UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
P.O. Box 777	)	
Crownpoint, NM 87313	)	
	)	

NRC STAFF'S RESPONSE TO INTERVENORS' PRESENTATION ON NEPA ISSUES

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August 12, 2005

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INTRODUCTION

On June 24, 2005, intervenors Grace Sam, Marilyn Morris, Eastern Navajo Diné Against Uranium Mining, and Southwest Research and Information Center (collectively, "Intervenors"), submitted a written presentation on their areas of concern pertaining to National Environmental Policy Act (NEPA) issues at the Section 17, Unit 1 and Crownpoint sites. *See* "[Intervenors'] Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Material License With Respect to: NEPA Issues for Church Rock Section 17, Unit 1, and Crownpoint" (June 24 Brief).[1]

As discussed below, the Intervenors have failed to show that their NEPA concerns have an adequate legal or factual basis. Further, the previous NEPA findings and rulings made by the Presiding Officer and Commission are the law of the case, and apply equally to the Intervenors' present NEPA concerns.

[1] This proceeding is governed by the former 10 C.F.R. Part 2, Subpart L hearing procedures, under which "areas of concern" rather than contentions are litigated.

BACKGROUND

In 1988, Hydro Resources Inc. (HRI) submitted a license application to the NRC for authority to conduct *in situ* leach (ISL) uranium mining at its Church Rock site in McKinley County, New Mexico. HRI subsequently amended its application to include additional lease areas known as the Unit 1 and Crownpoint sites in and around Crownpoint, New Mexico, and to propose that processing of licensed material be conducted in a plant located at the Crownpoint site with a satellite processing facility at Section 8. The Intervenors first requested a hearing on HRI's license application in 1994. In February 1997 the NRC Staff published NUREG-1508, the "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project" (FEIS). In December 1997 the NRC Staff issued its safety evaluation report (SER) on HRI's license application. In early January of 1998, the NRC Staff issued HRI a materials license, SUA-1508, authorizing ISL mining and related process activities at the Church Rock, Unit 1 and Crownpoint sites after various license conditions are met.

On February 19, 1999, Intervenors ENDAUM and SRIC filed their "Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect To: NEPA Issues Concerning Project Purpose and Need, Cost/Benefit Analysis, Action Alternatives, No Action Alternative, Failure to Supplement EIS, and Lack of Mitigation" (Intervenors' 1999 NEPA Brief) (LL9902240094) and their "Brief in Opposition to [HRI's] Application for a Materials License With Respect To: Cumulative Impacts and Segmentation of Consideration of Impacts" (Cumulative Impact Brief) (LL9902240069). Grace Sam and Marilyn Morris also submitted the "Final Written Presentation of Grace Sam and Marilyn Morris" (1999 Sam Brief) (LL9902240064). In response to those and subsequent pleadings involving NEPA issues, the NRC Staff submitted to the Presiding Officer the following six sets of arguments pertaining to the Intervenors' NEPA (and related) concerns: (1) "NRC Staff Response to Intervenor

Presentations on NEPA Issues (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation)" (April 1, 1999) (LL9904050100) and the attached affidavit of Robert D. Carlson (LL9904050104); (2) "NRC Staff's Response to Intervenor's Presentation on Cumulative Impact and Segmentation Issues" (April 1, 1999) (LL9904050118); (3) "NRC Staff's Response to Intervenor Motions For Leave to File a Reply to HRI and Staff Presentations on NEPA (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation)" (April 19, 1999) (LL9904210031); (4) "NRC Staff Response to Questions Posed in April 21 Order" (May 11, 1999) (LL9905130188) with the affidavits of William H. Ford (LL9905130191) and Robert D. Carlson (LL9905130194); (5) "NRC Supplemental Response to Questions Posed in April 21 Order" (June 7, 1999) (LL9906100025) and the attached affidavit of Robert D. Carlson (LL9906100028); and (6) "NRC Staff's Answer to Intervenors' Motions to Supplement FEIS" (June 25, 2004) and the attached affidavits of Ron C. Linton and Richard A. Weller (ML041810325).

In LBP-99-30, the Presiding Officer addressed the Intervenors' arguments regarding the adequacy of the Staff's FEIS as well as their Section 8 cumulative impact arguments. 50 NRC 77, 120 (1999). Ultimately, the Presiding Officer concluded that "none of the Intervenors' concerns have been found to require relief." *Id*., at 124. In CLI-01-04, the Commission granted review of, and affirmed, LBP-99-30. 53 NRC 31. The Commission stated that the Intervenors' petition for review was infused with claims that the Presiding Officer – and the FEIS – underestimated particular environmental costs of the project, but noted that those same fact-specific, technical arguments had been previously rejected by the Presiding Officer and the Commission. *Id*., at 45. Thus, the Commission found no basis to revisit LBP-99-30's fact-based conclusions on groundwater, air emissions, liquid waste disposal, cultural resources, and health impacts. *Id*. at 46. In LBP-04-23, the Presiding Officer addressed the Intervenors' motions to reopen and supplement the record for Sections 8 and 17 in order to consider the

proposed Springstead Estates Project. 60 NRC 441. In each instance, the Presiding Officer found that no further supplementation was necessary. *Id*. In CLI-04-39, the Commission denied the Intervenors' petition for review of LBP-04-23 regarding the proposed Springstead Estates development. 60 NRC 657, 658 (2004). This decision completed the Section 8 phase of the proceeding on NEPA issues.

On November 5, 2004, the Presiding Officer issued an order setting the schedule for the second phase of the litigation, in which written presentations on the areas of concern for the Section 17, Unit 1, and Crownpoint sites would be considered and ruled upon. "Order (Schedule for Written Presentations)," dated November 5, 2004 (unpublished) (November 5 Order), at 1. Subsequently, the Presiding Officer revised the schedule for written presentations based on the Intervenors' decision not to pursue certain areas of concern. "Order (Revised Schedule for Written Presentations)," dated February 3, 2005 (unpublished) (February 3 Order), at 1. The Intervenors agreed to forego presenting any new evidence with respect to the NEPA area of concern (*i.e.*, adequacy of EIS (cumulative impacts, mitigation actions)) and instead "will file a pleading incorporating by reference their arguments raised with respect to the adequacy of the EIS for Section 8, thereby preserving those arguments with respect to Section 17, Unit 1, and Crownpoint." *Id*., at 1-2. This order left intact Parts 2 and 3 of the November 5 Order relating to the format and content of the written presentations. *Id*., at 3. The June 24 Brief is the last of a series of planned written presentations for the Section 17, Unit 1 and Crownpoint sites.

On July 28, 2005, HRI submitted its response to the Intervenors' June 24 Brief. *See* "[HRI's] Response in Opposition to Intervenors' Written Presentation Regarding Environmental Impact Adequacy" (HRI Response).

DISCUSSION

I. Preliminary Issues Related to NEPA Areas of Concern

A. Law of the Case Doctrine

As developed in more detail in the NRC Staff's recent filing responding to the Intervenors' groundwater concerns (*see* "NRC Staff's Written Presentation on Groundwater Protection, Groundwater Restoration, and Surety Estimates" (April 29, 2005), at 6-7), the doctrines of res judicata, collateral estoppel, law of the case, and laches are generally applicable in NRC adjudicatory proceedings, signifying adherence to the fundamental precept of common law adjudication that once an issue is determined in a proceeding, that issue is conclusively resolved.[2] The law of the case doctrine provides that when a court decides upon a rule of law or makes a factual determination, that decision should continue to govern the same issues in subsequent stages of the same case. *Safir v. Dole*, 718 F.2d 475, 480-81 (D.C. Cir. 1983). The doctrine encompasses the court's explicit decision, as well as those issues decided by necessary implication. *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 249 (D.C. Cir. 1987).

For those areas of concern identified in the Intervenors' June 24 Brief which fall within the scope of the NEPA findings and rulings previously made by the Presiding Officer and the Commission (discussed further in Section I.B below), the Presiding Officer should reject the Intervenors' present concerns to the extent that they are contrary to those prior determinations.

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[2] *See e.g.*, *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203, 203-204 (1974) (res judicata and collateral estoppel)*; Safety Light Corp.* (Bloomsburg Site Decontamination), CLI-92-9, 35 NRC 156, 159-160 (1992) (law of the case); *Houston Light and Power Co.* (South Texas Project, Units 1 and 2), CLI-77-13, 5 NRC 1303, 1321 (1977) (laches).

