

RAS 8170

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

July 20, 2004 (10:39AM)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

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

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

)
) Date: July 12, 2004
)
)

RESPONSE OF HYDRO RESOURCES, INC. TO INTERVENORS' APPEAL OF
PRESIDING OFFICER'S DECISION IN LBP-04-03 REGARDING HYDRO
RESOURCES, INC'S SECTION 8 RESTORATION ACTION PLAN

Anthony J. Thompson, Esq.
Counsel for Hydro Resources, Inc.

Christopher S. Pugsley, Esq.
Counsel for Hydro Resources, Inc.

July 12, 2004

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

INTRODUCTION.....1

BACKGROUND AND PROCEDURAL HISTORY.....1

STANDARD OF REVIEW.....4

DISCUSSION.....5

I. The Presiding Officer’s Decision Regarding HRI’s and NRC Staff’s Nine Pore Volume Restoration Estimate Should Be Affirmed.....5

A. Procedural History Regarding HRI’s and NRC Staff’s Nine Pore Volume Restoration Estimate.....5

B. HRI’s and NRC Staff’s Nine Pore Volume Restoration Estimate Has Been Fully Litigated and Should Be Subject to Collateral Estoppel.....11

C. Intervenors Have Failed to Demonstrate That Any Significant Issues Regarding HRI’s and NRC Staff’s Nine Pore Volume Restoration Estimate Reasonably Could Not Have Been Raised Prior to the Submission of HRI’s Section 8 RAP.....17

D. HRI’s NRC License Provides Additional Safeguards Regarding the Nine Pore Volume Restoration Estimate.....23

CONCLUSION.....25

TABLE OF AUTHORITIES

United States Supreme Court Decisions

<i>Parklane Hosiery Co. Inc. v. Leo M. Shore</i> , 439 U.S. 322 (1979).....	13
<i>U.S. v. Utah Construction and Mining Co.</i> , 384 U.S. 394, 421-422 (1966).....	12

Commission Decisions

<i>Hydro Resources, Inc.</i> (Crownpoint Uranium Project), Memorandum and Order, CLI-04-14 (May 20, 2004)	4, 17
<i>Hydro Resources, Inc.</i> (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).....	3
<i>Hydro Resources, Inc.</i> (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).....	3
<i>Private Fuel Storage, LLC</i> (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (November 17, 2000).....	4
<i>Hydro Resources, Inc.</i> (Crownpoint Uranium Project), Memorandum and Order, CLI-00-08, 51 NRC 227 (May 25, 2000).....	<i>passim</i>

Appeals Board Decisions

<i>General Public Utilities Nuclear Corp.</i> (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 NRC 1, 13-14 (1990).....	4
<i>Toledo Edison Co.</i> (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-378, 5 NRC 557 (1977).....	12
<i>Pacific Gas & Electric Co.</i> (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187-1188 (1975).....	4

Atomic Safety and Licensing Board Decisions

<i>Hydro Resources, Inc.</i> (Crownpoint Uranium Project), Memorandum and Order, <i>Ruling on Restoration Action Plan</i> , LBP-04-03, 2004 NRC LEXIS 69 (February 27, 2004).....	<i>passim</i>
---	---------------

Hydro Resources, Inc. (Crownpoint Uranium Project), Memorandum and Order, Partial Initial Decision, Financial Assurance for Decommissioning Issues, LBP-99-13, 49 NRC 233 (March 9, 1999).....passim

Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-34, 18 NRC 36, 38 (1983).....13

Florida Power and Light Co. (St. Lucie Plant, Unit 2), LBP-81-58, 14 NRC 1167 (1981).....13

Miscellaneous

Nuclear Regulatory Commission, NUREG-1508, Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico, (February 29, 1997).....passim

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:

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

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

)
) Date: July 12, 2004
)
)

**RESPONSE OF HYDRO RESOURCES, INC. TO INTERVENORS' INITIAL
BRIEF ON PRESIDING OFFICER'S DECISION IN LBP-04-03 REGARDING
HYDRO RESOURCES, INC'S SECTION 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 Response to Intervenors' Initial Brief on Presiding Officer's Decision in LBP-04-03 Regarding HRI's Section 8 Restoration Action Plan (RAP) for HRI's Nuclear Regulatory Commission (NRC) 10 CFR Part 40 materials license to operate an *in situ leach* (ISL) uranium mining facility in Churchrock, New Mexico. For the foregoing reasons, HRI respectfully requests that the Presiding Officer's decision in LBP-04-03 with respect to HRI's and NRC Staff's nine (9) pore volume restoration estimate be re-affirmed.

BACKGROUND AND PROCEDURAL HISTORY

HRI obtained an NRC license for a proposed ISL uranium mining operation (SUA-1508) on January 5, 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 areas of concern raised by Intervenors was financial assurance associated with decommissioning.

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, *inter alia*, 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) seeking HRI’s response to specific questions regarding the proposed Section 8 RAP.⁴ On March 16, 2001, HRI submitted its response to NRC Staff’s RAI.⁵ On April

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 both to sites owned and operated by HRI’s parent company, URI, and to other ISL uranium mining company sites.

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

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).

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

After hearing written and oral presentations regarding the approved 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, *inter alia*, found that HRI's and NRC Staff's nine pore volume restoration estimate for groundwater restoration was acceptable, because the issue had already been decided by the Commission in CLI-00-08. In response to the Presiding Officer's Order, on March 15, 2004, HRI and Intervenors each submitted Petitions for Review addressing certain portions of the Presiding Officer's decision in LBP-04-03 and requesting that the Commission grant review of such portions of his decision.

On May 20, 2004, after extending the period of review of HRI's Petition for Review on two separate occasions,⁷ the Commission granted each Petition for Review and requested further briefing on the two issues appealed by HRI and one limited issue posed by Intervenors.⁸ More specifically, the Commission granted Intervenors' Petition for Review "on the limited question of whether there is any significant issue on pore

⁶ See *Hydro Resources, Inc. Acceptance of Restoration Action Plan for Hydro Resources In Situ Uranium Mining Project, License SUA-1508*, ML011270156 (April 16, 2001).

