



- 1) The Environmental Assessment of the Springstead Estates Project dated June 2003 prepared by Howard Bitsui for the Ft. Defiance Housing Corporation and attached to the July 31 Letter from Eric Jantz to Mitzi Young and John Hull (ACN ML32810448).
- 2) The affidavit and resume of Michael G. Wallace, attached to Intervenor's Motion To Supplement The Environmental Impact Statement For The Crownpoint Uranium Project Church Rock Section 8, filed with the Commission on May 14, 2004 ("Section 8 Supplementation Motion"), as Exhibits A and A-1 respectively
- 3) The affidavit and resume of Alan Eggleston, attached to Intervenor's Section 8 Supplementation Motion as Exhibits B and B-1 respectively.

As demonstrated by Mr. Wallace's and Dr. Eggleston's affidavits, HRI's Church Rock Section 8 operations will have a significant effect on the Springstead Estates Project housing development ("Springstead Estates"), to be built within 2.5 miles of the CUP. HRI's Church Rock operations will likely impact Springstead Estates' drinking water supply, the air quality in and around the housing development, traffic patterns near the housing project, and environmental justice considerations. Mr. Wallace's and Dr. Eggleston's affidavits demonstrate that the Nuclear Regulatory Commission ("NRC") Staff should supplement the CUP Final Environmental Impact Statement, NUREG-1508 ("FEIS") pursuant to the National Environmental Policy Act of 1969 ("NEPA"). As demonstrated below, this motion meets the NRC's standard for reopening a closed record.

This motion is appropriately before the Presiding Officer because the hearing record is now closed in the proceeding before the Presiding Officer. See, LBP-99-30, 50 NRC 77, 109-

124 (1999); CLI-01-4, 53 NRC 31, 44-71(2001). Generally, the Presiding Officer no longer has jurisdiction to consider a motion to reopen the record in a proceeding where he has issued his final decision and a petition for Commission review of the decision has been filed. Philadelphia Electric Co., (Limerick Generating Station, Units 1 and 2) ALAB-823, 22 NRC 773, 775 (1985). However, in this case, Intervenors' Section 8 Supplementation Motion was originally filed before the Commission. The Commission subsequently referred Intervenors' Supplementation Motion to the Presiding Officer for consideration in conjunction with Intervenors' Motion To Supplement The Environmental Impact Statement For The Crownpoint Uranium Project Church Rock Section 17, filed before the Presiding Officer. Order of the Commission at 2 (unpublished) (May 26, 2004), attached hereto as Exhibit A. Pursuant to the direction of the Commission, this Motion is appropriately before the Presiding Officer.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

HRI applied for and received a materials license to conduct in situ leach mining on Sections 8 and 17 in Church Rock, New Mexico, and on two sites in Crownpoint, New Mexico, Unit 1 and Crownpoint. SUA 1508. HRI proposes to process the uranium extracted from each site at its Crownpoint processing facility. HRI plans to construct well fields at each mine site and inject a mining solution composed of bicarbonate ion complexing agents and dissolved oxygen through wells into an ore zone. See FEIS §§ 2.1.1 - 2.1.1.2 at 2-3 and 2-5. Uranium compounds, present in the aquifer in insoluble form, would then become oxidized and react with the lixiviant to form either a soluble uranyl tricarbonate complex or a bicarbonate complex. FEIS § 2.1.1.2 at 2-5. HRI proposes that the uranium enriched pregnant solution would be pumped from production wells to the satellite processing plants for uranium extraction by ion exchange. FEIS

§ 2.1.1.2 at 2-6.

The “mine zone aquifer” in which mining will take place at all four sites is the Westwater Canyon Member aquifer, an “important regional aquifer.” See Intervenor’s Written Presentation in Opposition to Hydro Resources, Inc.’s Application for a Materials License With Respect to: Groundwater Protection (“Groundwater Presentation”), Vol. 1 at 7-8 (January 11, 1999), quoting FEIS § 3.2.1 at 3-7. The Westwater Canyon Aquifer supplies drinking water to over 10,000 residents from a number of wells, including municipal wells at the Crownpoint mining site and a domestic well within 1.5 miles of the Church Rock mining site. Intervenor’s Groundwater Presentation at 8-9.