B. Previous NEPA Rulings in this Proceeding Addressed the Same Issues

As discussed above, the Intervenors have voluntarily limited their written presentation on the NEPA area of concern to "a pleading incorporating by reference their arguments raised with respect to the adequacy of the EIS for Section 8, thereby preserving those arguments with respect to Section 17, Unit 1, and Crownpoint." February 3 Order, at 1-2. The legal and factual arguments raised in the June 24 Brief with respect to Section 17, Unit 1, and Crownpoint are the same as those raised previously with respect to Section 8.[3] Consequently, the doctrine of the law of the case applies and the Intervenors' arguments should be rejected.

The Intervenors allege various infirmities with the FEIS that apply equally to Section 8, Section 17, Unit 1 and Crownpoint. By unpublished orders (dated September 22, 1998 and October 13, 1998), the Presiding Officer split this adjudicatory proceeding into phases, whereby areas of concern pertaining to HRI's Church Rock Section 8 site would first be considered and decided. The Commission denied the Intervenors' petition to review these orders, terming them as ones which defined the first phase of litigation as covering "all issues pertinent solely to Church Rock Section 8, and issues clearly relevant jointly to Section 8 and the other sites" (*i.e.*, the Church Rock Section 17, Unit 1 and Crownpoint sites). CLI-98-22, 48 NRC 215, 218 (1998). Thus, certain project-wide issues were addressed in the first phase of the proceeding. However, with the apparent intent to preserve their NEPA arguments for Section 17, Unit 1 and Crownpoint, the Intervenors repeat their previous arguments in the June 24 Brief. For example, the Intervenors argue that the "FEIS violates NEPA because the statement of purpose and need is incorrect and inadequate." June 24 Brief, at 33. However, the statement of purpose and need in the FEIS applies to the project as a whole, rather than to site-specific project areas.

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[3] Only one argument in the June 24 brief has not been raised previously. The Intervenors argue that the Navajo Nation's passage of the Diné Natural Resources Protection Act merits FEIS supplementation. *See* June 24 Brief at 50. As discussed, *infra*, Section VI.C, the Staff objects to the Intervenors attempts to raise new issues in violation of the February 3 Order.

See FEIS, at 1-1 (describing the proposed action as ISL uranium mining and processing at Church Rock, Unit 1, and Crownpoint); *see also*, CLI-01-04, 53 NRC 31, 47-48 (2001) (rejecting Intervenors' arguments regarding the adequacy of the FEIS statement of purpose and need). The Presiding Officer should reject the mere incorporation of prior arguments which, as discussed below in more detail, were previously denied by the Presiding Officer and Commission.

C. Procedural Requirements of NEPA

NEPA establishes a "broad national commitment to protecting and promoting environment quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989), citing 42 U.S.C. § 4331. Chief among the procedures that ensure that federal agencies maintain this commitment is the requirement for the preparation of an environmental impact statement for major federal actions that "significantly affect[] the quality of the human environment." *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87 (1998) (LES), *quoting* 42 U.S.C. § 4332(2)©). As the Commission stated:

> The EIS must describe the potential impact of the proposed action and discuss any reasonable alternatives. See 42 U.S.C. § 4332.
>
> The principal goals of an FEIS are twofold: to force agencies to take a "hard look" at the environmental consequences of a proposed project, and, by making relevant analyses openly available, to permit the public a role in the agency's decisionmaking process. *See Robertson*, 490 U.S. at 349-50; *Hughes Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996). ... The EIS, then should provide a discussion of the relevant issues and opposing view point to enable the decisionmakers to take a "hard look" at environmental factors and to make a reasoned decision." *Tsongas Conservation Society v. Cheney*, 924 F.2d 1147, 1140 (D.C.Cir. 1991).

LES, at 87-88.

While the statute does not mandate a cost-benefit analysis, NEPA is generally considered to call for a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal, but no formal or mathematical cost-benefit analysis is

required. *Id*, at 88. NRC regulations direct the Staff to consider and weigh the costs and benefits of the project and "to the fullest practicable, quantify the various factors considered." 10 C.F.R. § 51.71(d). If important factors cannot be quantified, they may be discussed qualitatively. *Id*. As part of its cost-benefit analysis, the Staff ordinarily examines the need a facility will meet and the benefits it will create.

Generally, a discussion of alternatives to the proposed action as required by NEPA includes a discussion of the agency taking "no-action." *See* LES, 47 NRC at 97. This alternative often assumes maintenance of the status quo as a result of denial of the action. *Id*. While discussion of a no-action alternative is governed by a "rule of reason" and the overall length of the analysis (often brief) is not significant, the discussion should reflect an evaluation of both the costs and the benefits of not approving a project and thus a comparative analysis and description summary that compares the advantages and disadvantages of not proceeding with a project. *Id*. at 97-99.

Even though an FEIS may be inadequate in certain respects, ultimate NEPA judgments should be made on the basis of the entire record before an adjudicatory tribunal. *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975). Since findings and conclusions of a licensing tribunal are deemed to amend the FEIS, amendment and recirculation of an FEIS may not be necessary to cure deficiencies in the document, particularly where a hearing is held, providing for the public ventilation of the evaluation that an amended FEIS would provide. *Id*., at 196-197. In addition, supplementation of an FEIS is not required unless there are substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns or bearing on the proposed action or its impacts. *See* 10 C.F.R. § 51.92.

II. The FEIS Adequately Analyzes Cumulative Environmental Impacts[4]

As the Commission stated in this proceeding, under NEPA, "[w]hen several proposals for ... actions that will have a cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." CLI-01-04, 53 NRC 31, 57 (2001) *citing Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976). NEPA looks at both the severity of the impacts a project may have on different resources, and the possibility that these impacts may combine in such a fashion that will enhance the significance of their action; the latter consideration is referred to as the NEPA "cumulative impacts" concern. CLI-01-04, 53 NRC at 57. Cumulative impacts analyses also look to whether, even at just one site, the proposed action's impacts will be significantly enhanced by already existing environmental effects from prior actions. *Id.*, at 60. Stated another way, a cumulative impact review examines the impact on the environment which results from the incremental impact of the action, when added to other past, present, and reasonably foreseeable future actions. *See* 40 C.F.R. § 1508.7. Thus, the cumulative impacts analysis in the FEIS looks to whether the simultaneous development of project areas (i.e. inter-regional impacts) will heighten the project's overall impacts or whether the incremental impact of the project will lead to a significant environmental impact.[5]

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[4] This Section II corresponds to Section IV.A of the Intervenors' June 24 Brief. The Staff notes that the Intervenors did not separate out their arguments by project area as in previous Phase II filings, *i.e.*, the Intervenors combined their arguments such that they apply to Section 17, Unit 1, and Crownpoint together. The Staff will therefore respond to each of the Intervenors' arguments as if they apply to all three remaining project areas.

[5] In CLI-01-04, the Commission discussed the Presiding Officer's treatment of cumulative impacts at Section 8. 53 NRC at 57-62. According to the Commission, the Section 8 cumulative impacts issues focused on the "incremental impacts" from the proposed project at Church Rock and left open the possibility that the Intervenors could raise "inter-regional impact" concerns in the second phase of the proceeding. *Id.*, at 62. The Intervenors have not availed themselves of this opportunity and instead chose to incorporate by reference their "incremental" cumulative effects arguments regarding Section 8. *See e.g.*, June 24 Brief, at 20. Thus, the Staff's response to the Intervenors' arguments focuses primarily on these incremental cumulative impact issues.

A. The FEIS Adequately Analyzes the Cumulative Effects of Radiological Air Emissions

The Intervenors assert that the FEIS does not adequately analyze the cumulative environmental effects of the project on radiological air emissions. June 24 Brief, at 21. Specifically, the Intervenors allege that the FEIS misrepresents existing radiation levels at Section 17, inaccurately analyzes radiological air impacts from the project, and fails to provide a correct or adequate cumulative impacts analysis. June 24 Brief, at 22-26. These arguments have been addressed and rejected previously.