⁷ 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).

⁸ See *Hydro Resources, Inc. (Crownpoint Uranium Project), Memorandum and Order, CLI-04-14* (May 20, 2004).

volumes that the intervenors reasonably could not have raised before HRI filed its [Restoration Action] Plan.” See *Hydro Resources, Inc.* (Crownpoint Uranium Project), Memorandum and Order, CLI-04-14 (May 20, 2004). (hereinafter “CLI-04-14”).

On June 14, 2004, HRI and Intervenors filed their Initial Briefs presenting arguments to the Commission regarding their respective issues. In this brief, HRI presents its Response to Intervenors’ Initial Brief and respectfully requests that the Presiding Officer’s decision in LBP-04-03 and the Commission’s decision in CLI-00-08 with respect to HRI’s and NRC Staff’s nine pore volume restoration estimate be re-affirmed.

STANDARD OF REVIEW

In general, Licensing Board decisions are affirmed where the brief on appeal does not point to an error of law or abuse of discretion that might serve as grounds for reversal of a Board’s decision. See *Private Fuel Storage, LLC*, (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (2000). Licensing Board findings may be rejected or modified if, after giving the Licensing Board’s decision the probative force it intrinsically demands, the record compels a different result. See e.g., *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 NRC 1, 13-14 (1990). A finding by a Licensing Board will not be overturned simply because a different result could have been reached. See *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187-1188 (1975).

DISCUSSION

I. The Presiding Officer's Decision Regarding HRI's and NRC Staff's Nine Pore Volume Restoration Estimate Should Be Affirmed

A. Procedural History Regarding HRI's and NRC Staff's Nine Pore Volume Restoration Estimate

The procedural history regarding the number of pore volumes required to complete groundwater restoration at HRI's Section 8 mining site is complex. Prior to describing the procedural history of the nine pore volume determination, it is important to include a brief discussion of the relevant terms used when discussing groundwater restoration at ISL facilities. The term "pore volume" was conceived by the ISL uranium mining industry to describe the "quantity of free water in the pores of a given volume of rock." See *In the Matter of Hydro Resources, Inc.*, Hydro Resources, Inc.'s Response to Intervenors' Briefs With Respect to Hydro Resources, Inc.'s Technical and Financial Qualifications and Financial Assurance for Decommissioning, Affidavit of Mark S. Pelizza (February 19, 1999) (hereinafter "1999 Pelizza Affidavit") at 12. Pore volume *units* are provided in gallons and are used to "describe the times water must flow through a quantity of depleted ore to achieve restoration." *Id.* Pore volumes generally are calculated "by determining the three dimensional volume of the rock (that is the ore zone) and multiplying this number by the percentage or porosity." *Id.* at 13. Using the "ore volume"⁹ method, HRI calculated the number of pore volumes associated with the Section 8 site by "map[ping] the extent of economic ore within a mine unit and digitiz[ing] the area of the mapped ore to provide the area. This area is then multiplied

⁹ The "ore volume" method is one of several potential methods by which ISL uranium mining licensees calculate the number of gallons of water necessary to conduct groundwater restoration. For a further discussion of this method, *please see* 1999 Pelizza Affidavit at 13.

by the average ore thickness to provide the three dimensional volume of the ore that is to be leached.” *Id.* at 13. Finally, the volume is then “converted to a PV [pore volume] by multiplying the ore volume by the percentage of porosity and then converting to the units of measurement (i.e., gallons).” *Id.* Further, “flare” factors are commonly used by ISL uranium miners to account for “leach solution outside of the specific boundaries of the calculated ore PV [pore volume].”¹⁰ As noted by HRI in its February 19, 1999 filing, “[i]t is generally accepted...that volume increases due to flare should be recognized in cost estimates.” 1999 Pelizza Affidavit at 13-14 (footnote omitted).

On April 25, 1988, HRI submitted a license application to NRC which included, *inter alia*, a pore volume estimate *to be used* to calculate financial assurance for groundwater restoration. Based on previous experience (i.e., Crownpoint testing, extensive Mobil restoration data from 1979-80 at Section 9, Teton Pilot, and URI operating history) and an analysis of the site-specific conditions at the Section 8 mining site, as well as generally accepted industry practices, HRI determined that four (4) pore volumes would be sufficient to perform groundwater restoration. Prior to the issuance of HRI’s NRC license on January 5, 1998, NRC Staff issued a RAI soliciting technical information from HRI so that NRC Staff review of the license application could be completed. On April 1, 1996, HRI submitted responses to the RAI, including a response to Question 59 regarding cumulative use of groundwater during and after active mining operations (i.e., groundwater restoration). In this submission, HRI continued to use the four pore volume restoration estimate. On April 5, 1996, HRI submitted its response to

¹⁰ HRI notes that Intervenor’s description of “flare” factors as fluids that remain “undetected” in the relevant aquifer is inaccurate. *See* Intervenor’s Appeal Brief at 2. Site monitoring wells specifically are designed to detect “flare” in the form of leach solutions outside the calculated pore volume and, thus, “flare” does not go undetected.

NRC Staff's RAI, Question 92 regarding the evaluation of four (4) processing options for HRI's CUP. HRI's response presented detailed analyses of these options and continued to rely on the four pore volume restoration estimate.¹¹

During its review of the substance of HRI's license application, NRC Staff determined that it would be necessary to perform an environmental impact statement (EIS) to evaluate potential impacts to public health, safety, and the environment, including those from groundwater restoration. On February 29, 1997, the Final Environmental Impact Statement (FEIS)¹² for the CUP was completed in which NRC Staff determined that nine pore volumes, and not four, would be required to conduct groundwater restoration at the Section 8 mining site. See FEIS at 4-40.