Throughout these proceedings, Intervenor’s have raised a number of concerns about the adequacy of the NRC Staff’s NEPA analysis of the CUP. See eg., ENDAUM And SRIC’s Written Presentation In Opposition To Hydro Resources Inc.’s Application For A Materials License With Respect To NEPA Issues Concerning Purpose And Need, Cost/Benefit Analysis, Action Alternatives, No Action Alternative, Failure To Supplement EIS, And Lack Of Mitigation (Feb. 19, 1999). Noting the NRC Staff’s ongoing obligation to supplement the FEIS, Intervenor’s now raise concerns about the NRC’s Staff’s failure to meet its NEPA obligations with respect to supplementing the FEIS.

On July 5, 2003 Intervenor’s received a copy of the EA. Recognizing that the proposed Springstead Estates development could be significantly impacted by HRI’s Church Rock operations, counsel for Intervenor’s sent a letter to the NRC Staff alerting it to the proposal by the Ft. Defiance Housing Corporation to construct a 1,000 unit housing development within two miles of Church Rock Sections 8 and 17, and requesting that the NRC Staff supplement the CUP

FEIS. Letter from Eric Jantz To Mitzi Young and John Hull with attached EA (July 31, 2003) (ACN ML ML32810448).

On November 13, 2003, the NRC Staff responded to Intervenors' letter requesting supplementation of the FEIS. Letter from Gary Janosko to Eric D. Jantz at 1 (November 13, 2003) (ACN ML032690013). In that letter the NRC Staff indicated that it would review the new information regarding Springstead Estates when it reviewed HRI's license renewal application. Id. However, in a Joint Status Report filed March 26, 2004 ("Joint Status Report") the NRC Staff indicated that it had reviewed the EA and other documents and would not supplement the FEIS. Joint Status Report at 7 (March 26, 2004).

On March 31, 2004 the Presiding Officer issued an order convening a telephonic conference on April 14, to discuss the issues presented in the March 26 Joint Status Report. Order of the Presiding Officer at 1 (March 31, 2004) (unpublished), attached hereto as Exhibit B. In that telephonic conference, the Presiding Officer directed Intervenors to present a motion to supplement the FEIS by May 14, 2004. Transcript of Telephone Conference at 66 (April 14, 2004) (ACN ML041100462). On May 14, Intervenors filed a motion to supplement the FEIS with respect to Church Rock Section 17 before the Presiding Officer, and a motion to supplement the FEIS with respect to Church Rock Section 8 with the Commission, pursuant to the Presiding Officer's direction. Id. at 47. On May 26, 2004, the Commission referred the Intervenors' motion to supplement the FEIS with respect to Section 8 to the Presiding Officer for determination. Order of the Commission at 2 (unpublished) (May 26, 2004).

On May 25, the NRC Staff filed a motion asking the Commission to defer its decision on supplementation of the FEIS for Church Rock Section 8 until after the Presiding Officer had

made a determination on FEIS supplementation on Section 17. NRC Staff's Motion To Hold In Abeyance Consideration Of Intervenors' Motion To Supplement The FEIS at 3 (May 25, 2004). In footnote 5 of that motion, the Staff suggested that Intevenors' Section 8 Supplementation Motion constituted an impermissible attempt to supplement the record of this proceeding, because Intervenors did not address the requirements of 10 C.F.R. § 2.734. Id., fn. 5. While the Intervenors did not believe that the requirements of 10 C.F.R. § 2.734 apply in the context of supplementation of an FEIS, in an abundance of caution, this pleading re-submits by incorporation by reference, the information presented by Mr. Wallace and Dr. Eggleston in their affidavits and the EA, and addresses the Commission's standard for reopening the record<sup>1</sup>.

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<sup>1</sup> The requirements of 10 C.F.R. § 2.734 should not apply in the context of supplementing a final EIS. First, requiring reopening the record to receive information pertinent to supplementing a final EIS makes no logical sense. The trier of fact should be able to analyze whether a final EIS should be supplemented based on new information, and then if the new information warrants supplementation, the record should be reopened to receive this information. Conversely, if the new information does not warrant supplementing the record, then there is no reason to reopen the proceeding.

