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NUCLEAR REGULATORY COMMISSION

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RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

In the Matter of:

Hydro Resources, Inc.
P.O. Box 777
Crownpoint, NM 87313

)
)
) Docket No.: 40-8968-ML

) Date: June 14, 2004
)
)

HYDRO RESOURCES, INC.'S INITIAL BRIEF ON PRESIDING OFFICER'S
DECISION IN LBP-04-03 REGARDING HYDRO RESOURCES, INC'S SECTION
8 RESTORATION ACTION PLAN

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June 14, 2004

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8 RESTORATION ACTION PLAN**

INTRODUCTION

Hydro Resources, Inc. (HRI), by its undersigned counsel of record and pursuant to a *Memorandum and Order* dated May 20, 2004 from the Commission, hereby submits this Initial Brief on Presiding Officer's Decision in LBP-04-03 Regarding HRI's Section 8 Restoration Action Plan (RAP) under its Nuclear Regulatory Commission (NRC) 10 CFR Part 40 license to operate an *in situ leach* (ISL) uranium mining facility in Churchrock, New Mexico. For the foregoing reasons, HRI asserts that the Presiding Officer's decision with respect to his findings in Sections IIF(1) and IIF(2) of LBP-04-03 are in error and should be reversed.

BACKGROUND AND PROCEDURAL HISTORY

HRI obtained a source material license for a proposed ISL uranium mining operation (SUA-1508) in January of 1998. Several parties, including the Eastern Navajo Dine Against Uranium Mining (ENDAUM) and the Southwest Research Information Center (SRIC) (hereinafter the "Intervenors"), subsequently were allowed to intervene to challenge that license, and one of the many issues raised by Intervenors in the course of

this proceeding was that the financial information and cost estimates submitted by HRI to satisfy 10 CFR Part 40, Appendix A, Criterion 9 financial assurance requirements were inadequate.

On May 25, 2000, the Commission issued an Order requesting that HRI submit, within 180 days of its receipt, "a decontamination, decommissioning and reclamation plan with cost estimates on which a surety will be based."¹ The Commission further stated that, "[t]he plan in the first instance need only address the Section 8 site where HRI plans to begin operations first."²

In accordance with the Commission's May 25, 2000 Order, on November 21, 2000, HRI submitted the requested Section 8 RAP and accompanying cost estimates addressing only the Section 8 portion of the Crownpoint Uranium Project (CUP). The RAP and accompanying cost estimates were prepared by HRI personnel who would be responsible for groundwater restoration at Section 8, based upon their personal experience implementing groundwater restoration at other ISL uranium mining facilities in Texas operated by HRI's parent company, Uranium Resources, Inc. (URI).³

On February 16, 2001, NRC Staff issued a Request for Additional Information (RAI) asking HRI to answer specific questions regarding specific issues associated with the Section 8 RAP.⁴ On March 16, 2001, HRI submitted its response to NRC Staff's

¹ See *In the Matter of Hydro Resources, Inc. (Crownpoint Uranium Project)*, CLI-00-08, 51 NRC 227, *16 (May 25, 2000).

² CLI-00-08 at *23.

³ When HRI refers to the experience of HRI personnel with groundwater restoration at previously restored sites or sites with ongoing restoration activities, this experience refers previously to sites owned and operated by HRI's parent company, URI.

⁴ See *Hydro Resources, Inc., Request for Additional Information Concerning Restoration Costs for Hydro Resources In-Situ Uranium Mining Project*, ML010520228 (February 16, 2001).

RAI.⁵ On April 16, 2001, NRC Staff completed its review of HRI's Section 8 RAP and determined that the financial assurance cost estimates listed therein were acceptable.⁶ Intervenor subsequently challenged HRI's submission and NRC Staff's approval of the Section 8 RAP.

After hearing written and oral presentations regarding the Section 8 RAP and accompanying cost estimates and allowing for a substantial interval for settlement negotiations, on February 27, 2004, the Presiding Officer issued an Order in which HRI's use of its NRC license to conduct ISL uranium mining activities was prohibited pending resolution of three specific issues: (1) re-calculation of HRI's Section 8 surety using the "tremie" line method for well-plugging, (2) re-calculation of labor costs using the estimated average costs projected by two independent contractors or the estimates provided by Intervenor without assuming employees would wear "multiple hats;" and (3) re-calculation of reclamation costs based on the average costs projected by two or more independent contractors, without assuming use of HRI's "major" equipment. *See In the Matter of Hydro Resources, Inc. (Crownpoint Uranium Project), Memorandum and Order: Ruling on Restoration Action Plan*, LBP-04-03, at 34, ML040620318 (February 27, 2004) (hereinafter "LBP-04-03").

In response to the Presiding Officer's Order, on March 15, 2004, HRI submitted a Petition for Review addressing the latter two issues noted above in the Presiding

⁵ *See Hydro Resources, Inc., Response to Request for Additional Information Concerning Restoration Costs for Hydro Resources In-Situ Uranium Mining Project*, ML010810221 (March 16, 2001).

⁶ *See Hydro Resources, Inc. Acceptance of Restoration Action Plan for Hydro Resources In Situ Uranium Mining Project, License SUA-1580*, ML011270156 (April 16, 2001).

Officer's decision in LBP-04-03 requesting that the Commission grant review of HRI's Petition and permit further briefing on the subject-matter of that Petition.⁷

On May 20, 2004, after extending the period of review of HRI's Petition for Review on two separate occasions,⁸ the Commission granted review and requested further briefing on the two issues appealed by HRI.⁹ In this brief, HRI presents its response to the Commission's request for briefs and asserts that the Presiding Officer's decision in LBP-04-03 with respect to his findings in Sections IIF(1) and IIF(2) are in error and should be reversed. Further, HRI respectfully requests that the Commission determine that HRI's Section 8 RAP financial assurance cost estimates, with the exception of the Presiding Officer's finding in Section IIE of LBP-04-03,¹⁰ are sufficient to commence ISL mining activities and that the prohibition on the use of HRI's source material license for Section 8 be lifted.