After NRC Staff determined in the FEIS that, initially, HRI would be required to use nine pore volumes for groundwater restoration, HRI submitted a revision to its Consolidated Operations Plan (COP),¹³ which accounted for NRC Staff's revision of the required pore volume estimate to nine pore volumes. The revised COP, which is directly tied to NRC Staff's FEIS and license conditions in HRI's NRC license, included several references to the use of nine pore volumes when calculating gallons of water for groundwater restoration and financial assurance cost estimates.¹⁴ As recognized by

¹¹ Intervenors allege that "[b]uried in thousands of pages of spreadsheets in HRI's response to Q [question]-92 were estimates of the costs of restoration and reclamation for each mining site...." Intervenors' Appeal Brief at 7. Apparently, NRC received the information requested in a form in which it could be addressed satisfactorily. In any event, the subject was discussed in both the FEIS and HRI's COP Rev. 2.0, which was revised based on the findings in the FEIS and, in specific instances, tied to specific license conditions.

¹² Nuclear Regulatory Commission, NUREG-1508, *Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico*, (February 29, 1997).

¹³ See Crownpoint Consolidated Operations Plan, Revision 2.0 (August 15, 1997).

Intervenors, the revised COP specifically stated, “surety bonding for groundwater restoration of the initial wellfields would be based on 9 pore volumes.” Intervenors’ Brief at 7; *see also* COP-167. Further, the revised COP also requires additional detail from HRI as to the conditions of its restoration plan. More specifically, the revised COP states:

“Prior to conducting mining operations, HRI will develop a[n] updated groundwater restoration plan *for the entire project*. At a minimum, this plan will include a refined restoration schedule, and a general description of updated methodology of restoration, and post-restoration groundwater monitoring *for the entire project*.”

COP Rev. 2.0 at 161.

HRI’s NRC license, License Condition 10.29, effectively makes this commitment a requirement. *See* 1999 Pelizza Affidavit at 65.

On January 5, 1998, NRC issued a materials license to HRI, which allows HRI to submit decommissioning estimates and surety arrangements prior to the commencement of active mining operations. This license also states that HRI would be required to perform a groundwater restoration demonstration project on a scale that would be sufficient to demonstrate the number of pore volumes necessary to restore a commercial-scale ISL uranium mining operation at the Churchrock site. *See* SUA-1508, License Condition 10.28. Most importantly, HRI’s NRC license specifically states that, until the completion of the required demonstration project, financial assurance will be based on nine pore volumes. *See id.* at License Condition 9.5.

After the issuance of HRI’s NRC license and the inception of this proceeding, on January 11, 1999, Intervenors filed their written presentation in opposition to HRI’s NRC license regarding financial assurance for decommissioning issues, which addressed the

use of nine pore volumes when calculating gallons of water to be used for groundwater restoration and for financial assurance. Their written presentation alleged that the use of nine pore volumes would pose a significant threat to public health and safety, that NRC Staff directed HRI to use nine pore volumes solely based on financial convenience to HRI, and that Intervenors' expert testimony demonstrated that the nine pore volume restoration estimate was inadequate. More specifically, Intervenors focused their arguments on two distinct issues: the alleged inadequacy of the nine pore volume estimate and the absence of a financial assurance/decommissioning plan in HRI's license application and responses to NRC Staff RAIs.

On February 19, 1999, HRI submitted its Response to Intervenors written presentation in which HRI argued that the portions of its license application regarding financial assurance were sufficient, including argument and expert testimony with respect to the adequacy of the nine pore volume estimate. In support of its Response brief, HRI submitted the aforementioned affidavit from Mr. Pelizza, which provided a discussion of the issues raised by Intervenors in their written presentation, including a detailed discussion of the use of pore volumes by the ISL uranium mining industry. In this discussion, Mr. Pelizza submitted Attachment 3 to his affidavit, which provided detailed calculations of the number of gallons of water to be used for groundwater restoration at the Section 8 mining site and the figures to be used in reaching that conclusion, including the consistent use of a 0.25 porosity figure and nine pore volumes.¹⁵

On February 26, 1999, Intervenors filed a request with the Licensing Board for leave to reply to HRI's Response brief. Judge Bloch considered and denied Intervenors'

¹⁵ As will be discussed *infra*, nowhere in Intervenors' Initial Brief is Mr. Pelizza's 1999 Affidavit with attachments (in excess of one hundred pages) even mentioned.

request. Later, on March 9, 1999, Judge Bloch determined (LBP-99-13) that the use of nine pore volumes was adequate for groundwater restoration and HRI's license with respect to financial assurance was sufficient. On appeal, the Commission determined that the Licensing Board's decision regarding the submission of a RAP for Section 8 was in error and directed HRI to file such a RAP. However, the Commission *affirmed* the use of nine pore volumes when calculating gallons of water to be used for groundwater restoration and financial assurance. *See* CLI-00-08 at *28-29. Thus, the only issue remanded to the Licensing Board was the eventual submission and evaluation of a RAP for Section 8 *and not* the adequacy of the nine pore volume estimate.

On November 17, 2000, HRI submitted its RAP for the Section 8 mining site, which included an assessment of the financial assurance necessary to conduct groundwater restoration at Section 8 using nine pore volumes. More specifically, Attachment E-2-1 to the Section 8 RAP provided specific cost estimates for groundwater restoration utilizing the nine pore volume estimate and calculations in the record (i.e., FEIS, COP Rev. 2.0, and HRI's February 19, 1999 Response brief and supporting Pelizza Affidavit). As noted above, the RAP was evaluated by NRC Staff and approved on April 16, 2001.¹⁶ Intervenors challenged this RAP and the Presiding Officer, in LBP-04-03, decided the issues raised by Intervenors on the basis of decisions in LBP-99-13 and CLI-00-08. *See generally* LBP-04-03.

¹⁶ *See* Letter to Mark S. Pelizza, President, Hydro Resources, Inc. from Daniel M. Gillen, Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, United States Nuclear Regulatory Commission, *Acceptance of Restoration Action Plan for Hydro Resources In-Situ Uranium Mining Project, License SUA-1508* (April 16, 2001).