Second, requiring a record to be reopened for supplementation of a final EIS adds an additional requirement to supplementing a FEIS that undermines the purpose of NEPA. It is well established that a final EIS should be supplemented when there are significant new circumstances that would be impacted by the project in question. 40 C.F.R. § 1502.9(c)(1); 10 C.F.R. § 51.92(a); Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 373 (1989). Requiring that the record be reopened in the context of EIS supplementation could mean that when a record is closed, the NRC Staff might not be able to consider the impacts of a project in changed circumstances, not because those changed circumstances are not significant, but because of an NRC determination that the manner in which the new circumstances are presented does not satisfy NRC technical procedural requirements.

Third, even though the Intervenors' Motion to Supplement Section 8 does not explicitly address the standards in 10 C.F.R. § 2.734, in substance that Motion meets all the requirements.

Fourth, when finality has attached to some, but not all, issues, new matters may be considered where there is a reasonable nexus between those matters and the issues remaining before the Board. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 841 n. 9 (1984) citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707 (1979). In this case, there is a very close nexus between the NEPA issues for Section 8 and Section 17. The sections

## ARGUMENT

### A. Standard for Reopening the Record.

The standards set forth in 10 C.F.R. § 2.734 are used to determine whether to reopen a closed record in a materials licensing proceeding. In the Matter of HRI, CLI-00-12, 52 NRC 1, 5 (2000). In relevant part, that regulation provides as follows:

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless:

- (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
- (2) The motion must address a significant safety or environmental issue.
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied.

10 C.F.R. § 2.734(a)-(b).<sup>2</sup> Directly applicable to the present situation, when a motion to reopen raises issues of great safety significance or gravity, the motion may be granted if the moving papers are "strong enough, in light of any opposing filings, to avoid summary disposition."

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB- 138, 6

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are contiguous. FEIS at 2-29, Fig. 2.10. The FEIS analyzed both sections as one unit. See eg. FEIS at 3-31 - 3-40 .

Fifth, analyzing either Section 8 or Section 17 in isolation would lead to segmentation of the FEIS, which is impermissible under NEPA. Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976).

Finally, even assuming, for the sake of argument, that Intervenor's arguments do not satisfy the requirements of 10 C.F.R. § 2.734, that would not relieve the NRC Staff of its obligation to supplement the FEIS. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-83-57, 18 NRC 445, 632 (1983).

<sup>2</sup> Subsection (d), which establishes additional standards for motions that are related to contentions that have not previously been litigated, is not applicable here.

AEC 520, 523 (1973). A motion to reopen an administrative record may rest on evidence that came into existence after the hearing closed. Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-898, 11 NRC 876, 879 n.6 (1980). Conversely, "a matter may be of such gravity that the motion to reopen should be granted notwithstanding that it might have been presented earlier." Vermont Yankee, *supra*, 6 AEC at 523.<sup>3</sup> Intervenors submit that this motion and the supporting Wallace and Eggleston affidavits satisfy the scenario described in the Pacific Gas and Electric and Vermont Yankee standards.

**B. The Motion is Timely and Raises Exceptionally Grave Safety Issues**

**1. Intervenors' Motion is Timely Under the Circumstances**

Intervenors' motion is timely under the circumstances. The standard governing timeliness for a party seeking to reopen a record provides that the party must show that the issue it now seeks to raise could not have been raised earlier. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 (1982), *citing*, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

In this case, Intervenors' motion is being filed as quickly as possible under the circumstances. The EA was not published until June 2003, well after the Board and Commission's rulings on Section 8 NEPA issues. Intervenors received the EA on July 5, 2003. Intervenors attempted to bring to the NRC's attention to this important new information as soon

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<sup>3</sup> Differing analyses by experts of factual information already in the record do not normally constitute the type of information for which reopening of the record would be warranted. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), 22 NRC 795, 799 (1985) (citation omitted). Intervenors submit that none of the information cited by Mr. Wallace or Dr. Eggleston is in this proceeding's record.



as possible after they received it. Letter from Eric Jantz to Mitzi Young and John Hull (July 31, 2003). The NRC Staff did not respond to Intervenors' correspondence until the end of 2003. Over the following months, Intervenors continued to raise the FEIS supplementation issue with the NRC Staff, in order to give it the opportunity to evaluate the information and determine whether it would supplement the FEIS on its own accord. Letter from Eric Jantz to Mitzi Young and John Hull Following Up on ENDAUM and SRIC Request That the NRC Staff Undertake to Supplement the FEIS for the Crownpoint Uranium Project at 1 (Jan. 8, 2004) (ACN ML040160454). The NRC Staff did not make a definitive statement on its refusal to supplement the FEIS until March 26, 2004. Joint Status Report at 7. The Presiding Officer did not require a motion on supplementation until May 14, 2003. Transcript of Telephone Conference at 66 (April 14, 2004). Thus, Intervenors submitted their motion as expeditiously as possible once it was established that the NRC Staff had no intention of supplementing the FEIS.