STANDARD OF REVIEW

Licensing Board decisions may be reversed where the brief on appeal points to an error of law that might serve as grounds for reversal of a Board's decision. *Private Fuel Storage, L.L.C.* (Independent Fuel Storage), CLI-00-21, 52 NRC 261, 265 (2000). In general, Licensing Board decisions may be rejected or modified if, after giving that

⁷ With respect to the first finding of the Presiding Officer regarding HRI's proposed well-plugging method, HRI will address this issue outside the scope of this appeal by either amending its RAP to use the "tremie" line method to calculate well-plugging costs or by seeking approval of its proposed well-plugging method from the State of New Mexico Engineer's office.

⁸ See *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), *Commission Order Extending Time to Rule on Petitions for Review of LBP-04-03*, Docket No. 40-8968-ML (May 19, 2004); *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), *Commission Order Extending Time to Rule on Petitions for Review of LBP-04-03*, Docket No. 40-8968-ML (March 31, 2004).

⁹ See *Hydro Resources, Inc.* (Crownpoint Uranium Project), Memorandum and Order, CLI-04-14 (May 20, 2004). (hereinafter "CLI-04-14")

¹⁰ See LBP-04-03 at 18-19.

decision the probative force it intrinsically commands, the record compels a different result. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-932, 31 NRC 371, 397-98 (1990); *see also Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975). Where the record would fairly sustain a result deemed “preferable” by the agency to the one selected by the Licensing Board, the agency may substitute its judgment for that of the lower Board. *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977).

DISCUSSION

I. The Presiding Officer’s Finding That HRI’s Section 8 Restoration Action Plan’s Proposed Labor Categories Were Insufficient and That Employees Cannot Perform Multiple Related, Albeit Different, Tasks Should Be Reversed

In LBP-04-03, the Presiding Officer stated that, “HRI, having assumed improperly that the laborers an independent contractor would use would wear ‘multiple hats,’ can either accept the cost estimates proposed by the Intervenor[s] [sic] in recalculating its labor costs or, alternatively, use the average cost estimates proposed for labor by two or more independent contractors.”¹¹ LBP-04-03 at 34. The Presiding Officer based this conclusion on his determination that “the current record does not support HRI’s decision to require employees to wear ‘multiple hats’ to decrease the costs of decommissioning as being in accord with the requirements of Criterion 9.” *Id.* at 25. As will be shown below, HRI’s RAP cost estimates accounting for the use of staff

¹¹ As a practical matter, it would be difficult for HRI to find two (2) independent contractors who would make such estimates about an ISL uranium mining project that has not yet been developed without being paid, which would make them “consultants” to HRI and not independent contractors.

employees performing related, albeit different, tasks is consistent with 10 CFR Part 40, Appendix A, Criterion 9 and makes common economic sense as reflected in generally accepted industry practice. As such, the record in this proceeding supports HRI's Section 8 RAP, and the Presiding Officer's decision below should be reversed.

A. NRC Guidance is Silent With Respect to In Situ Leach Uranium Mining Personnel Performing Multiple Related, Albeit Different, Tasks During Groundwater Restoration

NRC's Standard Review Plan for ISL uranium mining licensees (NUREG-1569) provides guidance for such licensees on a variety of issues, including financial assurance for groundwater restoration. *See* NRC, NUREG-1569, *Standard Review Plan for In Situ Leach Uranium Extraction License Applications*, 6-23-6-26, Appendix C (June 2003) (hereinafter "ISL SRP"). One particular aspect of this issue includes the calculation of cost estimates covering proposed labor categories for personnel involved in groundwater restoration activities. The ISL SRP initially states only that "the availability of *licensee staff* should not be considered in the estimate, to reduce cost estimates." *Id.* at C-5 (emphasis added). This statement in no way prohibits the use of qualified personnel for multiple related, albeit different, tasks. The ISL SRP, however, does state that financial assurance cost estimates are acceptable if "[t]he applicant has based the assumptions for financial surety analysis on site conditions, including experiences with *generally accepted industry practices....*" *Id.* at 6-26 (emphasis added). Since the ISL SRP's language does not directly or indirectly address the use of employees performing related, albeit different, functions, generally accepted industry practice should govern the calculation of financial assurance cost estimates with respect to proposed labor categories

and site personnel and, as such, HRI's Section 8 RAP cost estimate, which reflects generally accepted industry practice with respect thereto, should be upheld.

B. Generally Accepted Industry Practice Assumes That In Situ Leach Uranium Mining Site Personnel Will Perform Multiple Related, Albeit Different, Tasks During Groundwater Restoration

Cost estimates for uranium recovery operations and groundwater restoration activities at licensed ISL uranium mining sites assume a limited number of personnel, each of which perform several related, albeit different, tasks and a mix of automated controls. Mr. Mark Pelizza's January 22, 2001 affidavit submitted in support of the Section 8 RAP,¹² notes that URI/HRI is the oldest ISL uranium mining company in the United States and has fully restored multiple ISL uranium mining projects to the satisfaction of state regulatory agencies. *See* 2001 Affidavit of Mark Pelizza at 3. As a result of its experience in ISL uranium mining, HRI personnel have been "standard-setters" for the industry when new ISL companies have begun to operate. As shown in Mr. Pelizza's 2001 affidavit, since its inception in 1977, HRI personnel has extensive experience with "life-cycle" worksheets for both uranium recovery operations and groundwater restoration at particular ISL uranium mining projects, including calculation of accompanying financial assurance cost estimates. *See generally* 2001 Pelizza Affidavit. As a result, HRI personnel, including Mr. Pelizza, have helped to set industry standards for mining and restoration activities at ISL uranium mining facilities, including those currently operated by other ISL uranium mining licensees.

¹² *See In the Matter of Hydro Resources, Inc. (Crownpoint Uranium Project) Reply of Hydro Resources, Inc. to Intervenor's Response to HRI's Cost Estimate for Decommissioning and Restoration Action Plan, Affidavit of Mark Pelizza, Docket No-8968-ML, ML010250426 (January 22, 2001).*

The issue of personnel necessary for groundwater restoration, whether such personnel are licensee-employed or employed by an independent contractor, was addressed by HRI in its Section 8 RAP. The preamble to Mr. Pelizza's description of the Section 8 RAP's proposed labor categories, specifically addresses site personnel for groundwater restoration:

“to justify their full-time status and utilize their time on the job, it is assumed that they are required to provide a multitude of services, i.e., every employee will be wearing multiple hats.”

