

*Appendix to the Consent Decree in United States and New Mexico Environment Department v.
United Nuclear Corporation*

APPENDIX E

Navajo Informal Dispute Resolution Procedure

APPENDIX E: NAVAJO INFORMAL DISPUTE RESOLUTION PROCEDURE

Given that all environmental field work contemplated for a response action at the Consent Decree Site¹ will be carried out pursuant to the Consent Decree (“Decree”) between the United States, the State of New Mexico, and the Navajo Nation, as Plaintiffs, and United Nuclear Corporation and GE and their respective successors, as Settling Defendants and the associated Statement of Work provided in Appendix B to the Decree, the Parties are hopeful that there will be very limited areas of disagreement between them. Nevertheless, disputes can always arise. Therefore, Section XII of the Decree contains a dispute resolution process, including an informal dispute resolution process in paragraph 64 of the Decree. That process applies to all disputes between the Parties except for disputes between the Navajo Nation and Settling Defendants regarding Future Response Costs owed to the Navajo Nation, which are governed by paragraph 68 of the Decree, and which are to be addressed in the first instance under the Navajo informal dispute resolution procedure set forth in this Appendix E to the Decree.

The Navajo informal dispute resolution procedure consists of a process to talk through any dispute before resorting to other, more formal, dispute resolution methods. In that regard the Navajo Nation, with the invaluable assistance of former Navajo Nation Supreme Court Chief Justice Robert Yazzie and former Director of the Navajo Abandoned Mines Program Perry Charley, has provided the following discussion of Navajo Fundamental Law to inform any such discussions:

¹ All capitalized terms have the same meaning as specified in the Consent Decree, United States of America et al. v. United Nuclear Corporation, To the United States District Court, District of New Mexico, Civil Action No. [].

(a) If one conceives of the notion of problem-solving as a circle or sun with four stages, the process begins on the eastern side of the circle and might be labeled in Navajo as “nitsahakees” or “thinking.” Thinking is key and it takes a long time. It goes on and on. Perhaps it has no beginning and no end. In this process of thinking about remediating the uranium contamination left over from past uranium mining on Navajo lands it is almost impossible to identify a beginning. The Navajo paradigm and the four stages within it are embedded within one another. No one stage can exist without the other. Regardless, Navajo problem-solving begins with thinking. The Decree has required a great deal of thinking. Thinking is examining root causes of a problem and its nature and consequences. Before we can decide on a solution (“nahat’a” or “planning”) we must understand the problem. If we have done our job well, there will be few disagreements.

(b) After “thinking” comes “nahat’a” or “planning.” Planning may be visualized as the southern-most point of the circle. Inside the circle is the milieu of life. For the Navajo this means many things, including the sacred elements (air, water, fire and earth/pollen), the sacred mountains, and “Nayee” (things that get in the way of a good life).

(c) After “planning” comes “Iina” or the life that implements the planning. “Implementation” may be seen as the western-most point of the circle. Again, this takes time and interacts with the forces visualized as being inside the circle. Obstacles emerge and interfere with the implementation. Insights arise and help the implementation. But, if the thinking continues and the planning continues, this leads to hopeful and positive results.

(d) After “implementation” comes “sihasin” which means many things including “results.” “Results” appear at the northern-most point of the circle. Results follow thinking, planning and implementation. For all the parties here the desired “results” mean the expeditious

implementation of the Decree, although each party likely has its own reasons for wanting this result. For the Navajo Nation, this result is desired because it represents a step toward the complete remediation of all uranium contamination left over from past uranium mining on Navajo lands. The Navajo Nation understands the difficulties and challenges faced in achieving that goal. Still, the goal is worth the effort.

It is often difficult to keep focused on the nested nature of the four aspects discussed here. Each aspect is re-evaluated by discussion of what has worked and what has failed.