Arguably, Intervenors should have submitted their motion to reopen the record with respect to Section 8 with their Motion to Supplement the FEIS for Section 8. However, Intervenors did not believe such a motion is required in the context of FEIS supplementation, but are filing this motion in an abundance of caution. See footnote 2 of this motion. Moreover, neither HRI nor the NRC Staff are prejudiced by the timing of this motion. Neither party has filed a response to Intervenors' Motion to Supplement the FEIS for Section 8 and Intervenors will readily agree to any reasonable extension of time the NRC Staff and HRI request for responding to this motion.

## **2. Intervenors' Motion Raises Exceptionally Grave Safety Issues**

Alternatively, even if the Intervenors' motion is untimely, it should still be granted. An

untimely motion to reopen the record may be granted if the movant meets the increased burden of demonstrating that the motion raises an "exceptionally grave" issue rather than just a significant issue. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 76, 78 (1988), citing 10 C.F.R. § 2.734(a)(1). Intervenors respectfully submit that the EA and the affidavits of Mr. Wallace and Dr. Eggleston raise just such a grave issues.

HRI's groundwater pumping for its Church Rock Section 8 operations will likely affect the groundwater gradient when combined with groundwater pumping for drinking water from Springstead Estates. Affidavit of Michael G. Wallace ("Wallace") at ¶¶ 8, 18, attached as Exhibit A to Intervenors' Motion to Supplement for Section 8. This effect on groundwater gradient will likely affect HRI's ability to balance and control excursions. Id. at ¶ 8. Because of the close proximity of HRI's Church Rock Section 8 operations to Springstead Estates, excursions and groundwater gradient reversal could have serious consequences for the development's drinking water supply. Id. at ¶ 18.

The combined groundwater pumping form HRI's Section 8 operations and Springstead Estates could also cause vertical excursions. Id. at ¶ 19. If the groundwater flow is affected, groundwater could move away from HRI's wellfield toward the nearby Pipeline fault, causing a vertical excursion. Id. at ¶¶ 20-21. The combined effects of pumping from Section 8 and Springstead Estates could also change the pressure in the underground mine workings located at Section 17. Id. at ¶ 23. The change in pressure could further complicate HRI's ability to mitigate underground mine workings collapse, which could create pathways for vertical excursions. Id. at ¶¶ 22-24.

There are also potential radiological consequences of HRI's Church Rock Section 8

operations to Springstead Estates. The radiological assessment currently contained in the FEIS does not contain a 1,000 - unit housing development in its MILDOS receptor inventory.

Affidavit of Alan Eggleston ("Eggleston") at ¶ 10, attached as Exhibit B to Intervenors' Motion to Supplement for Section 8. The introduction of up to 4,400 new receptors nearby warrants remodeling the air emissions from HRI's Church Rock Section 8 operations. Id. HRI's Church Rock operations would also have a significant effect on the traffic patterns and accident rates on roads providing access to Springstead Estates. The FEIS's accident rate estimates for New Mexico route 566 and Navajo route 11/49 are based on historic usage. FEIS at 3-45. However, the introduction of an additional 4,400 individuals into the area will significantly change the traffic load on these roads and concomitantly affect the likelihood of an accident involving one of HRI's trucks transporting uranium slurry or hazardous materials. Eggleston at ¶¶ 9, 21.

Finally, the FEIS does not take into account the environmental justice implications associated with Springstead Estates. Springstead Estates will provide housing for low-income individuals and families. EA at 4. It could house up to 4,400 individuals. Eggleston at ¶ 9. The housing development will be built in an area populated largely by Native Americans. Id. at 13. Because of the new and substantial environmental justice population located in close proximity to HRI's Church Rock Section 8 operations, the Intervenors raise an extremely grave issue that warrants reopening of the record.