2001 Pelizza Affidavit at 19.

Table 3 of Mr. Pelizza's 2001 affidavit then lists four distinct categories of labor requirements and the necessary types of employees to satisfy such requirements. *See* 2001 Pelizza Affidavit at 19, Table 3 (also attached as “Exhibit A”). Typically, the personnel at ISL uranium mining sites are involved with both production and restoration tasks, as the two activities are performed simultaneously at any given mining site until active production ceases. For example, when HRI completes uranium recovery activities in the first well-field(s) at the Section 8 site, it will begin conducting groundwater restoration of such well-field(s) while commencing uranium recovery in other well-field(s) at the Section 8 site. Thus, HRI personnel will be performing both production and restoration tasks at the same time. As noted above, given the relatively small number of employees typically utilized at ISL uranium mining sites for both uranium production and post-production groundwater restoration, due to the use of automated systems, such employees will be required to perform multiple different, albeit related, tasks. For example, as stated in Mr. Pelizza's 2001 affidavit,

“in the restoration mode, a qualified geologist will be required to verify the configuration of restoration patterns to assure efficient

results. While this task requires unique geological expertise, the time commitment...to this task may only be several hours per week. Therefore, to maximize the use of the geologist's time, he or she will be assigned to many other tasks for which he or she *will be qualified.*"

2001 Pelizza Affidavit at 19.

Further, the several other site employees designated in Table 3 and the Section 8 RAP to perform groundwater restoration activities, such as the Radiation Safety Officer and engineers, "will also perform their primary function and [a] number of secondary roles," because, as noted above, most tasks associated with groundwater restoration at ISL facilities require minimal manpower and rely substantially on automated systems.¹³ *Id.*; *see also* Section 8 RAP at Attachment E.2.d (also attached as "Exhibit B"). However, while these employees may perform several different, albeit related tasks, no employee shall perform any task for which he/she is not *fully qualified.*

As shown in Table 3 of Mr. Pelizza's affidavit, the list of categories of employees for the Churchrock Section 8 site is comparable to the list for previous ISL mining projects at Kingsville Dome and Rosita, where URI is performing full groundwater restoration and has experienced no setbacks requiring additional employees. In addition, as noted above, employees charged with tasks associated with groundwater restoration that are outside the focus of their primary job, whether simple or complex, must be *fully qualified* to perform all additional tasks assigned to them. Thus, based on HRI's past ISL mining experience and the generally accepted industry standards, which HRI personnel

¹³ HRI notes for the record that neither the Intervenor's nor the Presiding Officer's decision in LBP-04-03 assert that HRI's proposed labor categories were insufficient. Indeed, the Presiding Officer, as noted above, determined that HRI's proposed system of using a "combination of manpower and machine," was acceptable. *See* LBP-04-03 at 24-25.

helped to develop, the use of employees performing multiple related, albeit different, tasks during groundwater restoration is generally accepted industry practice.¹⁴

C. The HRI Section 8 RAP's Proposed Labor Categories Are Sufficient to Conduct Groundwater Restoration at the Section 8 Site

In its May 20, 2004, Order, the Commission noted that, “[t]he more precise and pertinent inquiry would seem to be whether the proposed labor categories appear reasonably sufficient in number (e.g., person hours) and expertise for the proposed restoration tasks and volume of restoration work.” CLI-04-14 at 2. As noted above, HRI’s Section 8 RAP and Mr. Pelizza’s 2001 affidavit list the proposed labor categories to be used at the Section 8 site during the groundwater restoration phase, which neither the Intervenor nor the Presiding Officer have challenged are inadequate.

Even though ISL uranium recovery operations and groundwater restoration activities are, in large part, automated and generally require minimal site personnel support, HRI’s Section 8 RAP nevertheless provides a comprehensive list of labor categories which address each required task for groundwater restoration activities. These proposed labor categories include six (6) distinct “salaried” job descriptions including the following: (1) Operations Manager, (2) Environmental Manager, (3) Radiation Safety Officer, (4) Chemist, (5) Senior Geologist, and (6) Wellfield Foreman. *See* Section 8 RAP at Attachment E.2.d. Additionally, HRI budgeted for five (5) distinct “direct wage” job descriptions including: (1) Electrician, (2) Plant Operator, (3) Truck Driver, (4)

¹⁴ It is worth noting that, in its grant of HRI’s Petition for Review in this proceeding, the Commission stated, “[n]or is it obvious to the Commission...why HRI cannot assume that an independent contractor may have personnel that perform related albeit distinct functions.” CLI-04-14 at 2. Indeed, it is reasonable to presume that NRC oversight of groundwater restoration operations by an independent contractor utilizing finite surety funding would require adequately experienced personnel to perform multiple tasks to assure cost-effective restoration.

Wellfield Operator, and (5) Pump Hoist Operator. *Id.* These proposed labor categories are designed to address the limited personnel-related duties required for groundwater restoration such as membrane and filter replacement, equipment instrument maintenance, repair or replacement, and logistical or administrative support. *See generally id.* As stated in Mr. Pelizza's 2001 Affidavit, each such employee will be fully qualified to perform their primary task (i.e., Radiation Safety Officer is primarily responsible for compliance with NRC and other relevant agency safety regulations),¹⁵ as well as any other secondary tasks (i.e., Radiation Safety Officer could also be responsible for assisting with laboratory analysis, vehicle safety, reporting and public information).¹⁶

In preparing this list of labor categories, HRI utilized prior experience at its other ISL mining projects, including four (4) ISL uranium mining projects where groundwater restoration has been fully completed or is currently ongoing. These labor categories also are designed to utilize the services of "technical professionals whose expertise is needed on a limited basis during the restoration mode" and to work on a finite budget (financial assurance cost estimate) by using a combination of "salaried" and "direct wage" personnel capable of performing multiple related, albeit different, tasks. Assuming that a licensee, such as HRI, were to become insolvent and groundwater restoration work were to be performed by an independent contractor, the contractor will be required to operate on the same finite budget as reflected in the NRC-approved Section 8 RAP.

The Presiding Officer's decision below could be interpreted to assume that NRC would allow an independent contractor to perform groundwater restoration inefficiently and, thereby, risk depleting available financial assurance prior to completion of

¹⁵ *See* Section 8 RAP at Attachment E.2.d.

