place partially located in the Grants Mining District that "McKinley County residents have higher rates of stomach, kidney, renal and pelvis cancer than the overall population of both New Mexico and the U.S".⁴ Especially of concern are old uranium mill sites. Some of which have been reclaimed by the federal government. The Anaconda mill site has been reclaimed but it has been found that groundwater is being affected by a moving radioactive plume. The Homestake mill site is undergoing clean now for over 35 years with little progress and groundwater is being contaminated. The groundwater being contaminated with radioactive elements is the San Andres Glorietta Aquifer which serves the nearby towns of Milan and Grants and impacts the water for the Acoma and Laguna Pueblos. Furthermore the uranium mill tailings emit radon gas which transmits radioactive elements into the air.

Impact Upon Sacred Places

Mt. Taylor is a mountainous region in northwest New Mexico at an elevation of 11,300 feet. It is the main source of forest land for rain and snow moisture and it has sustained the lives of indigenous peoples for centuries. The mountain is sacred to the nearby indigenous peoples of Acoma, Laguna, and Navajo, and to all other indigenous peoples in the state of New Mexico and others in adjacent states. The indigenous people have special names for this sacred place. In Acoma it is Kaawaashtimaa (snow covered peak). In 2008 the Cibola National Forest made a determination that Mt. Taylor was eligible for listing on the National Register of Historic Places, pursuant to the National Historic Preservation Act. In other words it was eligible for designation as a Traditional Cultural Property (TCP) because of its historic significance and for its importance to future generations. In 2009 with the insistence of Acoma Pueblo, Laguna Pueblo, Zuni Pueblo, the Navajo Nation and the Hopi tribe Mt. Taylor was designated as a TCP by the state of New Mexico under state law. Several mining companies challenged its designation in state court and the New Mexico Supreme Court upheld its establishment. It remains a TCP even as new uranium mining is being planned

³ <http://www.newswise.com/articles/slac-study-helps-explain-why-uranium-persists-in-groundwater-at-former-mining-sites>

⁴ Looking Within: A Health Impact Assessment of Uranium Mining by Jordon Johnson, McKinley Community PLACE MATTERS, et al (April 2015).

within it. Two resolutions are being attached here indicating its importance to Acoma Pueblo and to the other indigenous pueblos in New Mexico.⁵

Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is intended to protect indigenous peoples' human rights and their lands, territories, and resources. Specifically here are some important articles regarding lands, territories and resources. Articles 11-13 address indigenous rights on traditional and culture maintenance. Article 19 emphasizes the need to obtain free, prior and informed consent to legislation or administrative measures affecting indigenous people and their land. Article 26 asserts indigenous peoples have rights to lands, territories and resources of land which they traditionally, occupied or used. Of particular importance to land and environment is Article 29. It asserts indigenous peoples have the right to the conservation and protection of their lands and territories and urges states to obtain free, prior and informed consent from indigenous peoples from lands intended for disposal of hazardous waste. Especially of importance are the articles on free, prior and informed consent. The challenge for the federal government is obtaining consent from indigenous people for public domain lands but still the aboriginal land of affected indigenous tribes. These lands contain sacred places and which provide natural resources for their livelihood such as wood, flora and fauna, and water. Final decisions are made by the federal government for public lands but consultation must be obtained from affected indigenous people. Often times tribes say no to mining and other mineral and gas extraction but decisions are made to proceed such as at Oak Flats in Arizona, the Dakota Access Pipeline in North Dakota (DAPL) and the proposed uranium mines at Mt. Taylor. Thus, UNDRIP is essentially ineffective in regard to political and legal decisions of governments on public land once traditionally occupied by indigenous people.

Follow Up and Recommendations

The United States and its states must respect the human rights of indigenous peoples and their rights to their aboriginal land and their lands within their possession and their traditionally occupied or used land. Usually the federal government and states recognize and respect the legal rights of tribes to lands in their possession such as Indian Reservations and treaty lands. However, this is often not the case for aboriginal land but now declared public land managed by the federal and state governments. As stated here much of this aboriginal land is former indigenous homeland which contains sacred sites. We urge the US and state governments take into serious account the traditional rights of Native American

⁵ Pueblo of Acoma Tribal Resolution, TC-MAY 23, 2013-VIa: The Pueblo of Acoma Approval for Continuing Protection of Cultural and Water Resources in the Mt. Taylor Traditional Cultural Property from Impacts of the Proposed Roca Honda Mine. All Indian Council Resolution 2007 -12: Companion Resolution for the Protection of Mt. Taylor and All Sacred Sites and Cultural Properties Related to the Pueblos of Acoma and Laguna, and the Nineteen Pueblos of New Mexico.

people to their aboriginal land. As stated there is a federal executive order respecting sacred sites and a federal mandate to consult with indigenous people. It is incumbent upon the United States to perform environmental studies in order to determine impacts upon the indigenous peoples. But, as just recently seen in DAPL, even when an EIS was ordered by the President it can be disregarded by another federal executive order. This is blatant discrimination by the United States. The federal government must educate states and the general public about UNDRIP. The federal government has a federal trust responsibility to protect Native Americans and their lands and resources and the federal government must work with its agencies to inform them of UNDRIP. Creating a national institution to oversee the international obligation of the United States in fulfillment of UN human rights institutions such as ICCPR, CERD, and UPR, is of utmost importance.

Another consideration by the United Nations in implementing UNDRIP and broadening the understanding of indigenous human rights is to work with its member nation-states in the seven global regions. One such example, is the American Declaration on the Rights of Indigenous Peoples adopted by the Organization of American State in consultation with indigenous peoples of the Americas. Indigenous peoples insisted that UNDRIP be taken as the minimum standard while establishing the American Declaration. Therefore, there are many articles in the Declaration which respects the rights of the indigenous peoples to their lands, territories and resources. UNDRIP and the American Declaration must be implemented to advance the human rights of indigenous peoples and recognize their rights to their lands, territories, and resources.