RAS 1663

April 17, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	)	
	)	
HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
P.O Box 15910	)	
Rio Rancho, NM 87174	)	ASLBP No. 95-706-01-ML
	)	

INTERVENORS' REPLY TO NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE TO MOTION TO REOPEN AND SUPPLEMENT THE RECORD

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby reply to the Nuclear Regulatory Commission ("NRC") Staff's Response to Motion to Reopen and Supplement the Record (April 4, 2000) (hereinafter "Staff's Response"). In support of this reply, ENDAUM and SRIC offer the declaration of Dr. John D. Fogarty (April 16, 2000) ("Fogarty Declaration"), attached hereto as Exhibit 1.

A. The NRC Staff Errs in Asserting that Intervenors Have Not Raised an Exceptionally Grave Safety Issue.

The NRC Staff incorrectly asserts that Intervenors have not raised an exceptionally grave safety issue in several respects.[1] First, the Staff claims that Intervenors have failed to show that

[1] As Intervenors have noted in the past, they did not previously identify Dr. Fogarty as a potential witness during the evidentiary proceeding, because at that time he did not live in Crownpoint, and had not undertaken his investigation of the groundwater restoration standard in the EIS and his study of chemical uranium toxicity. Intervenors have proffered Dr. Fogarty's testimony as soon as possible after receiving a copy of his letter to the Commissioners.

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any persons using well water in the vicinity of Section 8 would be exposed to unhealthy levels of uranium as the result of ISL mining at Section 8. Staff's Response at 12. Intervenors respectfully submit that their March 15 Motion to Reopen and Supplement the Record and previous submissions have demonstrated that just such a danger could exist. Wells currently exist within 1.5 miles of the mine site. See Intervenors Written Presentation in Opposition to Hydro Resources, Inc.'s Application for Materials License With Respect to: Groundwater Protection, (January 11, 1999) (hereinafter "Intervenors' Groundwater Presentation") Exhibit 4. Further, all the mining sites, including Section 8, are located in the Westwater aquifer, the sole source aquifer for 15,000 people.[2] Intervenors have submitted testimony that clearly demonstrates (1) the groundwater at Section 8 meets EPA's definition of an underground drinking water source (See Intervenors' Reply to HRI's Response in Opposition to Motion to Reopen and Supplement the Record (April 4, 2000) (hereinafter "Intervenors' Reply to HRI") at 4); (2) HRI is highly unlikely to qualify for an aquifer exemption under the Safe Drinking Water Act because mining at Section 8 would contaminate a future drinking water source (Id.); and (3) HRI's method for determining baseline water quality artificially inflates the baseline for uranium in groundwater in the Church Rock area such that the project may result in degradation of an area

[2] Staff errs when it insinuates that the substance of Intervenors' Motion was based on Crownpoint and not Church Rock and that as Crownpoint issues are outside of the scope of Phase I of this proceeding. Staff's Response at 12. Throughout this process, Intervenors noted several of the reasons why the Staff's improper application of a 0.44 mg/L groundwater restoration standard will be gravely damaging to the Church Rock community and the Westwater aquifer. See Motion to Reopen at 3, 14 n.11, and 15. Further, because the secondary restoration standard of 0.44 mg/L is discussed in the Environmental Impact Statement which is applicable to the entire license, Intervenors have challenged the groundwater restoration standard as it applies to the entire license, *i.e.*, to all mining sites at the Crownpoint Project including Church Rock (Sections 8 and 17), Crownpoint and Unit 1.

of the Westwater that is currently better than drinking water. See Intervenors' Groundwater Presentation at 47-48 and attached Affidavit of Dr. Richard Abitz at 11-15, and 43.[3]

Second, the Staff argues that "the safety of using the 0.44 mg/L level as the secondary groundwater restoration goal for uranium was fully evaluated during the Staff's preparation of the FEIS," and that Intervenors have made "no showing" to cast any doubt on the validity of the FEIS's analysis. Staff's Response at 12-13. Contrary to this argument, Dr. Fogarty's declaration demonstrates that the FEIS contained no scientific evaluation or analysis of the 0.44 mg/L standard, but simply referenced the radiological equivalent of that number from NRC's Part 20 Appendix B regulations. Exhibit 1 at 3-4. Moreover, Mr. McKenney's latest affidavit provides no further scientific support or quantitative analysis for the Staff's choice of a 0.44 mg/L secondary groundwater restoration standard. Id. at 4-5.