¹⁶ *Id.*

restoration. Since all independent contractor activities must be approved by NRC during restoration in accordance with the approved reclamation plan (RAP), it is unlikely that NRC would permit an independent contractor to expend finite financial assurance inefficiently and irresponsibly. By paying technical professionals salaries to work full-time and to perform multiple related, albeit different, tasks for which they are qualified, and by paying direct wage employees only when their skills are necessary, financial resources are maximized to insure that restoration can be successfully completed within the available financial assurance. Thus, the proposed labor categories submitted by HRI and approved by NRC Staff in its Section 8 RAP are sufficient for groundwater restoration at the Section 8 site. Therefore, HRI respectfully requests that the Commission find HRI's proposed labor categories acceptable and reverse the Presiding Officer's decision below.

D. NRC-Mandated Annual Surety Updates Adequately Address Potential Costs for Additional Site Personnel

With respect to financial assurance for all NRC licensees, including ISL licensees, NRC mandates that financial assurance cost estimates be updated annually to account for potential changes in site conditions, repair or replacement of equipment, and personnel requirements. 10 CFR Part 40, Appendix A, Criterion 9 states,

“[t]he licensee’s surety mechanism will be reviewed annually by the Commission to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.”

10 CFR Part 40, Appendix A, Criterion 9 (emphasis added).

The ISL SRP also states, “[c]ost estimates...should be submitted to NRC with the initial license application or reclamation plan and should be updated annually;...” ISL SRP at C-1 (emphasis added). In each annual surety update, the licensee is directed to revise its financial assurance cost estimate upward or downward based on existing site conditions and circumstances, including the required equipment and/or personnel necessary for groundwater restoration.

As stated above, with respect to the specific issue of personnel for groundwater restoration, NRC’s ISL SRP does not explicitly or implicitly address the ability of groundwater restoration personnel, licensee-employed or not, to perform multiple related, albeit different, tasks. This issue, while directly addressed by generally accepted industry practice for ISL licensees, is also addressed by NRC-mandated annual surety updates. It is the licensee’s responsibility to monitor its licensed site for changing conditions and circumstances, including the perceived need for additional site personnel to perform newly required tasks or increased salaries for personnel performing such tasks in addition to those tasks previously assigned to them or, conceivably, reductions in staff as a result of the introduction of new automated controls. Each year, the licensee must submit, for NRC review, a revised financial assurance cost estimate and a justification for revising such estimate upward or downward for it to remain the same. Then, NRC may accept, reject, or reject with modifications the licensee’s proposed estimate according to its assessment of site conditions and circumstances. This iterative process allows both NRC and the licensee to continually adjust financial assurance to changed site conditions and circumstances, including the need for more or less personnel.

By requiring HRI to submit a financial assurance cost estimate based on the use of one employee for only one task, the Presiding Officer's decision ignores not only generally accepted industry practice of operating what he himself terms a "combination of manpower and unmanned automated machines with automatic shutdowns," but also ignores the availability of annual surety updates as a mechanism to insure that adequate funding for an independent contractor to hire necessary, experienced personnel (whether licensee employed or not). Thus, the Presiding Officer's decision below should be reversed.

II. The Presiding Officer's Finding that HRI's Section 8 Restoration Action Plan Cannot Account for the Availability of *Major* Site Equipment Should Be Reversed

In LBP-04-03, the Presiding Officer opined that, "HRI, having improperly assumed the availability of on-site equipment in calculating its surety estimate, must recalculate its reclamation costs based on the average costs that two or more independent contractors, without using HRI's equipment, would accrue in decommissioning...." LBP-04-03 at 33. This conclusion was based on the Presiding Officer's determination that, when calculating financial assurance, "it cannot be assumed that the *major equipment* necessary for decommissioning is available, and therefore, the revised estimates...should account for the cost of at least leasing the major equipment." *Id.* at 22. The Presiding Officer's determination is vague and ill-defined, and HRI's Section 8 RAP cost estimate accounting for the availability of certain site equipment is consistent with standard industry practices. As a result, the Presiding Officer's decision below should be reversed and HRI's RAP, as approved by NRC Staff, should be upheld.

A. NRC Guidance Regarding The Availability of Certain Site Equipment for Groundwater Restoration is Inconsistent

NRC's ISL SRP discusses the calculation of financial assurance cost estimates with respect to accounting for the availability of ISL equipment. Initially, the ISL SRP states that “[e]quipment owned by the licensee...should not be considered in the estimate, to reduce cost calculations.” ISL SRP at Appendix C, C-5 (emphasis added). The apparent assumption in this statement, which is even broader than the Presiding Officer's assumption noted above, suggests, on its face, that NRC Staff expects ISL uranium mining licensees to post enough financial assurance to cover each and every piece of equipment at the mining site (i.e., existing wells, well-field pipes, ion-exchange columns, reverse osmosis units, brine concentrators) and all components and instruments associated with each piece of equipment (i.e., filters, membranes, gauges, etc.)--an assumption that could not have been intended. HRI is aware of no evidence in the record or elsewhere that financial assurance estimates at ISL (or other) uranium mining facilities embody such an assumption. As a result, any such assumption would be fundamentally inconsistent with the ISL SRP's conclusion that financial assurance cost estimates should be based:

“on experience from *generally accepted industry practices*, from research and development activities at the site, or from previous operating experience in the case of a license renewal.”

ISL SRP at 6-24.

The Presiding Officer's decision at least attempts to limit the scope of this concept by using the term *major equipment* to describe which site equipment cannot be accounted for in HRI's RAP cost estimates, albeit without defining the term “major.”

