URANIUM PRODUCERS OF AMERICA

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January 25, 2006

David Albright
Groundwater Office Manager
U. S. Environmental Protection Agency
Region 9
75 Hawthorne Street, Mail Code: WTR-9
San Francisco, CA 94105

Re: Determination of Indian Country Status for Purposes of Underground Injection control Program Permitting

Dear Mr. Albright:

The Uranium Producers of America ("UPA") was organized in 1985 for the purpose of promoting the viability of the domestic uranium industry. UPA members own or lease private lands and government patented and unpatented mining claims located in numerous states, including Wyoming, Nebraska, New Mexico, Arizona, Utah, Colorado and Texas. Members operate *in situ* recovery and conventional mining operations. Members control properties near various Indian reservations and have a specific interest in EPA's determination of whether Hydro Resource, Inc.'s ("HRI") Section 8 property is Indian Country. This decision could create precedent for UPA member owned and controlled properties.

UPA believes that the Administration's Nuclear Power Initiative coupled with the clear signal from Congress in the recently enacted Energy Bill that nuclear power is a favored source of energy for the country requires the reestablishment of a vital domestic uranium producing industry. Domestic uranium producers can provide significant, secure fuel supplies for our nation's reactors. Many known uranium reserves are located in the western states with some near reservation lands. EPA would be well served to work with the domestic producing industry to assure that these resources can be delivered to nuclear utilities in an environmentally acceptable manner. Uranium production centers currently operating in Wyoming, Nebraska, Colorado and Texas have established that domestic uranium producers can recover uranium and restore land and aquifers in an environmentally sound manner. Recognition that HRI's Section 8 property is not Indian Country is a positive step in permitting an operation that will promote better understanding of current mining technology and quiet unfounded fears of industry critics. This is a very important decision in the revitalization of a critical industry.

UPA strongly urges EPA to follow the review factors of federal set aside and federal superintendence established in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998). It is uncontroverted that the 160 acre tract located in Section 8 that is subject to EPA's determination is owned in fee (surface and mineral rights) by HRI. Since HRI's Section 8 property is fee land, there can be no question that the land was never set aside by the federal government for the exclusive use of anyone, Indian or non-Indian. Further, the land in question is administered by its owner, HRI, not the federal government. Thus, according to the *Venetie* factors of federal set aside and federal superintendence, HRI's Section 8 property is not Indian Country.

The use of community of reference as a threshold test for Indian Country review was rejected by the Supreme Court in *Venetie*. The Supreme Court rejected multi-factor community of reference tests because they reduced federal set aside and superintendence requirements to mere considerations rather than being the determinative factors. 522 U.S. 527, 531 n. 7. The sole use of the *Venetie* federal set aside and federal superintendence factors was followed by the Ninth Circuit in *Blunk v. Arizona Department of Transportation*, 177 F.3d 879 (9th Cir. 1999). The *Blunk* case makes it very clear that fee land such as HRI's Section 8 property was never set aside by the federal government for Indian use, and therefore, cannot be Indian Country. *Id.* at 883.

Following *Venetie*, *Blunk and United States v. Roberts*, 185 F.3d 1125, 1133, n. 5 (10th Cir. 1999), it is clear that the federal set aside and federal superintendence review must be confined to HRI's Section 8 property and not expanded to some larger area of land. HRI's Section 8 property is the land in question, and it is not occupied by Indians. To extend the review of the federal set aside and federal superintendence factors to surrounding lands outside of HRI's 160 acre tract would render these mandatory factors meaningless.

Given the clear direction of *Venetie* and its progeny, UPA urges EPA to declare that HRI's Section 8 property is not Indian Country. UPA would urge EPA to issue a prompt decision without further delay to this effect, so that HRI can commence its recovery operations. These operations are vital to our Nation's energy independence and the growing recognition that clean nuclear energy is an increasingly important source of energy in the United States.

Sincerely,

Ron Hochstein
President, Uranium Producers of America