Significantly, the Staff concedes that the Appendix B effluent standard on which the Crownpoint Project groundwater restoration standard is based is not based on chemical toxicity, but on the radiological toxicity of uranium. McKenney Affidavit at 4. As Dr. Fogarty previously testified, chemical toxicity occurs at much lower levels of uranium than the NRC considers to be radiologically toxic. Affidavit of Dr. John D. Fogarty in Support of Motion to Reopen and Supplement the Record, at 7 (March 1, 2000) (hereinafter "March 1 Fogarty affidavit") (attached as Exhibit 1 to Intervenors' Motion to Reopen and Supplement the Record (March 15, 2000) (hereinafter "Intervenors' Motion").

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[3] The aforementioned issues are currently on appeal to the Commission. See Intervenors' Petition for Review of Partial Initial Decisions LBP-18, LBP-19, LBP-99-30 (September 3, 1999).

Mr. McKenney claims that he reviewed the information in the U.S. Environmental Protection Agency's Integrated Risk Information System ("IRIS") database to determine that a 0.44 mg/L uranium groundwater standard "minimizes . . . or avoids all nephrotoxic effects." McKenney Affidavit at 5.[4] Mr. McKenney recites the purpose of EPA's "chronic oral exposure figure", or reference dose (RfD), and concludes that the 10 CFR 20 Appendix B "effluent concentration limit" for uranium of 300 pCi/l "is within the uncertainty associated with the RfD." Id. He adds two more conclusions: first, that a "secondary groundwater restoration goal for uranium of 0.44 mg/L would result in minimal impacts to any future population" and therefore was "an acceptable limit to use in HRI's license. . ." (Id.), and second, that the 0.44 mg/L level "minimizes. . .or avoids all nephrotoxic effects. . ." Id. As Dr. Fogarty notes, Mr. McKenney offers no scientific explanation of analysis to support these conclusions. Exhibit 1 at 5. He does not review the history of the EPA reference dose ("RfD") for uranium, including the studies upon which it is based, nor attempt to back-calculate a maximum contaminant level ("MCL") for uranium to determine if the 0.44 mg/L level is even close to an acceptably safe level for human consumption. Id.

Dr. Fogarty, however, makes those mathematical calculations in his Declaration and conclusively demonstrates that the 0.44 mg/L restoration level is not safe to protect the health of people who may drink water containing such a high level of uranium. See Exhibit 1 at 6-9. In performing those calculations, Dr. Fogarty used EPA's own reference dose and the World Health

[4] By relying on the IRIS for his understanding of the chemical toxicity of uranium, Mr. McKenney relied upon information that has not been updated since 1989. See Exhibit A to Fogarty Declaration, attached hereto as Exhibit 1.

Organization's assumptions about body weight, allocation factor and average daily water consumption. Id. at 7. Dr. Fogarty's calculation resulted in an MCL "guideline" of 0.009 mg/L, or 9 μg/L — nearly 50 times less than NRC's restoration standard for the Crownpoint Project. Id. Clearly, the 0.44 mg/L restoration goal is not within the range of uncertainty contemplated by EPA's RfD and therefore is unsafe.

Making the situation worse, EPA's RfD no longer reflects current scientific knowledge of the lowest effect level for uranium. As Dr. Fogarty explained in his March 1 affidavit, the studies relied on by the NRC Staff and used by EPA to derive an RfD for uranium, such as the Maynard and Hodge paper from 1949, are outdated and methodologically flawed. By its own admission, the EPA RfD has not been updated since October 1989. See Exhibit A to Fogarty Declaration at 1 and 6. EPA, therefore, could not have used data from any of the recent studies Dr. Fogarty cited and reviewed in developing the RfD of 0.003 mg/kg-bw/d[5] for uranium.

Furthermore, Dr. Fogarty cited Gilman et al.'s recent animal studies that demonstrated adverse effects on the kidneys of rats at dose equivalents as low as 0.06 mg/kg-bw/d. See Fogarty March 1 Affidavit, Exhibit D at 117. Both Health Canada and WHO not only cited Gilman's animal studies, but used the study's lowest observable adverse effect level ("LOAEL") for rats of 0.06 mg/kg-bw/d as the basis for a revised TDI, or RfD. Id., Exhibit H at 7-10; Exhibit I at 91.[6] Using an uncertainty factor of only 100 instead of 1,000, the revised TDI would be 0.0006 mg/kg-bw/d. Dr. Fogarty plugged in this reference dose to calculate a maximum

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[5]The unit "mg/kg-bw/d" means "milligrams per kilogram of body weight per day".