B. HRI's and NRC Staff's Nine Pore Volume Restoration Estimate Has Been Fully Litigated

The Presiding Officer's finding in LBP-04-03 that Intervenors could not challenge HRI's and NRC Staff's nine pore volume restoration estimate because it has been fully litigated at both the Licensing Board and the Commission should be affirmed. In LBP-04-03, the Presiding Officer states that, "Intervenors *first challenged* the NRC's designation...of the 9 pore volumes in their January, 1999, brief in opposition to HRI's application for a material license." *See* LBP-04-03 at 9 (emphasis added). This challenge, according to the Presiding Officer, was unsuccessful, because Judge Bloch determined that "the 9 pore volume estimate was based upon the Staff's professional judgement, and reflected an increase from HRI's initial estimate of 4 pore volumes." *See id.* at 10. Intervenors later appealed this decision to the Commission and, as stated in LBP-04-03, Judge Bloch's decision was "upheld [by the Commission] in CLI-00-08." *Id.* The Commission's affirmation of Judge Bloch's decision emphasized the fact that, "the arguments made by the Intervenors' expert [that the nine pore volume estimate was inadequate] were not convincing, and highlighted the fact that the Staff could require HRI to increase the pore volumes and surety amount prior to HRI commencing operations if necessary." *Id.* at 10-11.

Intervenors allege that the Presiding Officer's decision in LBP-04-03 effectively deprives them of a full and fair opportunity to litigate HRI's and NRC Staff's nine pore volume estimate. More specifically, Intervenors allege that the Presiding Officer's decision in LBP-04-03 should be reversed for three specific reasons:

"First, HRI's groundwater restoration estimates based on 9 pore volumes apply only to HRI's groundwater restoration demonstration project and not the entirety

of Section 8....Second, critical components of HRI's groundwater restoration calculations changed throughout the hearing....Third, HRI's RAP represents the first time in these proceedings that HRI presented its technical basis for its groundwater restoration cost estimates."

Intervenors' Appeal Brief at 17.¹⁷

Intervenors' argue that "the Presiding Officer's refusal to consider Intervenors' challenge to HRI's pore volume calculations is in contravention of the Commission's order in CLI-00-08" and that "Intervenors were denied meaningful public participation under the AEA...." *Id.* at 18-19.

Based on the substance of Intervenors' challenge, the principles of collateral estoppel should apply. It is well-settled that principles of collateral estoppel may be applied in administrative proceedings. *See U.S. v. Utah Construction and Mining Co.*, 384 U.S. 394, 421-422 (1966). Collateral estoppel precludes re-litigation of issues of law or fact which have been finally adjudicated by a tribunal of competent jurisdiction. *See Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3)*, ALAB-378, 5 NRC 557 (1977). Collateral estoppel requires the presence of at least four elements in order to be given effect: (1) the issue sought to be precluded must be the same as that involved in the prior action, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must

¹⁷ Explaining their claim slightly differently, Intervenors allege that they were denied "meaningful public participation" in this proceeding with respect to the nine pore volume estimate because:

"First, the 9 pore volume figure applies only to HRI's restoration demonstration project and not the entire Section 8 operation....Second, HRI did not provide a consistent porosity value or number of gallons of water to be used in its pore volume calculation until it submitted its RAP.... Third, the calculations for the pore volume figure were never introduced in one place in the context of cost estimate for groundwater restoration."

Intervenors' Appeal Brief at 19-20.

have been essential to the prior judgment. *See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2)*, LBP-83-34, 18 NRC 36, 38 (1983), *citing Florida Power and Light Co. (St. Lucie Plant, Unit 2)*, LBP-81-58, 14 NRC 1167 (1981).

The procedural history of litigation on this issue demonstrates that the criteria for collateral estoppel have been satisfied.¹⁸ Taking the four above-mentioned criteria in order, HRI asserts that:

(1) The issue Intervenors are attempting to litigate here is the *same issue* that was addressed in both LBP-99-13 and CLI-00-08. The question of whether nine pore volumes was sufficient to conduct groundwater restoration for the required Section 8 demonstration project was discussed by Intervenors in their January 11, 1999, written presentation and supporting expert testimony, HRI's February 19, 1999, response brief and supporting affidavit from Mr. Pelizza, Judge Bloch's LBP-99-13 decision, and the Commission's affirmation of that decision in CLI-00-08. It is also worth noting that the nine pore volume estimate was present in the administrative record in the FEIS developed by NRC Staff and in the COP, Revision 2.0 submitted by HRI in 1997, which was available to Intervenors prior to and during the litigation discussed above.

(2) The nine pore volume estimate has been *fully litigated*. As stated in the Presiding Officer's decision in LBP-04-03, in January of 1999, Intervenors filed a brief in opposition to HRI's and NRC Staff's nine pore volume restoration estimate, which was discussed in the FEIS and the COP Rev. 2.0 in 1997 and as a requirement in HRI's license. Intervenors' brief directly challenged the nine pore volume restoration estimate

¹⁸ Intervenors were a party to the previous litigation on the nine pore volume estimate and to the decisions rendered in LBP-99-13 and CLI-00-08. This is important because the doctrine of collateral estoppel traditionally applies only when the parties in the case were also parties...in the previous case." *See e.g., Parklane Hosiery Co. Inc. v. Leo M. Shore*, 439 U.S. 322 (1979).

based on HRI's alleged inability to provide sufficient financial assurance for groundwater restoration, on potential safety issues associated with using nine pore volumes to fully restore Section 8, and on the allegation that the pore volume estimate was calculated based on "what was convenient for the licensee." *See* LBP-04-03 at 10.

On February 19, 1999, after Intervenors submitted their initial brief, HRI submitted its response to Intervenors' brief. As will be discussed in greater detail below, HRI's response brief supported the validity of the nine pore volume restoration estimate as the initial requirement for groundwater restoration at Section 8. In addition to the text of the response, HRI submitted an affidavit from Mr. Pelizza which provided a detailed discussion of the use of the term "pore volume" in the ISL uranium mining industry, a description of the different factors associated with pore volumes such as flare factors and porosity, a listing of the different figures used for calculating the pore volume estimate, and an attachment detailing how this calculation was completed.