First, the Intervenors argue that the FEIS "misrepresents the sources of existing radiation levels" and fails to adequately address radiation from previous mining activities. June 24 Brief, at 23-25. Initially, the Intervenors ignore the fact that information regarding background radiation was inadvertently omitted from the FEIS but was made available in the DEIS and was available to the public. *See* McKenney April 7, 1999 Affidavit at 9 (attached to Staff's April 7, 1999 response to LBP-99-15, March 18, 1999 Order). In LBP-99-30, the Presiding Officer addressed previous Intervenor arguments regarding the cumulative effects of radioactive air emissions by stating as follows:

> In LBP-98-9, 47 NRC 261, 283 (1998), I ruled that concerns regarding existing radiological conditions in and around HRI's Church Rock site are not germane to this proceeding. The Intervenors argue that the FEIS inaccurately represents existing and continuing sources of radioactivity in the Church Rock area. My reading of the FEIS at 4-72, 4-73 and 4-124 confirms that the FEIS acknowledges the existence of elevated levels of radioactivity from previous mining and milling activities near Church Rock. In addition, there is a thorough discussion of the background radiological characteristics of the Church Rock [sic], including levels from a previous mining and milling activities site, in the DEIS at Section 3.7. This information was inadvertently omitted from the FEIS but had been made available in the DEIS and was available so that the public might have information about radiation. McKenney April 7, 1999 Affidavit at 9 [attached to Staff's April 7, 1999 response to LBP-99-15, March 18, 1999 Order].
>
> The FEIS, NUREG-1508 (February 1997) reviews cumulative impacts at pp. 4-120 to 4-127. The key section on health physics effects states:

> The total annual population dose was estimated for the period in time of greatest releases from all three project sites.[6] Two population dose estimates were calculated: one for the Crownpoint/Unit 1 sites and one for the Church Rock site. As the area of impact is similar for both calculations, the results were combined with a total population dose less than 0.01 man-Sv/year (1 man-rem/year). The population within the 80 km (50 mi) radius of the entire project is approximately 76,500 persons. Population dose commitments resulting from facility operations represent less than 1 percent of the dose from natural background sources. The population dose from natural background would be approximately 170 man Sv/year (17,000 man-rem/year). FEIS at 4-124.
>
> Additionally, the FEIS at 4-124-125 adequately discusses the negligible impact on the population in the 50 mile radius from the expected releases from in situ leach mining activities HRI proposes.
>
> As I pointed out in LBP-99-15, March 18, 1999 (Questions Concerning Radioactive Air Emissions), the expected impact of radiation from the HRI project will be a small fraction of 1 millirem to an individual in the area. There is no reason to anticipate health effects from such a minimal dose. Accordingly, the FEIS and DEIS have adequately addressed issues concerning radioactive air emissions and no more detailed discussion is required.

50 NRC at 120. The Commission agreed with the Presiding Officer that "the intervenors simply have not credibly suggested how the relatively minor radiological impact of Section 8 will in fact prove significant even when added the already existing radiological conditions." CLI-01-04, 53 NRC at 61-62. In the Commission's view, the Intervenors did not cast doubt on the FEIS's conclusion that the "Church Rock Section 8 mining will make a minor, insignificant addition to overall existing radiological impacts." *Id*. Since the Presiding Officer's conclusions were independent of any particular project area and instead applied to the FEIS (and all four project areas) generally, the Intervenors' arguments should be rejected as contrary to the law of the case.

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[6] Since Church Rock Sections 8 and 17 are adjacent, the FEIS often treats them as one "project site" for purposes of evaluating impacts. Thus, the FEIS references only three project sites (Church Rock, Unit 1, and Crownpoint). However, Section 8 and Section 17 have typically been treated separately in the parties' written presentations unless otherwise noted.

Second, the Intervenors argue that the FEIS "incorrectly concludes that radiation from the [Crownpoint Uranium Project] will be under regulatory limits." June 24 Brief, at 25. However, the Presiding Officer has already rejected the Intervenors' arguments stating that:

> Intervenors argue that radiological emissions will exceed NRC standards. Intervenors' NEPA Brief at 51. The FEIS discusses the effect of Alternative 3 (the NRC Staff-recommended action) on radioactive air emissions. It concludes that there would be only minor impacts on air quality. These issues have been considered in detail in LBP-99-19, Radioactive Air Emissions, 49 NRC 421 (May 13, 1999), and I am satisfied that the FEIS has given adequate consideration to possible radioactive air emissions. The conditions imposed by the Staff, FEIS 4-5, § 4.1.3 (SUA-1508, § 10.9 at 5 and § 10.30 at 9) provide additional protection against air emissions. These conditions, in my opinion, represent an abundance of caution.

LBP-99-30, 50 NRC at 114. Since the Presiding Officer's conclusions were independent of any particular project area and instead applied to the FEIS generally, the Intervenors' arguments should be rejected as contrary to the law of the case.

Lastly, the Intervenors argue that the cumulative impacts section of the FEIS "seriously distorts" the radiological impacts on the Church Rock community giving the "false impression that there are no existing health impacts from prior human activities" that could contribute to cumulative radiological and health impacts of the proposed Crownpoint project. June 24 Brief, at 26. To the contrary, the FEIS states that the "primary radiological impact to the environment in the vicinity of the project results from naturally occurring cosmic and terrestrial radiation and naturally occurring radon-222 and its daughters," and acknowledged that in addition to natural background, there is "remnant radiation stemming from previous mining and milling activities near the Church Rock site." FEIS, at 4-72, 4-73. In its cumulative impacts analysis, the Staff recognized past exposures to radioactive materials in earlier uranium mines which "were large enough to result in a high incidence of cancer among workers" but also reiterated the minimal contribution HRI's ISL mining would make to the local population dose, stating its finding that such activity would produce "less than 1 percent of the dose from natural background sources."

Id., at 4-124. The Intervenors do not explain how this finding is misleading, or otherwise indicates a failure to properly evaluate cumulative impacts.[7]

Thus, the Presiding Officer should reject the Intervenors' concerns regarding the adequacy of the FEIS discussion of cumulative air emission impacts.

B. The FEIS Adequately Analyzes the Cumulative Impacts on Groundwater Resources

The Intervenors contend that the FEIS does not adequately address the impacts of past mining on ground water resources or "analyze the cumulative effects of the proposed Project with the impacts of past mining on ground water." June 24 Brief, at 27-28. These same arguments were raised in the Intervenors' 1999 Cumulative Impacts Brief. *See* 1999 Cumulative Impact Brief, at 28-30. The Presiding Officer has previously addressed and rejected the Intervenors' arguments by concluding that:

> In the portion of this opinion concerning groundwater, I have determined that Intervenors' arguments on groundwater are invalid. *See* page 7 et seq. [of LBP-99-30]. Accordingly, I find that failure to address these erroneous arguments (Intervenors' NEPA Brief at 46-50) in the FEIS was not an error.

LBP-99-30, 50 NRC at 113.

> With respect to groundwater cumulative impacts, claims that groundwater will not be restored properly are addressed above. [(Section II.E. in the groundwater portion of LBP-99-30)] The FEIS satisfactorily evaluates potential excursions at 4-54 and 4-55.

Id., at 120.

> After a careful review of the FEIS and Intervenor arguments concerning cumulative impacts and segmentation issues, I conclude that Intervenors have not provided any analysis or testimony that leads me to conclude that the Staff has not adequately analyzed and weighted the past and future cumulative impacts and segmentation issues associated with licensing HRI to conduct ISL operations at Section 8.

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[7] Additionally, the Presiding Officer has previously held that concerns regarding existing radiological conditions in and around HRI's Church Rock site are not germane to this proceeding. LBP-98-9, 47 NRC 261, 283 (1998).

Id., at 121. On appeal, the Commission found "no basis for reversal of the Presiding Officer's technical findings." CLI-01-04, 53 NRC at 62. Similarly, the Presiding Officer recently rejected the Intervenors same arguments regarding groundwater with respect to Section 17, Unit 1 and Crownpoint. *See* LBP-05-17, slip op. at 61-62.