[6] These terms may be used interchangeably. Fogarty Declaration at xx.

contaminant level guideline of 2 μg/L, or 240 times less than the NRC groundwater restoration standard for the Crownpoint Project. Exhibit 1 at 8. This limit is also the newly revised drinking water guideline for uranium advocated by the World Health Organization. Id.

The uranium cleanup standard for the Crownpoint Project does not provide a reasonable assurance of safety even when EPA's outdated uranium RfD is used to calculate a maximum contaminant level. When the lower uranium LOAEL derived from Gilman's studies is used to calculate an MCL, the magnitude of the inadequacy of the cleanup standard advanced by Mr. McKenney and the NRC Staff is magnified even more.[7]

And finally, it is clear that Staff may not rely on 10 CFR 20.1201(e), which requires a licensee to limit the soluble uranium intake by an individual to 10 mg in a week (or, on average, 1.43 mg/d) "in consideration of chemical toxicity." As Dr. Fogarty points out, in the Limson-Zamora study (Fogarty March 1 Affidavit, Exhibit C at 73), abnormally high levels of urinary glucose and alkaline phosphatase where observed in people who had total daily uranium intakes ranging from 21-410 μg and 220-410 μg. In other words, biomarkers indicating damage to the proximal tubules of the kidneys were evident in people who consumed from 3.5 times to 68 times *less* uranium than NRC would require a licensee to "limit" on average every day. See also Exhibit 1 at 10.

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[7] In his Declaration, Dr. Fogarty demonstrates that the lack of protectiveness of the Staff's restoration standard may be exacerbated by the environment context in Church Rock and Crownpoint. Nearly everyone in Church Rock and Crownpoint has only one source of drinking water — groundwater. Both Health Canada and Dr. Limson-Zamora and colleagues noted that people who use groundwater for drinking water are likely to receive a higher proportion of their daily uranium intake from water. This condition, says Dr. Fogarty, is further reason for a lower restoration level. Exhibit 1 at 10.

Mr. McKenney provided no credible evidence or analysis to refute Dr. Fogarty's original conclusions in his March 1, 2000, affidavit. Rather, he simply provided observations without foundation and chose to comment only on the Mao, et al., study from 1995. He ignores the Limson-Zamora and Gilman studies, and has nothing to say about the recommendations of USEPA, CalEPA, Health Canada and WHO and the scientific bases for those recommendations. Instead, Mr. McKenney criticizes the Mao study by commenting on its small sample size, the difficulty in proving cause and effect, and the difficulty in quantifying exposure. McKenney Affidavit at 6. Dr. Fogarty agrees with Mr. McKenney that the Mao study is limited by these factors inherent in the study design. Id. at 11. However, he notes that as a population-based epidemiological inquiry into the effects of chronic uranium ingestion on kidney function, the Mao study has received the attention of regulatory and health institutions worldwide because it shows a correlation between composite uranium intake in drinking water and increasing levels of microalbuminuria in exposed subjects. Id.; See also, Fogarty March 1 Affidavit at 12-13 and Exhibit B.

The NRC Staff is entirely incorrect in its assertion that Intervenors have not raised a grave safety issue. The secondary groundwater restoration standard for uranium for the Crownpoint Project poses an exceptionally grave risk to the health and safety of thousands of Navajo people who use the water resources of the Westwater Canyon Aquifer. The Intervenors' motion, which unlike the Staff's Response is supported by extensive scientific analysis, should be granted.

B. The NRC Staff Errs in Asserting that Dr. Fogarty Lacks Sufficient Expert Qualifications to Testify About the Toxicity of Uranium to the Human Kidney.

The NRC Staff errs in objecting to Dr. Fogarty's qualifications to render an expert opinion on the chemical toxicity of uranium to the human kidney. While Dr. Fogarty has not previously investigated the human health effects of exposure to uranium ingested through water, he is well-qualified to conduct research on the subject and to comment on the literature survey discussed in his March 1 Affidavit. As a practicing M.D., Dr. Fogarty is trained to evaluate and consider the chemical toxicities of numerous substances. Each drug he prescribes has potential chemical toxicities about which he must be knowledgeable. Further, as Dr. Fogarty has been involved in basic science and clinical research for over 15 years with some of that time specializing in care of those with diabetes and other impairments of renal functions, Dr. Fogarty is well-qualified to assess the studies and literature regarding uranium in drinking water and render an expert opinion on the chemical toxicity of chronic, low doses of uranium in drinking water and how it affects the kidney. Staff's assertions about Dr. Fogarty's qualifications are therefore incorrect.