After considering the arguments presented by Intervenors, HRI, and NRC Staff, Judge Bloch determined that Intervenors arguments regarding the nine pore volume estimate were without merit. Specifically, Judge Bloch stated that "the requirement that restoration be estimated as being accomplished through flushing with 9 pore volumes, was reached through the professional judgment of the NRC and is contained in SUA-1508 LC 9.5" *See* LBP-99-13 at *6. As a result of this determination, Judge Bloch concluded that Intervenors' request for relief regarding their concerns about financial assurance for decommissioning should be denied.

Immediately following the issuance of Judge Bloch's decision, Intervenors appealed to the Commission and alleged that Judge Bloch did not properly account for

their expert testimony regarding the alleged inadequacy of HRI's and NRC Staff's nine pore volume estimate. After considering Intervenors' appeal and the responses of HRI and NRC Staff, the Commission upheld Judge Bloch's decision that the nine pore volume estimate was sufficient. The Commission stated that Intervenors' expert testimony was, "unconvincing" and that Intervenors' expert offered only an "attempt to establish the insufficiency of nine pore volumes...comprised of nothing more than a brief footnote alluding summarily to the fact that two other ISL projects required significantly more pore volumes." CLI-00-08 at *28-29. Thus, based on this finding and the fact that the pore volume estimate could be adjusted, if necessary, by NRC Staff, the Commission determined that HRI's and NRC Staff's nine pore volume estimate was sufficient. Therefore, Intervenors were able to offer expert testimony regarding the nine pore volume restoration estimate in their January 11, 1999, written presentation and were presented with all of the information relevant to a financial assurance calculation based on nine pore volumes in the record, including the FEIS, HRI's COP Rev. 2.0, and HRI's February 19, 1999, response brief and accompanying affidavit from Mr. Pelizza, all of which were addressed in litigation by both the Licensing Board and the Commission on appeal.

Additionally, the Presiding Officer specifically notes that Intervenors also "failed to raise specifically the Board's decision to deny the Intervenors' request to file a reply." See LBP-04-03 at 12, fn 46. Since this issue was not raised on appeal and not addressed by the Commission in CLI-00-08, Judge Bloch's decision to deny Intervenors an opportunity to reply to HRI's response brief is effectively closed. Thus, as the Presiding

Officer correctly states, “it is too late for the Intervenors’ to argue here that they did not have an opportunity to litigate the 9 pore volume standard.” *Id.*

(3) The adequacy of the nine pore volume estimate was determined by a *valid and final* judgment. Both the Licensing Board in LBP-99-13 and the Commission in CLI-00-08 were tribunals of competent jurisdiction in this proceeding, which rendered valid judgments on the adequacy of the nine pore volume estimate. As noted above, Intervenors did not avail themselves of the opportunity to appeal the denial of their request for leave to reply to HRI’s February 19, 1999 response brief to the Commission. Based on this, the judgment of the Commission in CLI-00-08 was a *valid and final* judgment.

(4) Affirmation of the nine pore volume estimate was *essential* to the Commission’s decision in CLI-00-08. In order to properly submit a financial assurance cost estimate for groundwater restoration at ISL uranium mining facilities, an applicant/licensee must have an approved pore volume estimate to calculate the total amount of water to be circulated throughout the depleted ore body. Without an approved pore volume estimate, HRI would have been unable to satisfy the Commission’s directive to submit a RAP for the Section 8 mining site. Thus, the affirmation of the nine pore volume estimate in CLI-00-08 was essential to the requirement that HRI file a RAP containing a surety estimate for Section 8, which is required prior to the commencement of active ISL uranium mining.

Based on the above-mentioned procedural history, the Presiding Officer, in LBP-04-03, correctly refused to address Intervenors’ attempt to raise additional questions

regarding the nine pore volume estimate. Therefore, the adequacy of the nine pore volume estimate, as a litigable issue, should be subject to collateral estoppel.

C. Intervenor's Have Failed to Demonstrate That Any Significant Issues Regarding HRI's and NRC Staff's Nine Pore Volume Restoration Estimate Reasonably Could Not Have Been Raised Prior to the Submission of HRI's Section 8 RAP

Pursuant to the Commission's Order in CLI-04-14, all parties were directed to present argument "on the limited question of whether there is any significant issue on pore volumes that the intervenors reasonably could not have raised before HRI filed its [Restoration Action] Plan." *See* CLI-04-14 at 4. Intervenor's have failed to demonstrate that such a significant issue exists.

Initially, Intervenor's' brief presents a confusing description of the alleged difficulties they had with the development of the administrative record by first discussing the FEIS and, subsequently, discussing pre-FEIS RAIs and responses thereto which led to NRC Staff's development of the FEIS' nine pore volume restoration estimate. After all of this discussion, Intervenor's allege that they were deprived of a fair chance to litigate this issue because the nine pore volume estimate is restricted only to the Section 8 groundwater restoration demonstration, the number of gallons of water needed to flush the relevant aquifer changed during the hearing, and the Section 8 RAP is the first time in the proceeding that HRI presented a technical basis for its restoration cost estimates. *See* Intervenor's' Appeal at 16-17.

Intervenor's, however, fail to account for the above-discussed procedural history of the nine pore volume estimate and the existence of ample information regarding the estimate's adequacy. Moreover, Intervenor's fail to account for NRC Staff's and HRI's

control options under HRI's NRC license, and the restoration options available to HRI thereunder.