Most importantly, however, the FEIS does contain a thorough discussion of cumulative impact issues. *See* FEIS, 4-120 to 4-127. The charge that the FEIS does not address the impacts of past uranium mining on groundwater resources (June 24 Brief, at 27) is without basis, as shown by even a cursory review of the FEIS. *See* FEIS §§ 4.12.4, 4.13.2, 4.13.3, and 4.13.6 (discussing, for example, the effects of dewatering the aquifer during previous underground mining operations and the possible impacts of ISL mining on altered aquifer geochemistry). The June 24 brief contains other inaccuracies, including the statement that "United Nuclear Corporation's mine and milling facilities at Church Rock has [sic] been declared a federal Superfund site because of the extensive ground water contamination there." June 24 Brief, at 27 (emphasis added). This statement is inaccurate because while the mill has been declared a Superfund site, the site of the old Church Rock mine on Section 17 has not been so designated. Thus, the mill tailings contamination is not relevant to any groundwater issues at Church Rock.

The Intervenors also erroneously state that the "FEIS does not analyze the cumulative effects of the proposed Project with the impacts of past mining on ground water." June 24 Brief, at 28. On the contrary, page 4-122 of the FEIS contains quantitative estimates of consumptive water use for the whole project, and the FEIS further states in this regard as follows:

> Past actions that have contributed to cumulative impacts on groundwater in the region include underground uranium mining at the Church Rock site, which would have dewatered the Westwater Canyon aquifer and the Brushy Basin "B" Sand aquifer in the area of the existing workings and may have had some dewatering effects on the Dakota Sandstone aquifer. Dewatering effects would

> have lowered water levels in these aquifers for some distance around the workings and may have oxidized some of the rock around the workings by exposing it to the atmosphere. When mining stopped, the workings flooded, and after several years groundwater levels returned to pre-mining levels. Water quality in the workings was probably degraded, but groundwater quality outside the mine workings does not appear to have been affected.

FEIS, at 4-123. Moreover, on the same page, the FEIS concludes as follows:

> ISL mining at Church Rock, Unit 1, and Crownpoint sites would geochemically change the chemistry of the groundwater in the Westwater Canyon aquifer, but not so much as to degrade its use. Some temporary impacts on groundwater level would occur, but at the Church Rock site these impacts would be less than the effect of past underground mining activities on water levels.

Id. Accordingly, the Intervenors' contention that the FEIS lacks a groundwater cumulative impact analysis does not have merit.

The Intervenors reference the testimony by two of their experts to support their repetitive claim that past mining on HRI's Section 17 site will make it difficult to restore the groundwater at Section 17. June 24 Brief, at 29. This claim has already been addressed and has no merit. *See* March 1999 Affidavit of Mr. William Ford, attached to the Staff's March 12, 1999 Groundwater Presentation as Staff Exhibit 1, at ¶¶ 18-21 (LL 9903170045) (concluding that the prior dewatering of the underground mine at Section 17 will not impede groundwater restoration during ISL mining). The Intervenors also argue that "HRI has failed to determine whether abandoned mine tunnels have collapsed in Section 17" which could lead to fractures and contaminant transport. June 24 Brief, at 29-30. In the FEIS, the Staff recognized the potential for tunnel collapse and assumed the presence of undetected faults at HRI's Church Rock site. *See* FEIS, at 4-55 to 4-56. In fact, this conservative assumption formed the basis for requiring HRI to conduct pump tests prior to any ISL mining. *See* SUA-1508 License Condition 10.23.

Since the Intervenors have not demonstrated that the FEIS discussion of cumulative effects on the groundwater resource is inadequate, the Presiding Officer should reject this area of concern.

C. The FEIS Adequately Analyzes the Cumulative Radiological and Health Effects

The Intervenors allege that the FEIS does not adequately address "the cumulative levels of radiation that will result if the project proceeds." June 24 Brief, at 30. For the most part, these arguments merely repeat the Intervenors' concerns regarding the impacts of previous uranium mining in the area and radiological air emissions. *See* 1999 Cumulative Impact Brief, at 36-38 (advancing the same arguments as the June 24 Brief) and LBP-98-9, 47 NRC at 283 (holding that concerns regarding existing radiological conditions in and around HRI's Church Rock site are not germane to this proceeding); *see also*, *infra*, Section II.A (discussing radioactive air emission cumulative impact analysis at FEIS § 4.13.6). The Presiding Officer has previously rejected the Intervenors' arguments with respect to cumulative impact of the proposed project and previous uranium mining on the health of local communities by noting:

> In addressing these issues, it is important to note that the issuance of a license to HRI does not condone past practices by other companies with respect to mining or mill tailings. When there are substantial impacts imposed by the HRI project, then Intervenors are correct in pointing out that those impacts must be considered cumulatively with existing impacts in order to assess their importance. However, when the impacts imposed by this project are very small, as they uniformly appear to be for this project, the harm does not flow from this project but from the already existing problems and the small incremental increases caused by HRI are acceptable, absent some showing that they are the "straw that breaks the camel's back."

LBP-99-30, 50 NRC at 119. The Commission determined that the above statement "simply reflects [the Presiding Officer's] conclusion that the future 'small incremental increase' HRI's operations will bring to Section 8 will not add up to a significant cumulative impact when added to current and past impacts at Section 8." CLI-01-04, 53 NRC at 62, n. 11. Finally, even a quick perusal of the FEIS reveals that the Staff has taken into account the effects of past uranium mining on workers. *See e.g.*, FEIS, at §§ 4.12.4 and 4.13.6 (considering, for example, the residual radioactivity from prior mining activities and the radiological impacts, including higher incidences of cancer, to former workers in local underground uranium mines). Since the

Intervenors have introduced no evidence to call into question the FEIS conclusion that the small incremental impact caused by HRI at Section 17, Unit 1 or Crownpoint are not significant, the Presiding Officer should reject the Intervenors' arguments regarding cumulative radiological and health effects.

D. The FEIS Adequately Analyzes the Cumulative Impacts on Land Use

The Intervenors state that the "cumulative impacts on land use are not included in the FEIS." June 24 Brief, at 32. The Intervenors' arguments are without merit. The FEIS discusses, in the cumulative impacts section, the potential impacts of the project on land uses, including grazing, before concluding that "HRI's proposals for site restoration and reclamation, the combination of existing land disturbance, new land disturbance related to the project, and disturbance from reasonably foreseeable future action is not expected to represent a significant cumulative impact." FEIS, at 4-126. The Intervenors do not explain how this finding is misleading or otherwise indicates a failure to properly evaluate cumulative impacts.

Further, their arguments have been discredited by the Presiding Officer previously. With respect to the relocation of residents, the Presiding Officer concluded:

> Intervenors argue that proposed mitigation for relocating residents is inadequate. Intervenors' NEPA Brief at 50-51. People who graze livestock on HRI's Unit 1 property are either mineral lease holders or are beneficiaries of leases held by others. Some of these people may be displaced because HRI is exercising mineral rights to which it has valid title. Under applicable law, these people do not have the right to continue to graze their livestock upon land on which they do not have continuing grazing rights. Nevertheless, the FEIS considers this impact to be an environmental justice impact and grazing rights permittees and others who would be required to relocate will be compensated. FEIS at 4-118, § 4.12.6. I conclude that the FEIS has given adequate consideration to the relocation of individuals. The loss of the small plot of land in Church Rock Section 8, set as it is in the midst of a vast desert, will not materially affect the ability of people to graze their cattle.

LBP-99-30, 50 NRC at 114. The Presiding Officer also addressed concerns arising from the impacts of the project on grazing holding that:

> Intervenors object that it is impermissible for HRI to displace individuals from this area, even if it compensates them. They also object that the loss of grazing rights will prevent Larry J. King and Mitchell Capitan from being "complete or 'free'." (Id. at 75.) However, I have been to the site of these projects and I am at a loss to understand the harm of which Intervenors complain. There are no people living on Church Rock Section 8 so there will be no displacement. Furthermore, the land being removed from grazing is very small in comparison to the size of the vast desert in which it is located. I do not understand how anyone could possibly be prevented from raising livestock because ISL mining will take place on Section 8. Furthermore, there is no indication in the record that any family will be required to relocate. Accordingly, I find Intervenors allegations about relocation and about grazing rights to be without merit.

