

RAS 7703

April 30, 2004
DOCKETED 05/03/04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of

HYDRO RESOURCES, INC.
P.O. Box 777
Crownpoint, NM 87313

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Docket No. 40-8968-ML

JOINT STATUS REPORT

Pursuant to the Presiding Officer's requests made during an April 14, 2004 transcribed telephone conference, the parties in the above-captioned proceeding are filing this Joint Status Report.

Discussion was held pertaining to documents sought by Intervenors ENDAUM and SRIC. See Tr., at 35-40. Among such documents are ones cited in NUREG-1508, the "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico" (FEIS) published in 1997. Any documents specifically referenced in the FEIS -- and which independently qualify for inclusion under 10 C.F.R. § 2.1231 -- should already be part of the Hearing File. As indicated in the Staff's April 15, 2004 e-mail to the Board and counsel for the parties, and as further explained to Intervenors' counsel Eric Jantz during an April 19, 2004, telephone call, documents of interest to the Intervenors and specifically referenced in the FEIS are already in the Hearing File. The Staff summarizes the April 19, 2004 telephone call as part of its discussion below.

On page 4-42 and page 4-55,¹ the FEIS cites to an April 1996 HRI response to a Staff request for additional information (RAI). This HRI response -- referenced in the FEIS as "HRI 1996a" -- is part of Hearing File Notebooks 9.1 and 9.2 and carries Public Document Room (PDR) accession numbers 9604030208 and 9604090313. Page 3-29² of the FEIS cites to a June 1992 HRI technical report (attached to an HRI cover letter to the Staff dated July 31, 1992), which is referenced in the FEIS as "HRI 1992b". The cover letter and the 1992 HRI technical report are part of Hearing File Notebook 5.1. The technical report carries PDR accession number 9509080094. The Staff distributed copies of the above-referenced Notebooks to the Board and parties in June 1998.

Apart from the above documents, the Staff does not have any of the documents now sought by Intervenors ENDAUM and SRIC. This includes the types of "fence diagrams," "structural cross-sections", and "driller's logs" specified by Intervenors ENDAUM and SRIC on pages 3-4 of the Joint Status Report dated March 26, 2004.³

Below, as requested by the Presiding Officer (see Tr., at 35-6), counsel for the Intervenors and HRI provide an update on reaching an agreement on the terms of a protective order, and discuss related document issues.

¹ These FEIS pages are cited by ENDAUM and SRIC on page 4 of the Joint Status Report dated March 26, 2004.

² This FEIS page is cited by ENDAUM and SRIC on page 5 of the Joint Status Report dated March 26, 2004.

³ The Staff checked the FEIS pages cited by ENDAUM and SRIC in the March 26 Joint Status Report. These FEIS pages contain no references to "fence diagrams," "structural cross-sections", or "driller's logs".

INTERVENORS' POSITION

The Intervenor's agree with the NRC Staff that any document specifically referred to in the FEIS should be part of the hearing file, if it is not already. It is Intervenor's position that they should also have access to information or data referred to in any document that appears in the hearing file, because such information or data was presumably reviewed by the NRC Staff and informed its decision to grant HRI's materials license application. Thus, for example, while fence diagrams and structural cross-sections are not specifically referred to in the FEIS⁴, fence diagrams and structural cross-sections are specifically referred to in HRI's Consolidated Operations Plan ("COP"), version 0.0 at p. 90. Presumably, the NRC Staff reviewed HRI's COP and the fence diagrams and structural cross-sections referenced therein, in the course of evaluating HRI's license application. It is Intervenor's position that in order to challenge any conclusions reached by the NRC Staff based on its review of, for example, HRI's COP and the fence diagrams and structural cross-sections referenced therein, their experts must likewise have access to these documents. Review of the documents requested by Intervenor's assures that they will be afforded a meaningful opportunity to challenge the NRC Staff's decision making process and rationale for granting HRI's materials license application.

Finally, Intervenor's continue to discuss enabling Intervenor's experts to have access to the requested documents with HRI. A confidentiality agreement has been drafted, and the parties are working out the details of that agreement. On May 3, 2004, Intervenor's and HRI will hold a conference call with their respective experts to clarify the scope of the information sought by

⁴ Intervenor's hydrology expert interpreted the language on pp. 3-12, 3-21, 4-42, and 4-45 of the FEIS as referring to fence diagrams and structural cross-sections because the conclusions on those pages regarding geologic faulting could not have been drawn in any way except by examining fence diagrams or structural cross-sections.

Intervenors. The results of these discussions between HRI and Intervenors may satisfy some or all Intervenors' requests for information.

HRI'S POSITION

With respect to Intervenors' suggestion that fence diagrams and structural cross-sections for the Crownpoint Uranium project exist based on the FEIS language referenced in footnote 4 of this Status Report, HRI did not prepare any such diagrams or cross-sections for its license application. However, HRI is continuing to search its file archives for any such diagrams and cross-sections that potentially could have been prepared by the previous site owner. If such diagrams and cross-sections are located, HRI will promptly inform Intervenors of their existence. It is worth noting that, in a letter to Intervenors dated December 29, 1998, HRI informed Intervenors of the potential availability of several sets of requested documents, including the aforementioned fence diagrams and structural cross-sections. HRI directs Intervenors to this letter for additional reference regarding their document request.

HRI agrees with the statements made by Intervenors regarding the status of negotiations over Intervenors' potential access to requested documents. HRI is working to have a full accounting of its file archives for the above-mentioned documents, as well as Intervenors' other requested documents. The May 3rd conference call will entail discussion of the following issues: (1) Intervenors' comments on HRI's proposed draft protective order, (2) clarification of the scope of documents requested by Intervenors and HRI's ability to determine the existence or non-existence of such documents, and (3) terms, conditions, and procedures for effectuating Intervenors' review of their requested documents.

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Respectfully submitted,

/RA/

John T. Hull
Counsel for NRC Staff

/RA/

Anthony J. Thompson
Counsel for HRI

/RA/

Eric Jantz
Counsel for ENDAUM and SRIC

Dated at Rockville, Maryland
this 30th day of April, 2004.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
) Docket No. 40-8968-ML
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CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT STATUS REPORT" in the above-captioned proceeding have been served on the following persons this 30th day of April, 2004, by deposit into the U.S. Mail, first class (or as indicated by an asterisk, through the Nuclear Regulatory Commission's internal mail system), and by electronic mail (as indicated by a double asterisk).

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