Initially, with respect to Intervenor's allegation regarding the restriction of the nine pore volume estimate to HRI's Section 8 demonstration project, the required demonstration project is designed to provide site-specific information so that NRC Staff can determine how many pore volumes will be required to perform groundwater restoration at Section 8 on a commercial scale. *See* SUA-1508, License Condition 10.28. Based on HRI's NRC license, NRC Staff may modify, up or down, the number of pore volumes required for the restoration of Section 8 wellfields based on the results of that demonstration project. In short, Intervenor ignores the fact that the demonstration project *would not be a demonstration* if it required the restoration of the entirety of Section 8. Furthermore, with respect to development of a site restoration plan, HRI has made additional commitments in its COP, Rev. 2.0, which, as stated above, makes clear that:

“Prior to conducting mining operations, HRI will develop a[n] updated groundwater restoration plan *for the entire project*. At a minimum, this plan will include a refined restoration schedule, and a general description of updated methodology of restoration, and post-restoration groundwater monitoring *for the entire project*.”

COP Rev. 2.0 at 161 (emphasis added).

Then, with respect to Intervenor's allegations regarding gallons of water to flush the relevant aquifer and HRI's technical basis for the nine pore volume estimate, the fatal omission in Intervenor's brief is their failure to address the argument and testimony offered by HRI in its February 19, 1999, response brief and supporting affidavit from Mr. Pelizza. As discussed above, Mr. Pelizza's affidavit provides a detailed discussion of various issues associated with pore volumes in the ISL uranium mining industry,

including specific references to the figures HRI used in calculating its financial assurance cost estimate for groundwater restoration based on nine pore volumes. *See* 1999 Pelizza Affidavit at 12-14, 77-78, & Attachment 3. In several instances, Mr. Pelizza specifically states which figures will be used for calculating gallons of water to be circulated during restoration and financial assurance estimates. For example, Mr. Pelizza states:

“Pore volume calculation for the Churchrock Section 8 location, that is Essentially the same as that presented in RAI Q59 Attachment 59-1, follow in Attachment 3 an example of how the calculation is determined in a commercial project. In this example, HRI used a horizontal PV increase factor of 1.5, a vertical PV increase factor of 1.3, *and circulation of 9 corrected PV.*”

1999 Pelizza Affidavit at 14.

Further, Attachment 3 to Mr. Pelizza’s affidavit is a chart which includes each of the figures that Intervenors claim were never available to them when litigating the nine pore volume issue. More specifically, the chart provides figures related to porosity (consistent at .25),¹⁹ horizontal pore volume increase factor (1.5), vertical pore volume increase factor (1.3), corrected pore volumes (in gallons), and a final calculation of gallons of water to be used in groundwater restoration based on the nine pore volume estimate. *See* 1999 Pelizza Affidavit at Attachment 3. The availability of the proposed total gallons of water to be used during restoration based on nine pore volumes in the February 19, 1999, Pelizza affidavit directly refutes Intervenors allegation that “[i]t was not until HRI presented the total restoration water volume of 1.33 billions [sic] gallons (based on circulating 9 pore volumes) in the November 2000 RAP that Intervenors were able to

¹⁹ The availability of a “consistent” porosity value in Attachment 3 directly contradicts Intervenors’ allegation that “[p]rior to submitting its RAP pursuant to CLI-00-08, neither HRI nor the Staff had presented a consistent porosity value for HRI’s pore volume calculation.” Intervenors’ Appeal Brief at 23.

evaluate HRI's cost estimates in the context of financial assurance." Intervenors' Brief at 25 (emphasis omitted). The issue of the *adequacy* of the nine pore volume restoration estimate is primarily relevant to the issue of financial assurance, and the availability of the information provided in Attachment 3 of Mr. Pelizza' 1999 affidavit demonstrates that Intervenors reasonably could have raised a challenge to the estimate, including all of its contributing factors, at that time.²⁰

Throughout Intervenors' brief, they acknowledge that the nine pore volume estimate was available in the administrative record prior to the submission of their written presentation on January 11, 1999. As stated above, after the issuance of the FEIS, on August 15, 1997, HRI submitted its COP, Revision 2.0, which accounted for the FEIS' nine pore volume requirement for groundwater restoration. In addition, as acknowledged by Intervenors, when HRI was issued its NRC license, License Condition 9.5, specifically states that financial assurance for groundwater restoration initially will be based on nine pore volumes. *See* SUA-1508, License Condition 9.5. Thus, Intervenors were well-aware of the existence of the nine pore volume estimate and reasonably could have challenged that determination before the issuance of LBP-04-03.

Further, Intervenors' January 11, 1999 written presentation gave them a full and fair opportunity to challenge to HRI's and NRC Staff's nine pore volume estimate based on all available and relevant information regarding such estimate. Intervenors' offered

²⁰ Again, the Presiding Officer's statement that Intervenors failed to avail themselves of the opportunity to appeal the denial of their request for leave to reply to HRI's February 19, 1999 response brief is crucial. Intervenors reasonably could have requested that the Commission remand the issue to the Licensing Board allowing them to file a reply brief. However, as stated by the Presiding Officer, because Intervenors failed to avail themselves of this opportunity, "it is too late for the Intervenors to argue here that they did not have an opportunity to litigate the 9 pore volume standard. LBP-04-03 at 12, fn 46.

argument and supporting expert testimony alleging that the nine pore volume estimate represented a significant threat to public health, safety, and the environment. As stated in Intervenor's appeal brief and their January 11, 1999 written presentation:

“Intervenors’ also argued that the 9 pore volume figure required by L.C. [License Condition] was not based on safety concerns but rather on the financial convenience to the applicant.”

Intervenors’ Appeal Brief at 10.

After submitting their written presentation, HRI submitted its Response which included the aforementioned Attachment 3 on pore volume calculations. All of the information included in Attachment 3, including “flare” factors and porosity values were available to be challenged by Intervenor's. Even though their request for leave to file a reply to HRI's Response was denied by Judge Bloch, such denial did not deprive Intervenor's of the opportunity to challenge the nine pore volume restoration estimate because that estimate had been available for challenge since the completion of the FEIS and HRI's COP, Revision 2.0.