Id., at 117-118. The Commission also addressed and rejected the Intervenors' arguments on land use stating:

> We turn next to the intervenors' argument on land use impacts. These impacts, as described in the FEIS, include on-site disturbance of approximately 90% of the Church Rock site, the temporary disruption of livestock grazing at project sites, and the potential relocation of residents. *See* FEIS 4-93, 4-94. The FEIS recognizes that "[l]ocal residents have expressed concern that this disruption of grazing would adversely affect Navajo who have grazing permits for the land and rely on livestock as an important economic resource." *Id*. at 4-94.
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> . . .
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> The FEIS, however, clearly and repeatedly acknowledges that HRI's proposals for disposing liquid wastes from the Church Rock site may involve more than Section 8. *See*, *e.g.*, FEIS at 4-11; 4-93; 3-55; 2-26. One of the possible liquid waste disposal methods is "land application," in which agricultural irrigation equipment is used to apply wastewater over a relatively large land area. *See id*. at 2-19. If land application ultimately is selected as the waste disposal method for Section 8, there are four possible sites that may be used: Section 17, Section 8, Section 12, and Section 16. *Id*. at 4-11. Up to 640 acres of pasture land from Section 16 might be affected. *Id*. at 4-11; 4-93. That land is owned by the State of New Mexico. *Id*. at 4-11.
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> . . .
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> More significantly, HRI's license does not currently authorize waste disposal through land application. For HRI to conduct waste disposal through land application, it must first submit a plan, in the form of a "detailed license amendment" application, and receive approval by the NRC. *See id.* at 4-80; 4-90; see also License Condition 11.8; *Hydro*, CLI-99-22, 50 NRC 3, 10 (1999). The

> "NRC would consider any consequences arising from such [an] approval[] at that time." *Hydro*, CLI-99-22, 50 NRC at 10. Land application, in short, "would have to be proposed by HRI under a license amendment and [then] would be subject to additional environmental review." *See* FEIS at 2-18; 4-90. Meanwhile, the FEIS does not overlook the general possibility that individuals with grazing permits may be temporarily displaced and should be compensated accordingly. *See, e.g.*, *id*. at 4-118; 4-95.

CLI-01-04, 53 NRC at 50-51. Because the Intervenors' arguments have been previously rejected and, in any event, lack merit, the Presiding Officer should reject the Intervenors' request for relief regarding land use.

Accordingly, as discussed above, the Intervenors' cumulative impact arguments lack merit and the Intervenors' requests for legal relief based thereon should be denied.

III. The Statement of Purpose and Need is Adequate[8]

The Intervenors contend that the Staff's decision making "has been distorted by an incorrect statement of purpose and need" that "has skewed the entire review process and represents a fundamental flaw in the EIS." June 24 Brief, at 36. The Intervenors have raised these issues previously (*see* Intervenors' 1999 NEPA Brief, at 20). The Presiding Officer did not agree with the Intervenors and ultimately found that "none of the Intervenors' concerns have been found to require relief." LBP-99-30, 50 NRC at 124. On this point, the Commission found as follows:

> The FEIS thus concludes that "[t]he proposed project, which would produce about one million pounds of uranium per year at each of the three project sites, would have the beneficial effect of helping the United States offset this deficit in domestic production." Id.
>
> Concededly, this information appears in the FEIS's section titled "Costs and Benefits," rather than the section expressly titled "Purpose of and Need for the Proposed Action." Nevertheless, the FEIS should be read and understood as a whole. It clearly identifies domestic uranium production as the primary public benefit associated with this project.
>
> The intervenors claim that this benefit of domestic uranium "does not exist." *See*

[8] This Section III corresponds to Section IV.B of the Intervenors' June 24 Brief.

> Intervenors Brief at 42. The gist of this vague claim is that there is no need for an additional domestic source of uranium, given current market conditions. HRI, however, has repeatedly emphasized that if market conditions are unfavorable -- taking into account uranium prices and HRI's costs of operations -- it will not go forward with the project. As the Presiding Officer described, only if uranium prices climb and cross HRI's "break-even" point will HRI choose to enter the market.
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> . . .
>
> The intervenors have not called into question the general interest in maintaining a domestic uranium production industry or HRI's possibly significant role as a domestic uranium producer. Regardless of the current market price for uranium or shifting market scenarios speculating upon future uranium supply and demand, it remains in the national interest to maintain a domestic uranium production capability. *See* FEIS at 5-1; *see also* 42 U.S.C. §§ 2210b, 2296b.

53 NRC at 47-48. Since the statement of purpose and need is independent of any specific project area, the adequacy of the statement of purpose and need is the law of the case.

Contrary to the Intervenors' assertion, the statement of purpose and need did not "skew" the FEIS in favor of license issuance. The FEIS can be read as describing the need for the action in terms of the need for issuance of the proposed license to authorize the construction and operation of a ISL mining facility. The balance of the FEIS makes it clear that the NRC is concerned with the impacts of the proposed issuance of a license authorizing HRI's mining project. *See* FEIS, Section 3 and 4. Throughout the NEPA process, the Staff endeavored to identify and consider the impacts of the proposed action. *See* FEIS, Section 6 (Consultation and Coordination), Section 9 (Agencies and Individuals), and Appendix A (Response to Written Comments). The effort resulted in a document that consists of over 300 pages, 30 figures, and 70 tables concerning this materials licensing action. The Staff took a "hard look" at the proposed action and considered alternatives to the NRC's proposed issuance of the license that were consistent with HRI's stated goals. *See e.g.*, FEIS at xx-xxi; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991) (agencies should not consider alternatives to the applicants stated goals, but evaluate alternate ways of achieving agency goals, shaped by

the application at issue and by the function that the agency plays in the decisional process). The FEIS identified the benefits of the project as including economic benefits to HRI, socioeconomic benefits to the local community, and the provision of a domestic source of uranium. *See* FEIS, Section 4.9 and 5.1. Such benefits addressed the need for issuance of a license for the proposed project.

Therefore, the analysis in the FEIS was not skewed in favor of license issuance and Intervenors' claim in this regard should be rejected by the Presiding Officer.

IV. The FEIS Adequately Identifies and Analyzed Alternatives[9]

The Intervenors allege that the FEIS discussion of alternatives is inadequate because the FEIS fails (1) to properly identify alternatives, (2) to explain why alternatives were rejected, (3) to adequately address the no action alternative, and (4) to perform a cost-benefit analysis among alternatives. June 24 Brief, at 36-40. These issues have been raised previously by the Intervenors. *See* Intervenors' 1999 NEPA Brief, at 20-22, 59, 60, and 23-56. The Presiding Officer rejected those arguments and ultimately found that "none of the Intervenors' concerns have been found to require relief." LBP-99-30, 50 NRC at 124. We address each of these issues below.

A. The Alternatives Were Adequately Identified

The Intervenors are concerned that the statement of purpose and need precluded consideration of reasonable alternatives, including alternative fuel sources. June 24 Brief, at 37-38. Although blending down highly enriched uranium (HEU) may be a reasonable alternative for providing fuel for the production of electricity by nuclear power plants (*see* June 24 Brief, at 37), it does not follow that this is a reasonable alternative to the proposed action, *i.e.*, issuance of a license for an ISL mining project. It would be unreasonable to

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[9] This Section IV corresponds to Section IV.C of the Intervenors' June 24 Brief.

examine all alternatives for providing nuclear fuel for electric power generation given the project's purpose of, among others, maintaining a dwindling uranium mining industry and providing a domestic source for uranium. *See* FEIS, at 5-1 to 5-5. In addition, the Intervenors do not explain why this alternative was not proposed in scoping meetings or comments on the DEIS. *See e.g.*, FEIS at Appendix A. Regardless, the Commission has already rejected these concerns and held that:

> Agencies need only discuss those alternatives that are reasonable and "will bring about the ends" of the proposed action. *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991). "When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved." *Id*. (*citing City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986)(per curiam), *cert. denied*, 484 U.S. 870 (1987)).
>
> The intervenors mischaracterize the project's purposes by declaring – over-broadly -- that the project's main public benefit is simply to provide fuel for nuclear power plants. It is, more specifically, to help maintain the viability of a dwindling "domestic uranium mining industry." FEIS at 5-1. The "viability of the industry is a Federal concern," aimed at assuring a dependable, ongoing domestic source of uranium. See id.. Other public benefits of the project include the socioeconomic benefits to the local community, the local governments, and the State of New Mexico. FEIS at 5-1 to 5-5; 50 NRC at 125- 29. Of course, the applicant, too, would benefit from revenues generated from uranium sales. FEIS at 5-1. Additional alternatives suggested by the intervenors would not satisfy the goals of the project.
>
> The intervenors entirely ignore the nature of the ISL project -- it is a project proposed by a private applicant, not the NRC. "Where the Federal government acts, not as a proprietor, but to approve ... a project being sponsored by a local government or private applicant, the Federal agency is necessarily more limited." *Citizens Against Burlington*, 938 F.2d at 197. The NRC is not in the business of crafting broad energy policy involving other agencies and non-licensee entities. Nor does the initiative to build a nuclear facility or undertake ISL uranium mining belong to the NRC.
>
> When reviewing a discrete license application filed by a private applicant, a federal agency may appropriately "accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project." *Id*. The agency thus may take into account the "economic goals of the project's sponsor." *City of Grapevine v. Dept. of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994); *see also Citizens Against Burlington*, 938 F.2d at 196 ("the agency should take into account the needs and goals of the parties involved in the application"). HRI proposes to mine on

> Section 8 of Church Rock because it owns land there in fee simple and that is where the ore body is located.