The EA, Mr. Wallace's and Dr. Eggleston's affidavits showing the likely impacts that HRI's Church Rock Section 8 operations will likely have on Springstead Estates raise exceptionally grave issues rather than just significant issues. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 76, 78 (1988), citing 10

C.F.R. § 2.734(a)(1).

**C. A Materially Different Result Would Have Been Likely If Intervenors' New Evidence Had Been Considered.**

Another of the factors for reopening a record is whether a different result might have been reached had the newly proffered material been considered initially. Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 11 NRC 876, 879 (1980). Intervenors are confident that had information regarding a significant new housing development for thousands of individuals in the Church Rock area (with concomitant demands on the Westwater aquifer) been available prior to 1997, when the FEIS was published, or in 1999, when the NEPA issues for Section 8 were litigated, the result would have been significantly different.

The FEIS analyzed, among other things, the CUP's impacts with respect to hydrology, air quality, land use, and environmental justice at Church Rock. FEIS, Sections 4.3.1.3, 4.1.1.2, 4.8.1, and 4.12. The FEIS also analyzed the CUP's transportation risks. Id., Section 4. When the FEIS was published, the Church Rock area was described as "sparsely populated." FEIS at 3-6. HRI's Church Rock site was described as "undeveloped range land" with a few scattered residences located within 2 miles of the site, only some of which were inhabited throughout the year. Id. at 3-55. The FEIS noted that the estimated population of Church Rock was 1742 in 1993. Id. The FEIS' characterization of the population in Church Rock as sparse and its distance from Sections 8 and 17 figured prominently in the former Presiding Officer's decision to uphold HRI's license for Section 8. In his partial initial decision dismissing Intervenors' environmental justice concerns, the Presiding Officer noted that the village of Church Rock was more than four miles from HRI's Church Rock Section 8 project and would not be affected by any pollution from HRI's operations. LBP-99-30, 50 NRC 77, 123 (1999). Additionally, the Presiding Officer

stated that his visit to the mining site permitted him to “observe the vastness of the desert and raises serious questions about how this project ... could possibly have any serious adverse impact on the people of this area.” Id.

Intervenors submit that the Presiding Officer would have had to address the impacts of HRI’s Church Rock Section 8 operations on Springstead Estates if confronted with the EA and Mr. Wallace’s and Dr. Eggleston’s affidavits. The substantially increased population and population density that Springstead Estates brings to the Church Rock area completely undermine the FEIS’ and Presiding Officer’s characterization of Church Rock as sparsely populated. The result could have been an additional license condition much like that of LC 10.27(A), which prohibits HRI from mining on its Crownpoint site until Crownpoint’s municipal wells have been moved. The applicability of this information to the public health effects of the CUP is indisputable. Respectfully, a materially different result would have been likely.

**D. The Motion is Adequately Supported by Mr. Wallace’s And Dr. Eggleston's Affidavit.**

**1. The Wallace and Eggleston Affidavits Contain Relevant, Reliable, and Well-Supported Evidence.**

The Appeal Board has held that new material in support of a motion to reopen a closed record must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 CFR 2.714(b) for admissible contentions. Pacific Gas & Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-775, 19 NRC 1361, 1366-67 (1984) (footnote omitted). Such supporting information "must be more than mere allegations; it must be tantamount to evidence" that is relevant, material, and reliable. Id. See also Vermont

Yankee, ALAB-138, 6 AEC at 523 (evidence must be sufficient to survive summary disposition). Mr. Wallace's and Dr. Eggleston's testimonies meet this standard. Both Mr. Wallace and Dr. Eggleston are qualified to testify on the material they raise. See, Section D.2 of this motion. They both reviewed the FEIS and the EA and drew conclusions based on their knowledge and experience. Wallace at ¶ 6, Eggleston at ¶ 5. All relevant supporting material, including any material available to support a motion to reopen the record, was attached to Intervenors' Section 8 Supplementation Motion. See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983). Moreover, both Mr. Wallace and Dr. Eggleston are prepared to testify orally to answer any questions on the record.