With respect to challenging HRI's financial assurance costs estimates in the Section 8 RAP, the information regarding the use of nine pore volumes did not change. In each portion of the Section 8 RAP devoted to the process through which HRI will conduct groundwater restoration, the nine pore volume estimate is used to calculate the financial assurance necessary to complete such restoration. As shown in Attachment E-2-1, nine pore volume is the figure used to calculate gallons of water to be used and the estimate of approximately 1.33 billion gallons of water remains intact from HRI's February 19, 1999 Response brief. Therefore, Intervenor's improperly mischaracterize the availability and use of nine pore volumes prior to the issuance of LBP-04-03.

Intervenors also fail to distinguish between their challenge to HRI's failure to submit a decommissioning/financial assurance plan and the adequacy of the nine pore volume estimate when they allege, *inter alia*, "[i]t was not until HRI presented the total restoration water volume of 1.33 billions [sic] gallons (based on circulating 9 pore volumes) in the November 2000 RAP that Intervenors were able to evaluate HRI's cost estimates *in the context of financial assurance*."²¹ Intervenors' Appeal Brief at 24-25. Initially, as a general proposition, the use of pore volume estimates is primarily relevant *in the context of financial assurance*.²² Pore volumes are primarily used to assist an ISL uranium mining licensee in determining how many gallons of water must be circulated throughout a depleted ore body to complete groundwater restoration effectively. The amount of water determined from the use of a pore volume estimate can then be translated into a dollar amount so that financial assurance can be calculated. As stated in Section IB, without an approved pore volume estimate, an ISL uranium mining licensee cannot calculate financial assurance for groundwater restoration.

Explicitly recognizing the need for an approved pore volume estimate, NRC Staff created the nine pore volume estimate in the FEIS and ensured that HRI provided sufficient information to justify the use of such an estimate, including the revised COP. Intervenors' challenged the use of nine pore volumes based on all the information included in the record up to January of 1999, and their challenge was denied by both

²¹ The "1.33 billion gallons" figure is explicitly listed in Attachment 3 of the 1999 Pelizza Affidavit.

²² In the absence of potential impacts on adjacent drinking water sources, which monitoring addresses during production operations and which restoration is theoretically designed to protect against over the long-term, the exempted aquifer (in the mining zone) is not a drinking water source before, during *or after* restoration due to the naturally occurring radionuclide concentrations which will exceed State or federal drinking water standards.

Judge Bloch and the Commission. Since, as stated above, the only issue remanded to the Licensing Board in CLI-00-08 was the required submission of a RAP for Section 8, the only potentially new information in the context of financial assurance for groundwater restoration that could have been submitted by HRI would have been information regarding the final process of conducting, and the final monetary amount necessary for, completing such restoration. This potentially new information is completely irrelevant to the issue of whether the use of nine pore volumes is still open to challenge. Thus, since their challenge to the adequacy of the nine pore volume estimate is not relevant to the issues litigated and decided in LBP-04-03, Intervenors have failed to demonstrate that any significant issues with respect to HRI's and NRC Staff's nine pore volume estimate exist which reasonably could not have been raised prior to the issuance of LBP-04-03. Therefore, Intervenors' appeal should be denied.

D. HRI's NRC License Provides Additional Safeguards Regarding the Nine Pore Volume Restoration Estimate

Finally, Intervenors' appeal should be denied because safeguards exist that allow HRI and NRC Staff to adjust the number of pore volumes used for restoration prior to, during, and after active ISL uranium mining operations. As noted by the Presiding Officer in LBP-04-03 and the Commission in CLI-00-08, HRI's NRC license specifically states that:

“As a prerequisite to operating under this license, the licensee shall submit an NRC-approved surety arrangement to cover the estimated costs of decommissioning, reclamation, and groundwater restoration...*If at any time* it is found that well field restoration requires greater pore-volumes or higher restoration costs, the value of the surety will be adjusted upwards.”

SUA-1508, License Condition 9.5 (emphasis added).

Based on this license condition, HRI must conduct a commercial groundwater restoration demonstration prior to conducting active ISL uranium mining operations. As stated by the Presiding Officer, “[a]s a practical matter...completion of the required commercial demonstration at Section 8...will moot any challenge to the pore volume estimate because it will provide a pore volume number based on the best possible, site-specific data.”²³ See LBP-04-03 at 12, fn 46; see also 1999 Pelizza Affidavit at 65, 77-78.

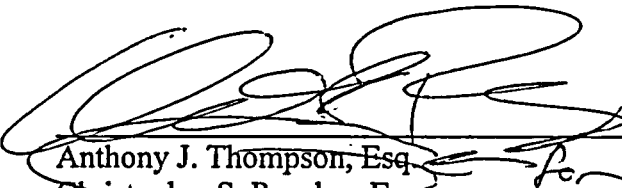
Even if Intervenors’ allegations regarding HRI’s and NRC Staff’s nine pore volume restoration estimate could be considered to have merit, the Commission need not reverse its decision in CLI-00-08 or the Presiding Officer’s refusal to re-litigate this issue. As shown above, HRI’s license explicitly allows for the pore volume estimate to be revised to account for additional pore volumes should the *site-specific* groundwater restoration demonstration show that such a revision is necessary or appropriate. When the restoration demonstration is complete, HRI will be required to increase or decrease surety if the pore volume estimate requires adjustment upward or downward. Based on these additional safeguards, both Judge Bloch in LBP-99-13 and the Commission in CLI-00-08 agreed that the nine pore volume estimate was based on NRC Staff’s “professional” judgment and that such an estimate could be used. Thus, given the ample level of precautions and safeguards accompanying HRI’s license and requirements for financial assurance associated with groundwater restoration, Intervenors’ appeal should be denied.

²³ HRI also has the authority to revise its approach to groundwater restoration per the FEIS, COP, and its NRC license (e.g., HRI may determine not to use a groundwater sweep of several pore volumes initially and go directly to reverse osmosis with re-injection of purified water, which some recent industry experience suggests could lead to groundwater restoration with fewer pore volumes).