53 NRC at 55-56. Since the development of alternatives is independent of any specific project area and instead provides alternatives to the proposed action at all four project areas, the adequacy of the identified alternatives in the FEIS is the law of the case and the Intervenors' arguments should be rejected.

B. The FEIS Explains Why Alternatives Are Rejected

The Intervenors state that the FEIS does not explain why alternatives to the recommended action are not preferable. June 24 Brief, at 38. To the contrary, the FEIS evaluates the impacts of constructing and operating HRI's project as a result of NRC's proposed approval of the license. The alternatives considered encompass the reasonably foreseeable range of impacts associated with approving or denying the project. FEIS Section 2.2.1 lists six combinations of ISL mining locations, Section 2.2.2 lists four alternatives sites for yellowcake drying and packaging, and Section 2.2.3 lists four alternative liquid waste disposal methods (and combinations thereof) that the NRC Staff considered as reasonable alternatives given the proposed licensing action. Each of these possible options was considered in impact assessments described in Section 4 of the FEIS.

FEIS Section 4 compares the impacts of the proposed action with the impacts of alternatives to the proposed action. While this section may have to be read together with pages xx-xxi of the FEIS, a comparison of the information in FEIS Section 4 enabled the Staff to choose its recommended alternative. *See* April 1, 1999 Affidavit of Robert D. Carlson, at 2-3 (LL9904050104) (attached to the April 1, 1999 Staff Response to Intervenor Presentations on NEPA Issues). In the course of finding no basis to reverse the Presiding Officer on alternatives, the Commission discussed the scope of the project alternatives in CLI-01-04 stating that:

> The [Presiding Officer's] decision makes clear why the "no action" alternative ("Alternative 4") was rejected. *See* 50 NRC at 132-33. It also notes that the staff's recommended "Alternative 3" -- containing numerous additional staff-imposed protective measures -- is preferable to the other FEIS-listed alternatives (Alternatives "1" and "2"), which only include those mitigative measures proposed originally by HRI but found inadequate by the staff. *See id*. at 132; *see also id*. at 133-45.
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> . . .
>
> Alternative 2 stems from the possibility -- considered in the FEIS -- that "potential impacts to public health and safety or the environment might indicate that ISL mining should not be conducted at all three sites" (Church Rock, Unit 1, and Crownpoint). *Id*. Given this possibility, instead of examining and discussing generally the entire project's impacts, the FEIS addresses the Church Rock, Unit 1 and Crownpoint impacts individually, as "subunits of the proposed project." *Id*. For each type of environmental impact, ecological, hydrological, meteorological, radiological, etc. -- the FEIS breaks its discussion down into separate sections for Church Rock, Unit 1, and Crownpoint. In the end, however, the FEIS does not find any of the proposed project sites' impacts so significant as to warrant eliminating from the license one or more of the sites.

53 NRC at 54, 56-57. Since the identification of alternatives is independent of any specific project area, the adequacy of the FEIS alternative discussion is the law of the case. Accordingly, the Intervenors' concerns regarding the discussion of alternatives lack merit and the Intervenors' requests for legal relief based thereon should be denied.

C. The FEIS Addresses the No Action Alternative

The Intervenors contend that the FEIS fails to adequately identify the environmental benefits of the no-action alternative. June 24 Brief, at 39. However, FEIS section 2.4 (at 2-32) states that the "no-action alternative for NRC is not to issue HRI a license for the construction and operation of facilities for ISL uranium mining and processing at Church Rock, Unit 1, or Crownpoint sites." The impacts of this no-action alternative are examined for each resource examined in FEIS Section 4. To the extent that the Intervenors assert that these discussion are not sufficient to reveal the benefits of the no-action alternative, their complaint is not sustainable since the benefit of maintaining the status quo is encompassed by the discussion in Section 4.

In finding the FEIS discussion of alternatives adequate, the Commission addressed the no-action alternative specifically and concluded:

> Generally, one of the alternatives proposed in an FEIS is the agency alternative of taking "no action." For the "no action" alternative, there need not be much discussion. *See Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1181 (9th Cir. 1990). It is most simply viewed as maintaining the status quo. *See Association of Public Agency Customers v. Bonneville Power Administration*, 126 F.3d 1158, 1188 (9th Cir. 1997)(referencing Council on Environmental Quality Memorandum to Agencies, 46 Fed. Reg. 18,026, 18,027 (Mar.1, 1981)).
>
> In this case, "no action" would mean denial of the HRI license. It is self-evident from both LBP-99-30 and the FEIS that the "no action" alternative would have the advantage of obviating all of the health and environmental impacts associated with the project, but also would forego "uranium production from Section 8" and the "beneficial socioeconomic impacts discussed in the FEIS." 50 NRC 132-33; *see, e.g.*, *id*. at 133-41; FEIS at 4-63, 4-66, 4-72. While the FEIS could have done a better job articulating final conclusions on the alternative chosen, it is nonetheless implicit in the FEIS that the "no action" alternative was rejected because the impacts of the project were found acceptable, while the ISL mining would yield significant quantities of domestically produced uranium as well as some local socioeconomic benefits. *See, e.g.*, FEIS at 4-120 to 4-127 (finding cumulative impacts either minor or, given license conditions and other mitigative measures, acceptable, for air quality, radiological health, ecology, land use, transportation risk, groundwater, etc.); *see also id*. at 5-1 to 5-5 (on benefits). Similarly, the Presiding Officer's decision ultimately rejects the "no action" alternative because it finds the impacts of the project either "minimal" or "acceptable" and the benefits desirable. *See, e.g.*, 50 NRC at 132-33.
>
> Clearly, the intervenors preferred the "no action" alternative, but NEPA imposes no obligation to select the most environmentally benign alternative. *See Robertson v. Methow Valley*, 490 U.S. 332, 350 (1989). NEPA "does not dictate agency policy or determine the fate of contemplated action." *Davis v. Latschar*, 202 F.2d 359, 360 (D.C. Cir. 2000) (*quoting Environmental Defense Fund v. Massey*, 986 F.2d 528, 532 (D.C. Cir. 1993).

CLI-01-04, 53 NRC at 54-55. Since the no-action alternative applies equally to all project areas, the adequacy of the discussion of the no action alternative in the FEIS is the law of the case and the Intervenors' arguments should be rejected.

D. The FEIS Performs a Cost-Benefit Analysis

The Intervenors allege that the FEIS "utterly fails to make any analysis of the comparative costs and benefits of the various alternatives considered elsewhere in the FEIS." June 24 Brief, at 40. These arguments have been addressed previously by the Presiding Officer and the Commission. With respect to cost-benefits analyses, the Presiding Officer held that:

> Intervenors argue that the FEIS does not provide a suitable summary of the costs and benefits of alternative courses of action. To the contrary, I find that the FEIS, as explained by the cost/benefit determination filed by Mr. Robert Carlson of the NRC Staff as an attachment to NRC Staff Response to Questions Posed in April 21 Order, May 11, 1999 (Carlson May 11, 1999 Affidavit), takes a suitable, hard look at the costs and benefits of this project and is adequate to fulfill the requirements of NEPA.