**2. Mr. Wallace and Dr. Eggleston Are Qualified to Testify on the Issues They Raise.**

Section (b) of 10 C.F.R. § 2.734 directs that the motion be accompanied by an affidavit(s) given by an individual with knowledge of the facts alleged or in disciplines appropriate to the issues raised. See also Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2) ALAB-915, 29 NRC 427, 431 (1989). Both Mr. Wallace and Dr. Eggleston are eminently qualified and competent to render an opinion on whether HRI's Church Rock operations are likely to impact the Springstead Estates.

Mr. Wallace has 15 years of hydrology experience, including generating groundwater transport models. Resume of Michael G. Wallace at 1, attached as Exhibit A-1 to Wallace affidavit. He is currently developing transport models for the NRC for the Yucca Mountain high level waste repository. Id. Moreover, Mr. Wallace has extensive knowledge of the local and regional aquifers and their hydrology in the Church Rock area because of his participation as an expert in these proceedings.

Dr. Eggleston has 25 years experience working in the ISL uranium mining industry. Resume of Alan Eggleston, attached as Exhibit B-1 to Eggleston affidavit. He has evaluated environmental impacts, especially with regard to radioactive air emissions, for a number of uranium mining companies, including HRI and its parent company, Uranium Resources, Inc. Id. at 5. Dr. Eggleston also has experience and knowledge of the CUP because he assisted HRI in preparation of materials in this proceeding. Id. Thus, Dr. Eggleston is qualified to testify on the likely environmental impacts of HRI's Church Rock uranium mining operations on Springstead Estates with respect to radioactive air emissions, traffic, and environmental justice.

### CONCLUSION

While Intervenors do not believe the requirements of 10 C.F.R. § 2.734 apply under these circumstances, Intervenors nonetheless respectfully urge the Presiding Officer to direct the reopening of the record of this proceeding for the NRC Staff to consider the extremely grave safety implications of Mr. Wallace's and Dr. Eggleston's affidavits with respect to supplementation of the FEIS for Church Rock Section 8. Mr. Wallace's and Dr. Eggleston's testimonies show that HRI's Church Rock Section 8 ISL mining operations will likely have an adverse effect on Springstead Estate's drinking water supply, its air quality, transportation issues, and environmental justice considerations. The environmental impacts of HRI's Church Rock operations on Springstead Estates is not considered by the FEIS, but should be.

Neither HRI nor the NRC Staff will be prejudiced by the granting of this motion. HRI could not commence mining tomorrow even if it desired to do so. HRI does not have a valid aquifer exemption or Underground Injection Control permit for Section 8 from the relevant permitting authority under the Safe Drinking Water Act. Furthermore, neither HRI nor the NRC

Staff have responded to the Intervenor's Motion To Supplement for Section 8 and Intervenor will agree to any reasonable extension of time that HRI and the NRC Staff request for responding to this motion.

The integrity of the FEIS will hinge on a determination on the merits of whether or not to include an analysis of HRI's impacts on Springstead Estates. Accordingly, Intervenor respectfully submit that the record of this proceeding should be reopened for the purpose of considering the EA and Mr. Wallace's and Dr. Eggleston's testimony.



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

May 26, 2004 (12:24PM)

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SERVED May 26, 2004

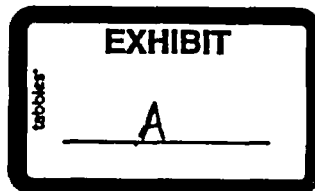
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In the Matter of )  
)

HYDRO RESOURCES, INC. )  
(P.O. Box 15910, )  
Rio Rancho, New Mexico 87174) )  
\_\_\_\_\_ )

Docket No. 40-8968-ML

**ORDER**

On May 14, 2004, intervenors Eastern Navajo Diné Against Uranium Mining and the Southwest Research and Information Center filed before the Commission a Motion to Supplement the Final Environmental Impact Statement for the Crownpoint Uranium Project Church Rock Section 8. Subsequently, the Commission has received two related procedural motions: (1) Hydro Resources, Inc.'s motion for an extension of time in which to respond to the intervenors' Section 8 motion; and (2) an NRC staff motion requesting the Commission to defer consideration of the Section 8 motion until the Presiding Officer rules upon a virtually identical motion on Church Rock Section 17.



Pursuant to my authority under 10 C.F.R. § 2.772(k), the intervenors' motion to supplement the FEIS in regard to Church Rock Section 8 is referred to the Presiding Officer, to consider together with the already pending and virtually identical motion on Church Rock Section 17.