Dr. Fogarty has also read the material relevant to reaching his conclusions in his March 1 Affidavit and attached Declaration. Staff is mistaken when they assert that Dr. Fogarty was not given adequate information on which to base a fully informed opinion. Staff's Response at 14. Contrary to Staff's assertion, Dr. Fogarty reviewed the relevant sections of the FEIS as part of the research he conducted prior to sending his January 28, 2000, letter to the Commission and again in preparing his March 1 affidavit. Fogarty March 1 Affidavit at 5-6. And, Dr. Fogarty reviewed the relevant sections of the FEIS again in preparing the attached Declaration (at 3-4); in fact, his

reviews of the FEIS led him to conclude that the NRC Staff never really "evaluated" the safety of the 0.44 mg/L restoration standard from a chemical toxicity perspective.

Further, Dr. Fogarty's statement that HRI should be required to "return the uranium concentration in the restored water back to baseline levels at the conclusion of mining operations" is evidence of his familiarity with (1) the overall quality of the Westwater aquifer in the Church Rock area; and (2) Intervenors' dispute with Staff's acceptance of HRI's inflated baseline for uranium in Section 8. His failure to mention License Condition 10.21 by name was irrelevant to the issue of whether the restoration standard is safe.[8]

C. The Staff Errs in Claiming that Intervenors' Challenge to the Uranium Groundwater Restoration Standard is an Impermissible Attack on an NRC Regulation.

The Staff incorrectly asserts that even had Dr. Fogarty's evidence been considered initially by the Presiding Officer, the Presiding Officer's ruling would not have changed because the Intervenors improperly attacked an NRC regulation by challenging the 0.44 mg/L restoration standard for uranium. NRC Staff's Response at 15. See LBP-99-30, 50 NRC at 115. The Staff relies for this argument on the Presiding Officer's ruling and on an irrelevant regulatory section by stating "absent a 10 C.F.R. § 2.1239(b) waiver issued by the Commission, the Presiding Officer would have had no choice but to make the legal ruling which he did, *i.e.*, that challenging the 0.44 mg/L restoration goal for uranium constituted an impermissible attack on an NRC regulation." Staff's Response at 16 (LBP-99-30, 50 NRC at 115). Such a waiver is not needed

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[8] Similarly, Dr. Fogarty, in his declaration, notes that references made by the Staff and Mr. McKenney to the New Mexico groundwater standard for uranium and USEPA surface-water discharge limitation for uranium do not "make the case for the safety of the 0.44 mg/L restoration level." Exhibit 1, n.2 at 3 and n.3 at 4.

and is not applicable to the situation at hand as Intervenors are not attacking the radiation protection standard of 10 C.F.R. Part 20, Appendix B, Table 2 (hereinafter "Appendix B standard").

1. The Appendix B Standard is Not an Appropriate Uranium Groundwater Restoration Standard for the CUP.

The NRC's regulations contain no regulatory standard for groundwater restoration that the Intervenors could challenge. Groundwater restoration standards must be determined on a case-specific basis. The NRC's Mr. McKenney states in his affidavit that the origin of the secondary goals for groundwater restoration were primarily derived from EPA drinking water regulations. McKenney Affidavit at 2; FEIS § 4.3.1 at 4-27. However, with respect to the restoration standard for uranium, the Staff departs from following EPA guidance and derived the 0.44 mg/L groundwater limit from 10 C.F.R. Part 20, Standards for Protection Against Radiation, Appendix B — Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations for Release to Sewerage. McKenney Affidavit at 2-3.[9] The Appendix B standard for release of uranium in effluents to unrestricted areas is 300 picoCuries per liter ("pCi/L"), which Mr. McKenney stated is "the specific activity of uranium" that when converted to mass is equivalent to 0.44 mg/L. Id. at 3-4.