LBP-99-30, 50 NRC at 115-116 (footnotes omitted). To the extent that the Staff Affidavit was incorporated into the licensing record, the Intervenors also argue that the Staff should be required to "re-draft and re-circulate the FEIS for public comment." June 24 Brief, at 40. However, the Commission has previously agreed that the incorporation of the Staff Affidavit into the record was acceptable in the following passage:

> Finally, the Presiding Officer's incorporation into LBP-99-30 of a staff affidavit on costs and benefits also does not require FEIS supplementation. All of the information in that affidavit was based upon and entirely encompassed by the FEIS. No significantly new picture of environmental or other impacts is presented by the affidavit.
>
> In addition, in an adjudicatory hearing, to the extent that any environmental findings by the Presiding Officer (or the Commission) differ from those in the FEIS, the FEIS is deemed modified by the decision. *See, e.g., Philadelphia Elec. Co.*, (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 706-07 (1985); *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 371-72 (1975). "The adjudicatory record and Board decision (and, of course, any Commission appellate decisions) become, in effect, part of the FEIS." *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998). Indeed, the hearing process itself "allows for additional and more rigorous public scrutiny of the FES than does the usual 'circulation for comment.'" *Limerick*, 22 NRC at 707.

53 NRC at 53. Since the Staff's cost-benefit analysis encompasses all four project areas, the adequacy of the FEIS discussion of the costs and benefits of the project is the law of the case and the Intervenors' arguments should be rejected.

Accordingly, as discussed above, the Intervenors' arguments regarding project alternatives lack merit and the Intervenors' requests for legal relief based thereon should be denied.

V. The FEIS Adequately Evaluates the Effects of its Proposed Mitigation Measures[10]

The Intervenors argue that the FEIS "fails to adequately analyze the impacts of its suggested mitigation measures on the environment and the local community." June 24 Brief, at 40. In particular, the Intervenors argue that the FEIS does not evaluate or sufficiently discuss the movement of the Crownpoint water supply, the testing and surety information that depends on well-field specific information, or the land use impacts. *Id*. at 41-42. To the contrary, the water supply impacts are encompassed by the impacts associated with authorized Alternative 1 and the discussion of the costs of replacement wells and distribution system. *See* FEIS Section 4; FEIS at 5-6 to 5-7. While adverse impacts to individuals within the local community may exist even with the adoption of mitigation measures, the implied conclusion of the FEIS is that such impacts would be offset by the overall benefits of the project.

With respect to the impact of mitigative measures, the Presiding Officer concluded that:

> Intervenors argue that the FEIS fails to explore the impact of measures to mitigate or reduce environmental effects, such as the requirement that Crownpoint drinking water wells should be moved. (Intervenors' NEPA Brief at 73-75). In their brief, Intervenors distort the purpose and effect of requiring that the Crownpoint Water Supply be moved. (*id*. at 73.) The purpose of having the wells moved is to avoid having the wells cause a cone of depression that would cause an excursion of lixiviant. Hence, once the wells are moved, there is no reason to believe that an excursion would occur that would affect the quality of the water in the area of the closed wells. With the wells closed, there will be nothing to draw lixiviant in that direction.

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[10] This Section V corresponds to Section IV.D of the Intervenors' June 24 Brief.

> Furthermore, the required moving of the wells will occur only if the Crownpoint water authority agrees to close down the affected wells and to open new ones. At that point, the Staff would examine the new plan to assure that it would protect water quality. The EPA likewise would examine that question. So it will take the concurrence of HRI, the municipal water authority, the NRC and the EPA before this plan is effectuated. If there is no appropriate way to move the wells, then they will not be moved and the no action alternative for Crownpoint will be implemented.
>
> There is no reason to determine now whether this plan is adequate. There is nothing in Intervenors' Groundwater Brief that persuades me to rule that the entire license is invalid because of this license condition.

50 NRC at 117. Since this prior decision already addressed the impacts at Crownpoint, there is nothing left to decide in this phase of the proceeding. Accordingly, the Presiding Officer should reject the Intervenors' concerns.

Regarding the additional testing and information required as conditions on HRI's license, the Intervenors' arguments here are similar to generic ones raised previously. *See e.g.*, Intervenors' 2005 Groundwater Presentation, at 39-43 (arguing that the use of certain licensing conditions allowed HRI to defer important safety questions until after the hearing closes). Those arguments were recently rejected by the Presiding Officer. *See* LBP-05-17, slip op. at 18-30 (finding that the "license conditions do not abridge the Intervenors' hearing rights"). Further, the Intervenors have provided no basis or support for their argument that "these measures degrade the level of safety provided by a typical NRC license." June 24 Brief, at 41. The Intervenors also state, incorrectly, that HRI's license "does not require HRI to submit a surety estimate or plan for the proposed mines and mill until after licensing." *Id*. In CLI-00-08, the Commission addressed this issue and concluded that while no surety was required until operations begin, an approved financial assurance plan was required before HRI could use its license. 51 NRC 227, 234 (2000). Pursuant to the Commission's decision, HRI submitted its financial assurance plan, the Restoration Action Plan (RAP), for the project. The RAP was reviewed and approved by the Staff and, ultimately, the Section 8 RAP was approved by the

Commission as well. *See* CLI-04-33, 60 NRC 581 (2004) (reversing LBP-04-03, 59 NRC 84 (2004)). Since HRI has already submitted a surety plan and estimate, the Intervenors' arguments in this regard are moot.

Lastly, with respect to possible impacts of HRI's proposal to compensate residents required to relocate and to compensate grazing rights permittees, the FEIS discussion of those impacts is addressed *supra*, Section II.D, and the Staff incorporates that discussion herein.

Accordingly, as discussed above, the Intervenors' arguments regarding the FEIS discussion of mitigation lack merit and the Intervenors' requests for legal relief based thereon should be denied.

VI. No Supplementation of the FEIS is Required[11]

The Intervenors argue that the "NRC erroneously failed to supplement either the DEIS or the FEIS in several significant respects," including the use of performance-based licensing (PBL), a change in the action alternative, the switch in the sequence of mining, the potential for a new housing development, and the passage of the Dine Natural Resource Protection Act ("DNRPA"). June 24 Brief at 42-51. As discussed below, FEIS supplementation is not warranted.

A. Performance-Based Licensing, Action Alternatives, and Mining Sequence Do Not Warrant Supplementation

The Intervenors correctly state that a supplement is required when (1) there are substantial changes in the proposed action that are relevant to environmental concerns or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. *See* 10 C.F.R. § 51.92. They wrongly

[11] This Section VI corresponds to Section IV.E of the Intervenors' June 24 Brief.

conclude, however, that performance-based licensing, the modified alternative in the EIS, and the reversal of the original sequence of mining warrant supplementation and recirculation of the FEIS.

First, the Presiding Officer and the Commission have already rejected the Intervenors' arguments regarding PBL and the change in the action alternative. The Presiding Officer concluded that:

> Intervenors argue that the use of "performance based licensing" by the Staff required supplementation of the FEIS. Intervenors' NEPA Brief at 60-72. I disagree. This license, which contains many conditions, is not a dramatic departure from previous licensing practices. *See* LBP-99-10, 49 NRC 145 (1999). Moreover, Intervenors have provided no reason to believe that performance based licensing, as applied to this license, will result in any increased risks to public safety or to the environment.
>
> Next, Intervenors argue that the FEIS developed and evaluated two new alternatives. These did not, however, involve any substantial change in the description of the project. What the Staff did was to pursue further analysis of the proposed project, including the evaluation of some fresh alternatives and the evaluation of some license conditions that helped to improve safety and reduce risk to the environment. Consistent with 10 C.F.R. § 51.72(a), I conclude this further Staff analysis did not require a further circulation of the FEIS for comment. Nor was it necessary to develop further alternatives for evaluation.

LBP-99-30, 50 NRC at 116-117 (footnotes omitted). The Commission also rejected the Intervenors' arguments with respect to PBL concluding:

> The intervenors claim that the staff's decision to include performance-based licensing concepts in HRI's license warrants formal supplementation of the FEIS. *See* Intervenors' Brief at 45. We disagree. First, the Commission already has considered and rejected the intervenors' claims that performance-based licensing (1) violates the AEA and NEPA, (2) accords undue discretion to the licensee, and (3) deviates sharply from agency regulatory practices and trends. *See Hydro*, CLI-99-22, 50 NRC at 15-17.
>
> Secondly, the mere inclusion of performance-based concepts in HRI's license does not warrant FEIS supplementation. Performance-based licensing concepts allow "minor operational modifications, without significant safety or environmental impact." *Id*. at 16. They are based on the notion that requiring a license amendment for any change, "no matter how inconsequential, would burden both licensees and the NRC, to no good end." *Id*.