IT IS SO ORDERED.



For the Commission

A handwritten signature in cursive script, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 22<sup>nd</sup> day of May 2004.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

HYDRO RESOURCES, INC.

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Docket No. 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER DATED 05/26/04 have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution, with copies by electronic mail as indicated.

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Docket No. 40-8968-ML  
 COMMISSION ORDER DATED 05/26/04

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Docket No. 40-8968-ML  
COMMISSION ORDER DATED 05/26/04

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 26<sup>th</sup> day of May 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge:

Thomas S. Moore, Presiding Officer  
Dr. Richard F. Cole, Special Assistant  
Dr. Robin Brett, Special Assistant

DOCKETED  
USNRC

March 31, 2004 (2:16PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SERVED April 1, 2004

In the Matter of

HYDRO RESOURCES, INC.

PO Box 777  
Crown Point, New Mexico 87313

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

March 31, 2004

ORDER

The Presiding Officer will hold a telephone conference with the parties in this proceeding on Wednesday, April 14, 2004, at 2 p.m. eastern daylight saving time. Counsel for all parties shall participate. To participate, counsel for each of the parties shall call 1-800-638-8081 (301-231-5539 for local callers) and enter passcode 4020# at a few minutes before 2 p.m. on the date of the telephone conference.

In the event any party's counsel cannot participate in the April 14, 2004 telephone conference, counsel should inform the Presiding Officer by close of official NRC business hours Wednesday April 7, 2004, either by e-mail (tsm@nrc.gov, acr2@nrc.gov and ksv@nrc.gov) or facsimile notice (301-415-5599) and provide the Presiding Officer an alternative date and time during the days of April 20, April 21, and April 22, acceptable to all other counsel for holding the conference. In any event, the parties should inform the Presiding Officer as to whom will be participating by close of official NRC business hours Wednesday April 7, 2004, either by e-mail (tsm@nrc.gov, acr2@nrc.gov and ksv@nrc.gov) or facsimile notice (301-415-5599).

EXHIBIT

tabular  
B

In the parties' March 26, 2004, Joint Status Report, Hydro Resources, Inc. (HRI) indicates its willingness to commence discussions with Eastern Navajo Diné Against Uranium Mining and Southwest Research and Information Center (Intervenors) in an attempt to resolve the Intervenors' request for materials referenced by HRI and/or the NRC Staff. HRI and the Intervenors should immediately commence discussions to resolve this matter. Although the Presiding Officer sees no obstacles to HRI and the Intervenors satisfactorily resolving this matter quickly, in the unlikely and unfortunate event they cannot reach a mutually acceptable solution, HRI and the Intervenors should be prepared to discuss any outstanding dispute in this regard during the April 14, 2004 telephone conference.

Further, with respect to the requested materials that the Staff, in the Joint Status Report, states are already in the Hearing File but which the Intervenors state are not, the Staff should be prepared at the telephone conference to provide the Hearing File numbers. Additionally, with respect to those requested materials that the Intervenors state the Staff has referred to in Staff documents such as the FEIS, the Intervenors should be prepared to address whether those materials are available through the NRC Public Document Room (PDR). Finally, with respect to any requested materials that are referred to by the Staff in Staff prepared documents but which are not publicly available in the PDR or already in the Hearing File, the Staff should be prepared to account for the absence of those materials from the Hearing File.


The parties should also be prepared to discuss the Intervenors' request that the Staff needs to supplement the FEIS. Initially, because all matters concerning Section 8 are concluded and either have already been appealed or appeals are pending with the Commission, the parties should be prepared to address the question of whether the Presiding Officer has any jurisdiction to entertain a motion with respect to any matters concerning Section 8. Further, the parties should be prepared to address the order for filing the written

presentations for the Intervenor's areas of concern should it be determined that the Staff needs to supplement the FEIS. Specifically, the parties should be prepared to address whether the area of concern regarding the adequacy of the FEIS should be litigated first because it might impact the other areas of concern. Finally, the parties should be prepared to address whether the question of the need for any supplementation of the FEIS pursuant to 10 C.F.R. § 51.92 is strictly a legal question, a mixed question of law and fact, or a matter that requires initial factual development of the record.

