

RAS 7243
NEW MEXICO
ENVIRONMENTAL LAW CENTER

DOCKETED
USNRC

Mitzi A. Young
John T. Hull
Nuclear Regulatory Commission Office of the General Counsel
Mail Stop 0-15-B18
Nuclear Regulatory Commission
Washington, DC 20555

January 15, 2004 (2:59PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: In Re: HRI, Docket No. 40-8968-ML, ASLBP No. 95-706-01-ML; Supplementation of FEIS

January 8, 2004

Dear Mitzi and John:

I am writing to follow up on Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center's ("SRIC") request that the Nuclear Regulatory Commission Staff ("Staff") undertake to supplement the Final Environmental Impact Statement ("FEIS") for the Crownpoint Uranium Project ("CUP").

As you know from my letter dated July 31, 2003, it is ENDAUM and SRIC's position that federal law requires the Staff to supplement the CUP FEIS. For your convenience I have attached a copy of the July 31, 2003 letter hereto. However, it is my understanding that the Staff has put consideration of whether to supplement the CUP FEIS "on the back burner".

Given the procedural posture of the HRI matter, I would like to request that you encourage your clients to expedite the decision to supplement the FEIS. It is my understanding that the last partial initial decision concerning Church Rock Section 8 is forthcoming in the near future. I expect that soon thereafter Phase II of the CUP litigation will commence. In order to best take advantage of the Licensing Board's resources, it would be most efficient to have a Staff decision on whether to supplement the CUP FEIS prior to commencement of Phase II of the CUP litigation.

If the Staff determines that supplementation is necessary, the Licensing Board could determine that Phase II should be stayed until supplementation is complete, given that a supplemental EIS could impact material issues in Phase II. If the Staff determines that supplementation is not necessary, any dispute regarding that decision seems best settled by the Licensing Board prior to commencing litigation on Phase II rather than in the middle of Phase II litigation.

1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

Printed on elemental chlorine free, 100% recycled post-consumer, recycled paper

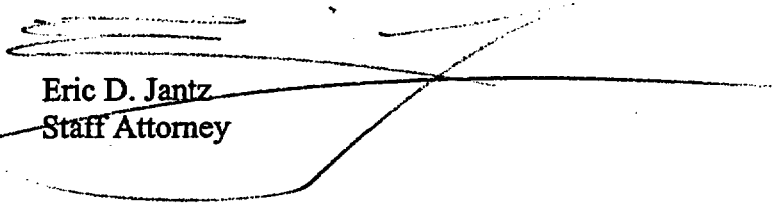
Template = SECY-043

SECY-02

January 8, 2004
In re: HRI, Page 2

If you have any questions regarding this matter, please do not hesitate to contact me.

Regards,


Eric D. Jantz
Staff Attorney

Encl.

Cc: Service List



NEW MEXICO
ENVIRONMENTAL LAW CENTER

Mitzi A. Young
John T. Hull
Nuclear Regulatory Commission Office of the General Counsel
Mail Stop 0-15-B18
Nuclear Regulatory Commission
Washington, DC 20555

Re: In Re: HRI, Docket No. 40-8968-ML, ASLBP No. 95-706-01-ML; New Information Concerning Sections 8 and 17 of the Crownpoint Uranium Project.

July 31, 2003

Dear Mitzi and John:

I am writing to request that the Nuclear Regulatory Commission Staff ("Staff") undertake to supplement the Final Environmental Impact Statement ("FEIS") for the Crownpoint Uranium Project ("CUP"). Based on information recently obtained by Eastern Navajo Diné Against Uranium Mining and Southwest Research and Information Center (collectively, "Intervenors") concerning a planned housing development near Churchrock, Navajo Nation, New Mexico, I believe the Staff is obliged to supplement the FEIS.

As was mentioned on the June 22, 2003 conference call with Judge Farrar regarding settlement of the Hydro Resources, Inc. ("HRI") matter, there have been numerous suggestions of late that the Ft. Defiance Housing Corporation, in conjunction with the United States Department of Housing and Urban Development ("HUD") and the Navajo Housing Authority ("NHA"), is planning to develop a 1000 unit housing complex, called the Springstead Estates Project, in the vicinity of Springstead, McKinley County, New Mexico, near Churchrock. The planned housing development will eventually have the capacity to house approximately 4000 people. My clients have recently received confirmation that Ft. Defiance Housing Corporation will, in fact, be building up to 1000 housing units on Section 30 of Township 16 North, Range 16 West of the New Mexico Principal Meridian. A full description of the proposed project is provided in the attached Environmental Assessment ("EA"). The EA was produced for the Ft. Defiance Housing Corporation and the NHA by an environmental consultant pursuant to HUD regulations.

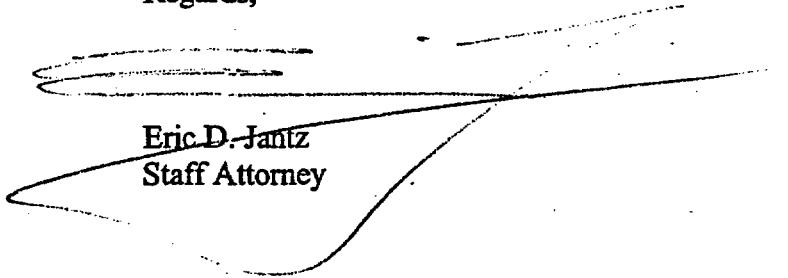
1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

The primary purpose of NEPA is to prevent or eliminate damage to the environment by focusing government and public attention on the affects of agency action, thereby ensuring that the agency will not act on incomplete information, only to regret its decision after it is too late to correct. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (citations omitted). Moreover, federal case law is clear that federal agencies have an ongoing to obligation to consider the environmental impacts of a project. Warm Springs Dam Task Force v. Gribble, 621 F.2d 1017, 1023-24 (9th Cir. 1980). Generally, supplementation of a project's FEIS is required when new information or circumstances that has a significant bearing on a project's impacts arise. See eg., Portland Audubon Society v. Babbitt, 998 F.2d 705, 707 (9th Cir. 1993).

In the case of the CUP, the proposed Springstead Estates Project is a new circumstance that clearly impacts the NRC's ongoing regulatory duty with respect to HRI's materials license. The planned housing development could house up to 4000 individuals, all of whom would be living within approximately two miles of HRI's Church Rock operations, and would be exposed daily to any radioactive air emissions from those operations. Furthermore, water for the development may be pumped from the Westwater Canyon aquifer, which would certainly affect HRI's and the NRC's analyses of underground contaminant transport. Finally, the traffic caused by approximately 4000 additional people in the area would have a bearing on the NRC's analysis of CUP transportation issues for the Church Rock operations.

Given the scale of the Springstead development and its potential effects on the water supply, hydrology, air quality and traffic patterns in the Church Rock area, Intervenor believe that a supplement to the CUP FEIS is warranted. Intervenor ask that the NRC Staff fulfill its duty to the public and take the required hard look at these potential new impacts. Furthermore, because it is Intervenor's understanding that development of Phase I of the Springstead Estates Project is imminent, Intervenor request that the NRC Staff make a determination on supplementation of the CUP EIS within thirty (30) days of receipt of this letter. If you have any questions regarding this matter, please do not hesitate to contact me.

Regards,



Eric D. Jantz
Staff Attorney

cc. David Lashway
Anthony J. Thompson
Samuel Gollis
Diane Curran
Geoffrey Fettus