Use of the broader term “equipment” not only contravenes generally accepted industry practice but common sense, since it would necessarily require including the cost of re-purchasing or leasing all piping, wells, pumps, other fixed equipment (i.e., ion-exchange columns, reverse osmosis units, brine concentrators), as well as all *non*-fixed equipment (i.e., drill rigs, front-end loaders, and pick-up trucks). Any such unreasonable assumption would make ISL uranium mining economically infeasible by requiring that a licensee assume complete re-purchase of *all* the equipment necessary to operate an ISL uranium mine.¹⁷

To the extent that the Presiding Officer’s decision in LBP-04-03 incorporates *all major equipment*, it is erroneous and contrary to generally accepted industry practice. HRI is unaware of any ISL uranium mining project in the United States where its financial assurance cost estimates have required that funding be set aside to account for potential replacement of *all major equipment* such as (i.e., wells, ion-exchange columns, brine concentrators, reverse osmosis units, etc.). By mandating any such cost estimate, the Presiding Officer essentially ignores the generally accepted industry practice of preparing “life-cycle” projections which plan for repair and replacement of equipment, licensee contingency planning, and the ability of NRC mandatory annual surety updates to address necessary repairs or replacement of specific equipment. For example, any assumption about replacement of a *major* piece of equipment necessarily must consider whether it is the type of equipment that is likely to be repaired or replaced periodically (e.g., a reverse osmosis unit) or one that almost never requires repair or replacement (e.g.,

¹⁷ Indeed, the Criteria listed in 10 CFR Part 40, Appendix A are intended to be applied to ISL licensees *flexibly* rather than in the rigid fashion articulated by the Presiding Officer. See *generally* 10 CFR Part 40, Appendix A.

a brine concentrator). Further, such an assumption also must assess whether the *major* piece of equipment is “brand new” or has been in use for a significant period of time. Annual surety updates are designed to address such site-specific issues. Thus, the Presiding Officer’s decision below should be reversed, and HRI’s NRC-approved Section 8 financial assurance cost estimates should be deemed acceptable.

B. Generally Accepted Industry Practice Supports HRI’S Section 8 RAP With Respect to Site Equipment For Groundwater Restoration

Financial assurance cost estimates for ISL uranium mining projects include funds for potential repair or replacement of site equipment necessary to conduct both uranium recovery operations and groundwater restoration activities. With respect to its groundwater restoration activities at the Section 8 site, HRI is authorized under its NRC license to conduct restoration activities using reverse osmosis equipment and a brine concentrator. For example, in this restoration process, HRI will be required to replace membranes and filters as necessary to assure that the reverse osmosis process is conducted properly. In addition, HRI must monitor other site equipment and their components to insure that all such equipment operates properly and can perform its designated function(s). When preparing its financial assurance cost estimates, HRI specifically accounted for the replacement of these membranes and filters in its Section 8 RAP. *See* Section 8 RAP at Attachment E.2.d. HRI’s Section 8 RAP also includes costs for the repair and/or maintenance of all site equipment, including the reverse osmosis unit, field equipment, vehicles, pumps, etc. *See id.* HRI also accounted for potential replacement of brine concentrator instruments and other filters, as well as the potential

replacement and /or maintenance of submersible pumps and motors and field piping and valves in well-field equipment. *See id.*

The financial assurance cost estimate methodology used by HRI in calculating these potential repair, maintenance, and/or replacement costs assumes that virtually all equipment at the site, with the possible exception of the well-field pipes and the brine concentrator, may require *some* repair and/or replacement at *some* point, depending on the time and extent of production and restoration activities. As will be shown below, 10 CFR Part 40, Appendix A, Criterion 9 still requires annual updates to HRI's financial assurance cost estimate to account for new or unanticipated costs like, such as those noted in the ISL SRP, for "equipment used for restoration...[that is] *near the end of its serviceable life.*" ISL SRP at C-3 (emphasis added).

This methodology, as described above, represents generally accepted industry practice for the calculation of ISL uranium mining financial assurance cost estimates. HRI personnel's previous site experiences at four (4) different sites (i.e., Kingsville Dome, Rosita, Longoria, Benavides) and experience from other ISL uranium mining projects (i.e., Power Resources, Inc. (PRI)) were considered in developing cost estimates that will assure that funds set aside for groundwater restoration are adequate. As noted above, since HRI personnel have been an integral part of setting industry standards for the ISL uranium mining industry, these past experiences demonstrate that HRI's Section 8 RAP, which was based on such experiences, but which can be modified as necessary on an annual basis, is consistent with generally accepted industry practice.

C. NRC-Mandated Annual Surety Updates Address Potential Replacement Costs for Equipment Near the End of Its Serviceable Life

As stated above, NRC's ISL SRP requires that ISL licensees perform annual surety updates which assure that adequate funds are available each year to support decommissioning and decontamination activities should the licensee be unable to perform them. NRC's ISL SRP specifically states that financial assurance submissions are acceptable if "[t]he applicant commits to updating the surety value annually, in response to changes in closure or decommissioning plans, and as necessitated by changes in the facility and its operation." ISL SRP at 6-25.

Further, these annual surety updates comport with several sections of the ISL SRP's outline for financial assurance cost estimates regarding groundwater restoration, which require that licensees monitor the condition and operability of existing equipment and increase financial assurance funding to account for such equipment when it requires replacement. For example, Section II of Appendix C states the following:

"Replacement costs of some water treatment equipment may need to be included in the surety if the equipment used for restoration is near the end of its serviceable life."

Id. at C-3 (emphasis added).

Based on this statement, NRC's ISL SRP explicitly recognizes that the costs of equipment such as reverse osmosis units, ion-exchange columns, and well-field mechanisms (i.e., pipes) are estimated by the licensee prior to the commencement of mining operations. Further, by using the annual surety update as a check on the licensee's financial assurance cost estimates(s), NRC requires that licensees monitor the operational quality of existing site equipment necessary for groundwater restoration and,

if necessary, set aside additional funding for replacement of existing site equipment “*if the equipment...is near the end of its serviceable life.*” *Id.* Thus, the Presiding Officer’s decision below requiring HRI to solicit estimates from independent contractors which do not include the availability of *major* site equipment flies in the face of NRC’s mandatory annual surety updates for ISL licensees.

III. HRI’s Section 8 RAP Cost Estimate Provides Adequate Contingency Funds for Unforeseen Events Regarding Site Equipment or Personnel

Pursuant to 10 CFR Part 40, Appendix A, Criterion 9 and NRC’s ISL SRP, ISL licensees also are required to submit financial assurance cost estimates that include a “contingency amount” over and above the calculated cost estimate to address potential unforeseen events. More specifically, the ISL SRP states, “[t]he licensee should include a contingency amount to the total cost estimate for the final site closure. The staff considers a *15-percent contingency* to be an acceptable minimum amount.” ISL SRP at C-4; *see also* License No. SUA-1580, License Condition 9.5 (emphasis added).