With the possible exception noted above, the Presiding Officer currently intends to adhere to the September 28, 2001, Joint Notice Regarding Agreed Order of Issues, where the parties agreed to litigate the issues in the following sequence: (1) groundwater protection, groundwater restoration, and related surety estimates; (2) liquid waste disposal and surface water protection; (3) historic preservation; (4) financial and technical qualifications; (5) air emission controls; (6) adequacy of FEIS (cumulative impacts, mitigation actions); and (7) environmental justice. Should any party object to this schedule, it should be prepared to discuss this matter during the telephone conference.

It is so ORDERED.

By the Presiding Officer<sup>1</sup>

  
Thomas S. Moore  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 31, 2004

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<sup>1</sup> Copies of this memorandum and order were sent this date by e-mail or facsimile transmission to counsel for each of the parties.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

HYDRO RESOURCES, INC.

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)

Docket No. 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED MARCH 31, 2004 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Thomas S. Moore, Presiding Officer  
Atomic Safety and Licensing Board Panel  
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Administrative Judge  
Richard F. Cole, Special Assistant  
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Administrative Judge  
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Docket No. 40-8968-ML  
LB ORDER DATED MARCH 31, 2004

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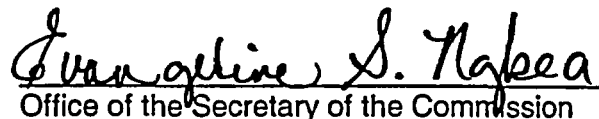
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 1<sup>st</sup> day of April 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Thomas S. Moore, Presiding Officer  
Richard F. Cole, Special Assistant  
Robin Brett, Special Assistant

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenors' Motion To Reopen And Supplement The Record" in the above-captioned proceeding have been served on the following by U.S. Mail, first class, or, as indicated by an asterisk, by electronic mail and U.S. Mail, first class, this 2<sup>nd</sup> day of June, 2004:

Administrative Judge, Thomas S. Moore\*  
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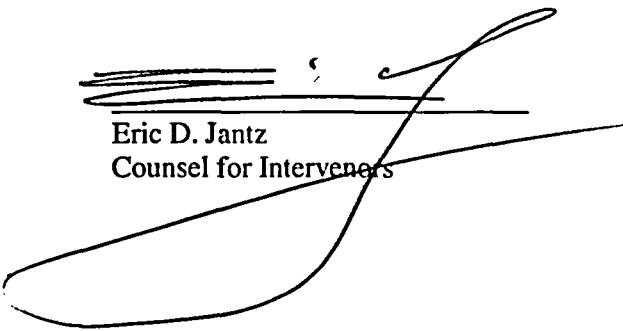
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Washington, D.C. 20555

Adjudicatory File  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
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Washington, D.C. 20555

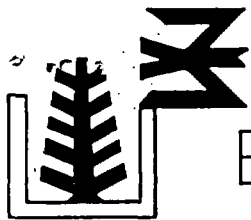
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Eric D. Jantz  
Counsel for Interveners



NEW MEXICO  
ENVIRONMENTAL LAW CENTER

June 2, 2004

**BY ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL**

U.S. Nuclear Regulatory Commission  
Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

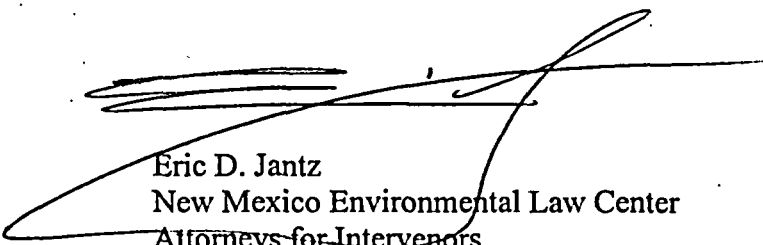
Re: In the Matter of: Hydro Resources, Inc.; Docket No: 40-8968-ML

Dear Sir or Madam:

Please find attached for filing Intervenors' Motion To Reopen And Supplement The Record in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the attached self-addressed, postage prepaid envelope.

If you have any questions, please feel free to contact me at (505) 989-9022.  
Thank you for your attention to this matter.

Sincerely,



Eric D. Jantz  
New Mexico Environmental Law Center  
Attorneys for Intervenors

Enclosures

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