The important point here is, however, that the Appendix B standard is not a groundwater

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[9] Mr. McKenney glosses over the fact that while EPA drinking water regulations do not have a codified concentration limit for uranium, EPA in 1991 proposed a national drinking water standard for uranium of 0.020 mg/L. 56 FR 33050-33127 (July 18, 1991); see also, Fogarty March 1 Affidavit, n.22 at 17 (it is undisputed that EPA plans on finalizing a uranium MCL of 0.020 mg/L by 2001. Id.).

restoration standard. Rather, Appendix B, among other tasks, sets "effluent limits" for protection against ionizing radiation. Groundwater is not effluent and ionizing radiation is not the subject of Dr. Fogarty's evidentiary presentation.[10] Effluent limitations are generally considered for release to surface waters. The significant difference between drinking water protection standards and effluent limits is illustrated by the EPA's regulatory scheme: the drinking water limit for uranium that EPA plans to finalize by 2001 under authority of the federal Safe Drinking Water Act is 0.02 mg/L, while the standard for release to surface water promulgated under authority of the federal Clean Water Act is 2 mg/L, or 100 times higher. See McKenney Affidavit at 3.

The FEIS demonstrates quite clearly that the NRC Staff considered that it had the discretion to choose amongst a range of regulatory limits in setting a groundwater restoration standard for uranium. The Appendix B standard was used as guidance and the NRC has made no claim that it considered the Appendix B standard to govern the situation as a matter of law. Therefore, its applicability as a groundwater restoration standard in this case is open to challenge.

2. Appendix B Is Not an Appropriately Protective Standard Where the Groundwater Is an Existing and Potential Source of Drinking Water.

Where the groundwater is an existing and potential source of drinking water, the Appendix B standard is not adequately protective of public health and safety as Dr. Fogarty has

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[10] 10 C.F.R. Part 20 regulations do not define effluent. The Clean Water Act defines "effluent limitation" in pertinent part as any restriction ... on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance. 33 U.S.C. § 1362(11). Technology based effluent limitations are based on what is considered technologically and economically achievable for hundreds of different pollutants discharged by many categories of industrial dischargers, and by publicly owned waste water treatment facilities. 33 U.S.C. § 1311.

clearly shown in both his March 1, 2000, Affidavit and attached Declaration. Intervenors have also shown that the groundwater at Section 8 is a potential source of drinking water. See infra at 2-3 and Intervenors' Reply to HRI at 2-4. It is undisputed that the aquifer at the Church Rock mine sites (Sections 8 and 17) both meets EPA's definition of an underground source of drinking water.[11] The Westwater aquifer in these mine site areas contains enough groundwater to supply a public water system. Moreover, the Westwater aquifer at both locations contains fewer than 10,000 mg/L total dissolved solids and thus meets EPA's regulatory definition of a potential underground drinking water source. See Final Environmental Impact Statement at 3-36, Table 3.19. 40 C.F.R. § 144.3.[12] And because of these facts, HRI is not likely to receive an aquifer exemption under the Safe Drinking Water Act. See Intervenors' Reply to HRI's at 3. Finally, the Staff fails to mention that there are drinking wells in the Westwater aquifer within only 1.5 miles of Section 8. See Intervenors' Groundwater Presentation, Exhibit 4.

Appendix B does not set drinking or groundwater restoration standards. Rather, it is a radiation protection standard. Mr. McKenney and the NRC Staff may have used an appropriate regulatory section for setting a radiation protection standard — i.e., annual dose limits — but not

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[11] See Intervenors' Reply to HRI at 4.

[12] Moreover, Intervenors have challenged the NRC Staff's acceptance of HRI's method for determining baseline water quality as it will artificially inflate the baseline for uranium in groundwater in the Church Rock area. As Dr. Abitz demonstrated in his testimony, HRI does not distinguish between separate water quality zones in determining water quality, but combines the water quality in mineralized ore zones with the high quality groundwater in the surrounding areas to create an average that does not reflect the true values of the Westwater aquifer. Thus, using HRI's method for determining a water quality baseline may result in degradation of an area of the Westwater aquifer that is currently better than drinking water. See Intervenors' Groundwater Presentation at 47-48 and attached Affidavit of Dr. Richard Abitz at 11-15, and 43.