HRI’s Section 8 RAP cost estimates include a 15 percent “contingency amount” on the total costs of final site closure, which HRI intends to maintain on its Section 8 financial assurance cost estimates throughout the duration of Section 8 mining and decommissioning, regardless of any changes in cost estimates in annual surety updates. By adding a 15 percent “contingency amount” to these cost estimates, HRI effectively has provided an excess of funds for final site closure that may be used for unforeseen repairs or maintenance of site equipment that could not be addressed in an NRC-mandated annual surety update. Further, HRI purposefully listed more “salaried” employees in its proposed labor and personnel categories than is normally required for groundwater restoration so that adequate funds would be available for decommissioning

activities. Using this “contingency amount” and overestimates of “salaried” employee time as insurance for the financial projections effectively insures that sufficient funding will be available should unforeseen events related to site equipment or personnel occur. Thus, the Presiding Officer’s decision in LBP-04-03 should be reversed.

IV. Issues of Creditors Rights Likely Will Not Impact the Site Equipment for HRI’s Section 8 Site

In its May 20, 2004 Order, the Commission states that HRI’s Petition for Review “also involves questions of creditor rights that have not been explored.” In particular, these questions may involve actions potentially taken by creditors to attempt to salvage or sell site equipment to satisfy debts after a licensee declares bankruptcy under the United States Bankruptcy Code. In other words, the concern is that creditors potentially could attempt to petition the Bankruptcy Court to remove equipment from the licensed site and sell such equipment prior to the completion of groundwater restoration. The Atomic Energy Act of 1954, as amended, (AEA) and NRC Guidance suggest that issues of creditors’ rights will not impact the availability of site equipment necessary for groundwater restoration.

NRC’s NUREG-1556 Guidance document entitled *Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses* (NUREG-1556)¹⁸ directly addresses the issues associated with changes of control at licensed sites due to licensee bankruptcy, in relation to Section 184 of the AEA, as amended, which states:

“No license granted hereunder...hereby shall be transferred...either voluntarily or involuntarily, directly or indirectly, through transfer

¹⁸ NRC, NUREG-1556, *Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses*, Vol. 15 (November, 2000).

of control of any license to any person, *unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.*"

42 U.S.C. § 2234 (1997).

NRC also makes it clear that "each instance of bankruptcy or change of control is unique and must be evaluated on a case-by-case basis." NUREG-1556 at § 1.

According to NUREG-1556, "[l]icensees who have filed for bankruptcy remain responsible for all regulatory requirements." NUREG-1556 at § 6. With respect to site equipment, the criteria for submitting a request for a new or amended license reflecting a change in control or bankruptcy are that such license request will be approved if:

"appropriate regulatory requirements are met demonstrating that the licensee (or applicant) has facilities and equipment that are adequate to protect public health and to minimize danger to life or property."

NUREG-1556 at § 10.9.

In addition, NUREG-1556 specifically states, "[p]ersons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing facilities." *Id.* Thus, each licensee must submit an application detailing the status of its licensed site, including site equipment, to NRC for approval *prior to* the amendment of a license for change of control due to bankruptcy.

In addition, when a licensee enters bankruptcy, NRC will immediately form a Bankruptcy Review Team (BRT) to address all issues associated with the bankruptcy proceeding. One of the BRT's primary duties is to "assess the current public health and safety situation at the licensee's facility and any impacts the bankruptcy could have on licensed operations. *Id.* at Appendix H. Part of this inquiry should include "any steps

necessary to secure the site...to ensure that NRC's rights to *compel the debtor to satisfy its public health, safety, and environmental obligations, or to pursue any claim against the assets of the bankruptcy estate would not be unnecessarily prejudiced.*" *Id.* (emphasis added). Thus, as stated in NUREG-1556, NRC has the ability to compel the debtor (licensee) to satisfy the conditions of its license (i.e., perform groundwater restoration) during a bankruptcy proceeding.

With respect to a creditor's interest in salvaging licensee equipment during bankruptcy prior to the completion of site decommissioning, NUREG-1556 mandates that:

"OGC [Office of General Counsel] will notify the Bankruptcy Court that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including: public health, safety, and environmental obligations; NRC regulations; and license conditions."¹⁹

NUREG-1556 at Appendix H.

In this statement, NRC apparently has directed that a debtor licensee's obligations under its NRC license, *including completing decommissioning* (i.e., groundwater restoration), must be addressed by a trustee or receiver in bankruptcy. Based on this statement, it is apparent that NRC has reserved the right to direct any recipients of NRC-licensed property to fulfill each of the debtor licensee's obligations under its license prior to NRC releasing any necessary licensed equipment for any other purpose. This policy is consistent with NRC's standard procedures regarding the release of solid materials from NRC-licensed sites, which dictate that solid materials such as site equipment cannot be

¹⁹ NUREG-1556 also makes clear that "[a]ny person possessing property contaminated with NRC-licensed materials, transferred by the licensee before completion of decommissioning, must comply with all applicable NRC requirements, *including obtaining or maintaining an NRC license and completing decommissioning.*" NUREG-1556 at § 6 (emphasis added).

released from a site for unrestricted release or direct disposal until they satisfy appropriate NRC release standards.²⁰

Thus, it appears unlikely that NRC would release licensee equipment necessary for site decommissioning (i.e., groundwater restoration) until such decommissioning has been completed. In any event, as a practical matter, most creditors would not be interested in decontaminating NRC-licensed ISL site equipment at their own expense so that it could be removed from the site for sale or other use. Therefore, HRI asserts that creditor's rights likely will not be a major issue with respect to completion of groundwater restoration and decommissioning at the Section 8 site.

²⁰ In Information Notice 93-100, NRC sets forth additional policy concerns with its requirement for licensees to immediately report a bankruptcy filing prior to the acquisition of licensee property contaminated with licensed material. Such concerns include potential safety hazard to the acquiring entity and potential enforcement action against the debtor licensee. See Nuclear Regulatory Commission, Information Notice 93-100, *Reporting Requirements for Bankruptcy* (December 22, 1993).

CONCLUSION

For the reasons described above, HRI respectfully requests that the Presiding Officer's decision below with respect to his findings in Sections IIF(1) and IIF(2) of LBP-04-03 be reversed. Further, HRI respectfully requests that the Commission determine that HRI's Section 8 RAP financial assurance cost estimates, with the exception of the Presiding Officer's finding in Section IIE of LBP-04-03, are sufficient to commence ISL mining activities and that the prohibition on the use of HRI's source material license for Section 8 be lifted.

Respectfully Submitted,



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COUNSEL FOR HYDRO RESOURCES, INC.

