NNEPA Talking Points for the Indian Affairs Committee Hearing Friday, October 28, 2011, in Santa Fe, NM, with reference to NMED Discharge Permit 558 and Sections 8 & 17

Hello, good evening members of the Indian Affairs Committee, Mr. Chairman, thank you for the opportunity to speak with you today about this important environmental permitting decision that is before the New Mexico Environmental Department (NMED), during the Public Comment part of your agenda. My name is Stephen B. Etsitty and I am the Executive Director of the Navajo Nation Environmental Protection Agency.

1) Sections 8 and 17 refer to two contiguous tracts of land in McKinley County (Church Rock Chapter) New Mexico. The Southeast Quadrant of Section 8 is fee land where URI/HRI has plans to conduct in situ leach (ISL) uranium mining in the near future. From newspaper accounts it's clear that URI believes it has, in place and effective, all licenses and permits necessary to conduct this mining. We use the designations HRI and URI interchangeably because it is our understanding that HRI (Hydro Resources Inc.) is a wholly owned subsidiary of URI (Uranium Resources, Inc.).

2) We believe that there are two primary approvals required for URI/HRI to conduct ISL mining on Section 8, a Radioactive Materials License from the U.S. Nuclear Regulatory Commission (NRC), and, an underground injection control (UIC) permit which will be decided by NMED. In the case of the UIC permit, as a result of the 2010 10th Circuit Court of Appeals decision in the case of HRI v. EPA, the State of New Mexico was deemed the appropriate permitting agency. NMED refers to this type of permit as a "discharge permit," and the particular permit in question for HRI is called DP558. It appears to us that URI has its NRC license in place. But, we were recently informed by NMED, during our initial consultation on October 14, 2011, that a renewal of discharge permit DP558 has not been issued by the State. We understand an original discharge permit was issued in 1989 by NMED.

3) Section 17, located immediately south of and adjacent to Section 8, is Navajo Nation Trust land. In situations such as this, where new uranium mining is planned on private lands located adjacent to Navajo lands, it is vital to the interests of the Navajo Nation that the Navajo Nation and the State of New Mexico work closely and cooperatively to make sure that human health and our shared environment are protected. It is important for policymakers to realize that the closest residents to the proposed mining are all Navajo people. The closest communities are Navajo communities. The closest livestock that drink the local surface waters and shallow groundwater are Navajo livestock. And as Sen. Lovejoy stated earlier regarding the cultural aspects of these issues, the Navajo people in this area collect local herbs and vegetation for their ceremonial purposes.

4) While the Navajo Nation may not have any direct regulatory control over lands such as Section 8, we do have a vital government responsibility and an overriding personal interest in protecting the health and welfare of our people and lands located in the back yard of this proposed ISL operation. In this regard it is incredibly difficult for us to believe that a business can inject chemicals and liquids into an aquifer, alter the geology and hydrology underneath the ground to unleash the existing uranium and

other possibly contaminating elements, and yet confine the threat of underground pollution to an artificially imposed property boundary line.

We understand the process of ISL mining and we understand that some aquifers have high levels of uranium and cannot be used for drinking water. To Sen. Adair's earlier statements, we are concerned with the potential for contaminants from an ISL mined aquifer to migrate to and then contaminate other nearby aquifers under Navajo Nation jurisdiction that are used for drinking water and other purposes.

As the Committee and Mr. Chairman have allowed for Mr. Jason John, Navajo Nation Department of Water Resources, to present technical information about groundwater resources in the area on November 2, 2011, I will simply re-state what Rep. Lundstrom stated earlier, that the groundwater resources in this area are inter-connected, and that is the basis for our concerns.

I also agree with Rep. Lundstrom that it is critical to establish a reliable technical baseline to measure future groundwater recovery against. It has been our experience that the historic lack of solid baseline technical information at the abandoned and closed conventional mining sites has made it difficult for NNEPA to accept arbitrary cleanup standards that cannot address pre-mining conditions.

It will be important to heed the advice of the earlier Geology technical panel's recommendations to take additional time to re-assess geologic and hydrologic conditions before launching into a type of uranium mining that New Mexico has never attempted.

Today you have heard that the threat of "Excursions" are real because "Excursions" happen. It is documented that one of the most critical parts of the ISL process is to control the movement of the chemical solutions within the aquifer. Any escape of these solutions outside the ore zone is considered an Excursion, and can lead to contamination of surrounding groundwater systems. Some of the most common causes of excursions, identified by operations in the United States and across Europe, can be through old exploration holes that were not plugged adequately, plugging or blocking of the aquifer causing excess water pressure buildup and breaks in bores, and failures of injection/extraction pumps.

The Churchrock, NM area has been mined for uranium before, it is documented and there are old conventional mines and a former mill site that are currently under federal cleanup programs. What is still unknown to the Navajo Nation is the impact of hundreds of old exploration holes (and observation wells) in the area that may not have been adequately plugged, which could potentially compromise an ISL mining process. A growing concern that I have is the need to better understand the anthropomorphic changes to the environment in this area since 1989 (when the original Discharge Permit was issued). There are many exploratory wells that have been drilled and then plugged and abandoned. But the cement used to plug these

wells ages and crumbles, infrastructure fails when it is not properly designed and/or maintained.

5) Members of the NM State Legislature please, seriously consider, in your legislative capacity as good and decent citizens, and, good and decent neighbors, whether or not it is appropriate to allow ISL uranium mining on parcels of land, such as Section 8, in light of the devastation from past uranium mining and processing that currently exists in the Church Rock Chapter.

At a minimum, URI/HRI and NMED should re-examine the proposed ISL mine site, and the surrounding Navajo communities. Some conditions have changed since NMED issued the original discharge permit in 1989 – the human population has increased. NNEPA's efforts since 2003 in the area have discovered radioactive waste materials at old sites. One site in particular that was certified by the State of New Mexico, the Atomic Energy Commission and the NRC to be clean and closed, is the Northeast Churchrock Mine site. Just recently U.S.EPA announced a huge cleanup plan to address the remaining contamination at the Northeast Churchrock Mine site. This is what the best science and reliance on the newest technology in the 1980's resulted in. We now look forward to an estimated $50 million clean up to address high level exposures which the last cleanup failed to address, and a cleanup which will take until 2020 to complete.

And we have also discovered radioactive waste materials on lands that HRI operated on in the past, Sections 8 and 17. As Mr. Pelizza, HRI, mentioned in his remarks, NNEPA has worked cooperatively with HRI to characterize these waste materials that are still on Section 17 and nearby sites.

Therefore, we strongly recommend that HRI and NMED fully characterize and clean up these radioactive waste materials on Sections 8 and 17 before finalizing a Discharge Permit.

And, if you should decide to allow ISL recovery to take place on Section 8, please make the time to consider and pass the best and most protective controls that you can legislate to make sure that the surrounding community and environment are protected from the type of devastation caused by the previous owners and operators of uranium mines. Thank you for the opportunity to address this committee.