II. CONCLUSION

For the reasons discussed above, HRI that the Presiding Officer's decision in LBP-04-03 with respect to HRI's and NRC Staff's nine (9) pore volume figure for groundwater restoration be affirmed.

Respectfully Submitted,



Anthony J. Thompson, Esq.

Christopher S. Pugsley, Esq.

Law Offices of Anthony J. Thompson, P.C.

1225 19th Street, NW

Suite 300

Washington, DC 20036

(202) 496-0780

(fax) (202) 496-0783

ajthompson@athompsonlaw.com

cpugsley@athompsonlaw.com

**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: July 12, 2004
)	

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Response of Hydro Resources, Inc. to Intervenors' 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, and U.S. First Class Mail on this 12th day of July, 2004.

Administrative Judge,
Thomas S. Moore
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop T-3 F23
Washington, DC 20555
Email: tsm2@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop T-3 F23
Washington, DC 20555
Email: rfc1@nrc.gov

Jep Hill, Esq.
Jep Hill and Associates
P.O. Box 30254
Austin, TX 78755
Email: jep@jephill.com

Office of the Secretary
Attn: Rulemakings and
Adjudications Staff
U.S. Nuclear Regulatory
Commission
Mail Stop: OWFN-16 C1
Washington, DC 20555
Email: hearingdocket@nrc.gov

Mark S. Pelizza, President
Uranium Resources, Inc.
650 S. Edmonds Lane, Suite 108
Lewisville, TX 75067
Email: mspelizza@msn.com

Office Manager
Eastern Navajo-Diné Against
Uranium Mining
P.O. Box 150
Crownpoint, New Mexico 87313

Administrative Judge, Robin Brett
2314 44th Street, NW
Washington, DC 20007
Email: rbrett@usgs.gov

Louis Denetsosie, Attorney General
Steven J. Bloxhalm, Esq.
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515

William Zukosky
DNA-Peoples' Legal Services, Inc.
222 East Birch
Flagstaff, AZ 86001
Email:
wzukosky@dnalegalservices.org

Adjudicatory File
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T- 3F23
Washington, DC 20555

David C. Lashway, Esq.
SHAW PITTMAN
2300 N Street, NW
Washington, DC 20037
Email:
david.lashway@shawpittman.com

Geoffrey H. Fettus
Natural Resources Defense Counsel
1200 New York Avenue, NW
Suite 400
Washington, DC 20005
Email: gfettus@nrcdc.org

John T. Hull, Esq.
Mauri T. Lemoncelli, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555
Email: jth@nrc.gov
Email: mtl1@nrc.gov

W. Paul Robinson
Chris Shuey
Southwest Research and
Information Center
P. O. Box 4524
Albuquerque, NM 87106

Eric Jantz, Esq.
Douglas Meiklejohn, Esq.
Heather L. Green
New Mexico Environmental Law
Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
Email: ejantz@nmelc.org
Email: meikljhn@nmelc.org
Email: Hgreen@nmelc.org

Laura Berglan
DNA-People's Legal Services, Inc.
P.O. Box 765
Tuba City, AZ 86045
Email:
lberglan@dnalegalservices.org

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory
Commission
Mail Stop: O-16G15
Washington, DC 20555

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory
Commission
Mail Stop: T-3 F23
Washington, DC 20555

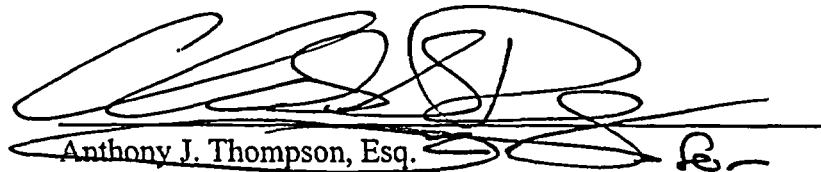
U.S. Nuclear Regulatory Commission
Attn: Jeffrey S. Merrifield, OCM
Mail Stop O-16C1
11555 Rockville Pike
Rockville, MD 20852-2738
Email: cmrmerrifield@nrc.gov

Thomas Fredrichs
Nuclear Regulatory Commission
Mail Stop T7F27
Washington, DC 20555
Email: tlf@nrc.gov

Mr. Jon Peckinpaugh
Nuclear Regulatory Commission
Mail Stop T7J8
Washington, DC 20555
Email: jmp@nrc.gov

U.S. Nuclear Regulatory
Commission
Attn: Chairman Nils J. Diaz,
Mail Stop O-16C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
Email: Chairman@nrc.gov

U.S. Nuclear Regulatory
Commission
Attn: Edward McGaffigan, Jr.,
OCM
Mail Stop O-16C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
Email: cmrmcgaffigan@nrc.gov



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
1225 19th Street, N.W., Suite 300
Washington, DC 20036
Telephone: (202) 496-0780
Facsimile: (202) 496-0783
Email: ajthompson@athompsonlaw.com
Email: cpugsley@athompsonlaw.com

Law Offices of Anthony J. Thompson, P.C.

1225 19th Street, NW., Suite 300
Washington, DC 20036
202-496-0780
Fax: 202-496-0783
(e-mail): ajthompson@athompsonlaw.com

July 12, 2004

BY ELECTRONIC MAIL 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

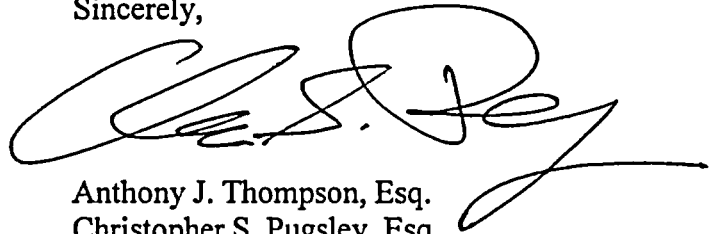
Re: In the Matter of: Hydro Resources, Inc.
Docket No: 40-8968-ML
ASLBP No: 95-706-01-ML

Dear Sir or Madam:

Please find attached for filing the Response of Hydro Resources, Inc. to Intervenor'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)