EXHIBIT A

Budget rows 1-15. However, to justify their full time status and utilize their time on the job, it is assumed that they are required to provide a multitude of services, i.e., every employee will be wearing multiple hats. As such, individual job descriptions are difficult. For example, in the restoration mode, a qualified geologist will be required to verify the configuration of restoration patterns to assure efficient results. While this task requires unique geological expertise, the time commitment by the geologist to this task may only be several hours per week. Therefore, to maximize the use of the geologist time, he or she will be assigned to many other tasks for which he or she will be qualified such as lab analyst, well sampler, and plant operator. HRI also plans to maintain several other technical disciplines on staff such as radiation safety specialist, and engineers. In the restoration mode they will also perform their primary function and a number of secondary roles.”

URI, HRI’s sister company in Texas, currently has two commercial mines in full-scale restoration. These mines each have RO units operational at a nominal 580 gpm, and industrial waste disposal wells and associated equipment in place of brine concentration. These operations are running smoothly with fewer personnel than are planned for the Churchrock location. To compare personnel at ongoing restoration locations with what is planned for the Churchrock location, I have prepared Table 3 below.

Table 3 – Labor Comparisons URI & HRI

			HRI	URI	URI
			Churchrock	KVD	Rosita
<i>Management and Accounting</i>					
Salaried		Operations Manager	1	1/2	1/2
Salaried		Environmental Manager	1	0	0
<i>Plant Personnel</i>					
Salaried		Plant Super/Engineer	0	1	1
Salaried		Radiation Officer	1	1	1
Salaried		Chemist	1	1	0
Salaried		Plant Foreman	0	0	1
Wage		Electrician	1	0	0
Wage		Plant Operator	1	1	0
<i>Wellfield Personnel</i>					
Salaried		Foreman	1	0	1
Wage		Truck Driver	1	1	0
Wage		Wellfield Operators	1	1	1
Wage		Pump Hoist Operators	1	1	1
<i>Engineering & Geologic Personnel</i>					
Salaried		Senior Geologist	1	0	0
Salaried		Engineer		1/2	1/2
		Total #	11	8	7

URI is able to perform restoration at the Texas locations with individuals serving multiple roles and through equipment automation. As stated above, an individual with the job

EXHIBIT B

Hydro Resources, Inc.

**CHURCH ROCK SECTION 8/CROWNPOINT PROCESS PLANT
RESTORATION ACTION PLAN**

November 17, 2000

The BC was sized to accommodate the anticipated brine that the RO will produce.

BC costs are included within the O & M budget in Attachment E-2-1.

d. Groundwater Restoration Budget Assumptions

The assumptions that were used in the groundwater restoration budget (See Attachment E-2-1) are as follows:

Salaries

For the purpose of the Financial Assurance Plan, HRI assumed employment of technical professionals whose expertise is needed on a limited basis during the restoration mode. Anticipated positions are listed in the Restoration Budget rows 1-15. However, to justify their full time status and utilize their time on the job, it is assumed that they are required to provide a multitude of services, i.e., every employee will be wearing multiple hats. As such, individual job descriptions are difficult. For example, in the restoration mode, a qualified geologist will be required to verify the configuration of restoration patterns to assure efficient results. While this task requires unique geological expertise, the time commitment by the geologist to this task may only be several hours per week. Therefore, to maximize the use of the geologist time, he or she will be assigned to many other tasks for which he or she will be qualified such as lab analyst, well sampler, and plant operator. HRI also plans to maintain several other technical disciplines on staff such as radiation safety specialist, and engineers. In the restoration mode they will also perform their primary function and a number of secondary roles.

Reflecting the very broad nature of each full time employee's job at the CUP during the restoration mode, the following is a summary of each position that is budgeted in the Financial Assurance Plan. Anticipated salaries that were used in the budget are within Attachment E-2-4.

Operations Manager. In Charge of all aspects of day-to-day activities and planning for Crownpoint Uranium Project D & D. Responsible for interface with accounting services including coding and approval of all invoices, monthly cost analysis, restoration report generation, and employee relation responsibilities.

Environmental Manager. Responsible for the radiation health and safety, environmental compliance and quality assurance program at the Crownpoint Uranium Project. Supervise the Radiation Safety Officers to ensure that all radiation safety; environmental compliance and permitting/licensing programs will be conducted in a responsible manner and in compliance with all applicable regulations and permit/license conditions. Serve as Company liaison with regulatory agencies over the term of the restoration activity.

Radiation Safety Officer. Responsible for compliance with all USNRC, and MSHA rules and regulations at the CUP. Also responsible for assistance with laboratory analysis, vehicle safety, reporting and public information.

Chemist. Responsible for maintaining day to day analytical services including operational and environmental. In this capacity the chemist will assure that proper chemical parameters are reported to operations for the water treatment processes. He will be responsible for performing analysis of all routine environmental samples such as monitor wells.

Senior Geologist. Responsible for evaluation of logs and other well data and its interpretation as it pertains to restoration activities. Performs all monitor well sampling duties and when possible, helps with wellfield construction as well as Smeal pump hoist operation. Duties include drafting and ACAD operator for mapping needs. Provides weekend call-out and rotating operator duties as needed.

Wellfield Foreman. Responsible for Wellfield operation and construction as it pertains to restoration. Helps with monitor well sampling and backup pump hoist operator.

Wages-Direct

Electrician. Responsible for performing day to day electrical maintenance and repair services. Performs restoration operator duties on a rotating basis.

Plant Operator. Performs restoration operator duties on a regular basis. This would include the operations of all water treatment equipment including the reverse osmosis unit and brine concentrator.

Truck driver. Provides CDL driver duties. Will serve as backhoe operator and have operator duties on a rotating basis.

Wellfield Operator. Perform wellfield restoration operator duties on a regular basis and rotations with the Plant Operator.

Pump Hoist Operator. Responsible for the running of pumps in and out of the hole as required by restoration activities. Other duties include the operation of the backhoe and labor necessary for field construction.

Insurance-Workman's Compensation

Estimate based on projected compensation expenses and prevailing rates.

Payroll Taxes

Estimate based on projected compensation expenses and prevailing rates.

Medical Insurance

Estimate based on headcount and historic premium rates.