the appropriate section for a safe accounting of the health concerns over the chemical toxicity of uranium in an existing and potential source of drinking water.[13] With the introduction of Dr. Fogarty's Affidavit and Declaration, Intervenors have submitted substantial evidence that uranium is chemically toxic and dangerous to human health at levels far lower than the effluent limit in Appendix B. Thus, despite Staff's protestations and contrary to the decision of the Presiding Officer in LBP-99-30, Intervenors have not challenged the validity of the uranium standard in Appendix B to 10 C.F.R. Part 20. Rather, they have consistently challenged the use of 10 C.F.R. Part 20 Appendix B standard in a context that cries out for the protection of the public health from the *chemically toxic* effects of uranium. See, Intervenors' Petition for Review of Partial Initial Decisions LBP-18, LBP-19, LBP-99-30, at 30, 31 (September 3, 1999); Intervenors' Groundwater Presentation at 49 and Abitz January 8, 1999 Testimony at 45; ENDAUM's and SRIC's Second Amended Request for Hearing, Petition to Intervene, and Statement of Concerns at 66 (August 15, 1997).

3. The Regulations in Part 20 Permit the NRC to Establish Stricter, More Protective Standards in Individual Cases.

Even assuming for the purposes of argument that the Appendix B standard could be used as a groundwater restoration limit, if concerns over public health demand, the regulations in 10 C.F.R. Part 20 permit the NRC to establish more protective standards in individual cases. The purpose of 10 C.F.R. Part 20 explicitly states, "nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety." 10 C.F.R. § 20.1001. Subpart N of

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[13] Mr. McKenney of the NRC Staff supports this conclusion with the statement, "[u]ranium's chemical toxicity was not taken into account when establishing the Appendix B concentration values." McKenney affidavit at 4.

these regulations are even more clear on the power of the NRC to institute an appropriately protective standard: "[t]he commission may, by rule, regulation, or order, impose requirements on a licensee, *in addition to those established in the regulations in this part*, as it deems appropriate or necessary to protect health or to minimize danger to life or property. 10 C.F.R. § 20.2302 (emphasis added). Intervenors submit that in light of Dr. Fogarty's evidence, a more protective secondary groundwater restoration standard than 0.44 mg/L must be adopted.[14]

The NRC Staff must be directed to consider the protectiveness of its limits on uranium in drinking water. Even if the Appendix B standard applies, there is clear and unmistakable regulatory direction that the limits may be strengthened in individual, appropriate instances. Instead, Staff has chosen to hide its head in the sand and ignore the steep, downward trend of drinking water limits on uranium. Dr. Fogarty demonstrates that the CUP's uranium groundwater restoration standard utterly fails to protect human health by current standards, based on modern biomedical studies involving both humans and laboratory animals. However, the Staff continues to defend an inappropriate standard designed to protect against radiological risks, not chemical risks. Intervenors have not impermissibly attacked an NRC regulation. Rather,

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[14] The NRC Staff may avail itself of several protective standards that comply with the directions of the Atomic Energy Act and the regulations. Virtually every other health based standard is at least a factor of ten times lower than that chosen by Staff. For instance, EPA established a health-based groundwater restoration standard of 30 pCi/l (equivalent to 0.044 mg/L) for inactive uranium processing sites, and the National Research Council's Safe Drinking Water Committee recommended in the early-1980s a Suggested No-Adverse Response Level of 0.035 mg/L for uranium in drinking water. Further, EPA plans on finalizing a uranium maximum contaminant level of 0.020 mg/L by 2001. See Fogarty March 1 Affidavit at 17. Equally important, it is undisputed by either Staff or HRI that the trend in standards setting for uranium in drinking water among regulatory agencies is a steady lowering of allowable levels in recognition of new evidence of increasing risk of human health impairment. Id. at 20.

Intervenors have merely requested that Staff apply an appropriately protective standard because the standard they have applied is not safe.

Conclusion

For the foregoing reasons, the NRC Staff's Response is without merit. The Motion should be granted.

Respectfully submitted,

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April 17, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
P.O. Box 15910	)	ASLBP No. 95-706-01-ML
Rio Rancho, NM 87174	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2000, I caused to be served copies of the foregoing:

Reply to Nuclear Regulatory Commission Staff's Response to Motion to Reopen and Supplement the Record

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. Service was also made via e-mail to the parties marked below by an asterisk. The envelopes were addressed as follows:

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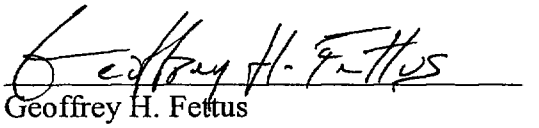
Dated at Santa Fe, New Mexico,
April 17, 2000



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