401K Contributions

The 401(k) Contribution cost codes represent HRI-funded contributions under the 401(k) – the retirement savings plan for HRI employees. The 401 (k) Contribution portion is made concurrent with each bi-weekly payroll period as a component of each eligible employee's total compensation.

Telephone/Telegraph

Estimated average costs of regular telephone service, cellular telephone service, and fax line service and internet line service at all CUP locations.

Postage/Freight

Estimated average cost of all types of mail service.

Copy Equipment

Estimate average cost for operation of all types of copy and fax equipment at all CUP locations.

Other Equipment & Rental

This covers the rental of equipment and miscellaneous equipment average costs. As applied in these estimates, it would include office machine rental, water machines for potable water, etc.

Office Supplies

Estimated average costs of office supplies such as paper, pens, etc.

Office Equipment Maintenance

Estimate average cost for maintenance for all types of office equipment at all CUP locations.

Data Processing

Estimated average cost for outside data processing.

Maps

Estimated average cost of plotting and reproducing maps for routine operations and reports.

Drafting & Printing

Estimated average for outside computer automated drawing services for report preparation.

Transportation - Air & Car

Estimated average for airplane tickets and auto rental.

Meals

Estimated average for travel related meals.

Misc. Travel Expense

Estimated average for travel related expenses such as hotels.

Env-Depreciable Equipment

Replacement equipment and calibration costs. This would include survey and sample equipment and routine calibration and service.

Env-Operational Analyses

This cost code is reserved for outside analysis

Environmental - Miscellaneous

As the name suggests, any environmental related item not specifically addressed in the other codes 090 through 098. Miscellaneous items may include sample bottles, filters, reagents, calibration, etc.

Safety

This is for costs associated with safety supplies for the employees. Items charged to this cost code would include safety boots, safety glasses, potable water, protective gloves, safety goggles etc.

Backhoe

All backhoe rental and maintenance such as oil changes, and repairs would be charged to this account

Misc. Chemicals

The major charge to this cost code during restoration is anti-scalant for the RO.

Utilities - Electric, Wellfield

Calculated electrical cost for operating the pumps and other equipment in the wellfield. The basis for these costs is shown in Attachment E-2-3.

Utilities - Electric, Brine Concentrator

Calculated electrical cost for operating the brine concentrator. The basis for these costs is shown in Attachment E-2-3.

Utilities - Electric, Plant and RO

Calculated electrical cost for operating the plant, reverse osmosis unit, and other office lighting and electrical needs. The basis for these costs is shown in Attachment E-2-3.

Submersible Pumps

Estimated average maintenance and replacement costs for submersible pumps that are used in extraction wells.

Submersible Motors

Estimated average maintenance and replacement costs for submersible pump electric motors that are used in extraction wells.

Field Piping & Valves

Estimated average maintenance and replacement costs for the various fittings, valves, glues etc. that is used in wellfield operations.

Meters

Estimated average maintenance and replacement costs for wellfield meters.

Misc. Field

The major charge to this cost code during restoration is PPE, rags, solvents and other miscellaneous field needs.

Handtools

Estimated average handtool replacement costs

Plant Piping & Valves

Estimated average maintenance and replacement costs for the various fittings, valves, glues etc. that is used in plant operations.

Plant Brine Concentrator Inst.

A cost code to charge anticipated brine concentrator instrument replacement.

Pumps

Estimated average maintenance and replacement costs for pumps that are used in the water treatment plant.

Plant Electrical

Estimated average electrical maintenance and replacement costs for water treatment plant operations.

Filters

Estimated average filter and filter media replacement costs and maintenance costs for filtration equipment for water treatment plant operations.

Evaporation Ponds

A cost code to charge anticipated maintenance costs for pond liner repairs and maintenance.

Roads

A cost code to charge anticipated maintenance costs for road maintenance.

Gas, Oil, and Grease

Equipment fuel costs and lubrication.

Disposal - BC Solids

Ongoing operational cost of disposing salt residue from brine concentrator. The basis for these costs is shown in Attachment E-2-3.

RO Unit

A cost code to charge anticipated reverse osmosis unit repair, maintenance and instrument replacement.

Lab Supplies

Estimated average costs of analytical laboratory supplies such as reagents, filters, glassware, etc.

RO Membrane

Average replacement costs of reverse osmosis unit membranes. The basis for these costs is shown in Attachment E-2-3.

Field Equip. Repairs & Maint.

A cost code to charge anticipated maintenance costs for large field equipment such as the pump host equipment, generators, and trucks.

Vehicle Repairs & Maint.

A cost code to charge anticipated maintenance costs for road vehicles such as pick up trucks and company autos.

Vehicles - Pickups

The estimated average cost for the major repair of a company pickup truck.

Vehicles - Tractors & Trucks

The estimated average cost for the major repair of a large trucks or trailers.

Vehicles - Automobiles

The estimated average cost for the major repair of a company car.

The total cost for groundwater restoration and post restoration management is projected to be \$7,255,621.

ATTACHMENT E-2-1
GROUNDWATER RESTORATION BUDGET

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before the Presiding Officer:

**Thomas S. Moore, Presiding Officer
Richard F. Cole, Special Assistant**

In the Matter of:)	
Hydro Resources, Inc.)	
P.O. Box 777)	
Crownpoint, NM 87313)	Docket No.: 40-8968-ML
)	
)	Date: June 14, 2004
)	

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Hydro Resources, Inc.'s Initial Brief on Presiding Officer's Decision in LBP-04-03 Regarding Hydro Resources, Inc's Section 8 Restoration Action Plan in the above-captioned matter has been served upon the following via electronic mail, facsimile and U.S. First Class Mail on this 14th day of June, 2004.

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June 14, 2004

BY ELECTRONIC MAIL, FACSIMILE AND U.S. FIRST CLASS MAIL

U.S. Nuclear Regulatory Commission
Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: OWFN-16C1
Washington, DC 20555

Re: In the Matter of: Hydro Resources, Inc.
Docket No: 40-8968-ML
ASLBP No: 95-706-01-ML

Dear Sir or Madam:

Please find attached for filing Hydro Resources, Inc.'s Initial Brief on Presiding Officer's Decision in LBP-04-03 Regarding Hydro Resources, Inc's Section 8 Restoration Action Plan 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 self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
Counsel of Record to HRI

Enclosures

(hydro resourcesCOVERLETTTER.doc)