> License Condition 9.4 permits HRI to make certain changes in operations without NRC approval, but "only those changes that are consistent with existing license conditions and applicable regulations," and with the Safety Evaluation Report (SER) and FEIS. *Id*. at 17. If any of these conditions are not met, HRI must seek a license amendment. *See* License Condition 9.4. Any change made pursuant to License Condition 9.4 must be fully documented and reported to the NRC, which will monitor all changes to assure that in fact no license amendment was required. "Not every change requires a supplemental EIS; only those changes that cause effects which are significantly different from those already studied." *Davis v. Latschar*, 202 F.3d 359, 369 (D.C. Cir. 2000). The new circumstance must reveal a "seriously different picture of the environmental impact of the proposed project." *Hydro*, CLI-99-22, 50 NRC at 14 (*citing Sierra Club v. Froehlke*, 816 F.2d 205 (5th Cir. 1987)). Here, "[b]y its own terms, License Condition 9.4 requires HRI to apply for a license amendment if any change, test, or experiment it undertakes is not consistent with the findings in the FEIS." *Hydro*, 50 NRC at 17. By no means will License Condition 9.4 "affect the quality of the human environment in a significant manner or to a significant extent not already considered." *See Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

53 NRC at 51-52.

Irrespective of the prior decisions on these issues, the Intervenors' arguments lack an adequate basis. The DEIS was issued for "comment by the public and other affected agencies" in October 1994 and the Staff's response to public and agency comments on the DEIS are in Appendix A of the FEIS. The matters raised by Intervenors do not constitute "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." First, if the price of uranium is lower than projected in the FEIS, HRI could abandon the project and the construction and operation impacts would be consistent with the no-action alternative. Thus, the environmental impacts would be less than assumed in the FEIS. Second, the Presiding Officer has already found that performance-based licensing authorizes HRI to make only low-risk changes in its mode of operations, including, for example, changes consistent the FEIS (*see* LBP-99-10, 49 NRC 145, 147-148 (1999)), and thus, the associated environmental impacts would not be significant. Third, to the extent the discussion of alternatives changed from the DEIS to the FEIS, the alternatives were qualitatively within the spectrum of alternatives discussed in the DEIS because Alternative 2 (alternate sites for ISL

mining and yellow cake packaging and drying) and Alternative 3 (NRC conditions on license issuance) are variations of HRI's proposal. Fourth, the Staff disputes Intervenors' assertions about the effect of Section 8 mining on groundwater and the potential for undetected excursions. *See generally*, "NRC Staff's Response to the Intervenor Amended Presentation on Groundwater Issues" (March 12, 1999) (ML9903170043) and "NRC Staff Written Presentation on Groundwater Protection, Groundwater Restoration and Surety Estimates" (April 29, 2005) (ML051260442). Further, the Intervenors have introduced no evidence to show that drinking water would be affected by the change in mining order in this phase of the proceeding. Since there were no significant changes in the scope of the action or the potential environmental impacts of the proposed action and alternatives, supplementation and recirculation of the FEIS are not warranted.

Lastly, the Intervenors argue that the change in the sequence of mining warrants supplementation. June 24 Brief, at 46-47. In the Section 8 portion of the proceeding, the Presiding Officer stated that:

> Intervenors have, however, challenged whether the change in the order of mining Section 8 and Section 17 requires supplementation of the FEIS. Whether or not to require a supplement requires consideration of whether or not it will be appropriate subsequently to permit the mining of Section 17 after Section 8 has been mined. That question need not be answered in this phase of the case. If it is inappropriate to mine Section 17 after Section 8 or if subsequent mining of Section 17 raises important questions requiring supplementation may be reserved for a subsequent portion of this case. In that portion of the case, Intervenors will need to raise some question concerning how the change in the order of mining will affect drinking water. Accordingly, I do reserve the question concerning the impact of the change in the order of mining.

LBP-99-30, 50 NRC at 116-117. Here, the Intervenors have introduced no evidence nor provided any basis for their statement that lixiviant and groundwater migration cannot be controlled if the sequence of mining is changed. Absent an indication that a change in the sequence of mining will have a significant environmental effect, FEIS supplementation is not warranted.

Accordingly, as discussed above, the Intervenors' arguments regarding FEIS supplementation lack merit and are contrary to the law of the case. Thus, the Intervenors' requests for legal relief based thereon should be denied.

B. The Proposed Springstead Estates Project Does Not Warrant Supplementation

The Intervenors argue once again that the FEIS should be supplemented and recirculated to incorporate a discussion of the impacts from ISL mining at Sections 8 and 17 on the proposed Springstead Estates Project.[12] June 24 Brief, at 47-48. Specifically, the Intervenors argue that the FEIS should examine the proposed development's effect on groundwater, the potential for vertical excursions, radiological impacts, transportation, and environmental justice. *Id*., at 48-50. These arguments have been previously considered and rejected by both the Presiding Officer and the Commission with respect to both Section 8 and Section 17. In LBP-04-23, the Presiding Officer denied the Intervenors' "Motion to Supplement the [FEIS] for the Crownpoint Uranium Solution Mining Project Church Rock Section 8" (May 14, 2004) as well as their "Motion to Supplement the [FEIS] for the Crownpoint Uranium Solution Mining Project Church Rock Section 17" (May 14, 2004). 60 NRC 441, 443-444 (2004). The Presiding Officer addressed each of the Intervenors' specific concerns and found, in every instance, that supplementation of the FEIS was not warranted. *See generally*, *id*. The Commission also addressed the need for supplementation of the FEIS with respect to the Springstead Estates Project. *See* CLI-04-39, 60 NRC 657 (2004). In denying the Intervenors' petition for review with respect to both Sections 8 and 17, the Commission held that the Intervenors did not identify any clearly erroneous factual or legal conclusion in the Presiding Officer decision, nor provide any other reason warranting review. *Id*., at 659. Since the

[12] The Intervenors arguments regarding FEIS supplementation and the proposed Springstead Estates development are not applicable to the Unit 1 and Crownpoint sites. *See* June 24 Brief, at 47-50.

Intervenors' arguments with respect to Sections 8 and 17 have been previously rejected by the Presiding Officer and the Commission, the Intervenors' efforts to revisit settled issues should be denied.

C. The Passage of the DNRPA Does Not Warrant Supplementation

In their last argument, the Intervenors contend that FEIS supplementation is warranted due to the passage of the Diné Natural Resources Protection Act (DNRPA) by the Navajo Nation in April 2005.[13] June 24 Brief, at 50-51. The DNRPA "bans all uranium mining and processing, including ISL mining, within Navajo Indian Country."[14] *Id*., at 51. The Intervenors argue that since the FEIS statements regarding the Navajo Nation's position on uranium mining are no longer accurate, the FEIS must be supplemented and recirculated. *Id*.

As discussed previously, a supplement is required when (1) there are substantial changes in the proposed action that are relevant to environmental concerns or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. *See* 10 C.F.R. § 51.92. Contrary to the Intervenors' arguments, no such circumstances exist. The Intervenors provide no evidence or argument to suggest that the DNRPA calls into question any of the environmental conclusions in the FEIS.

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[13] As an initial matter, the Intervenors are attempting to circumvent the agreement regarding the schedule and order of written presentations. In exchange for an extension of time to file their groundwater presentation, the Intervenors "agreed to forego presenting any new evidence with respect to the sixth area of concern (i.e., adequacy of EIS (cumulative impacts, mitigation actions)) and instead 'will file a pleading incorporating by reference their arguments raised with respect to the adequacy of the EIS for Section 8, thereby preserving those arguments with respect to Section 17, Unit 1, and Crownpoint.'" February 3 Order, at 1-2. Nevertheless, the Intervenors are attempting to introduce new evidence of the DNRPA in violation of the February 3 Order. *See* June 24 Brief, at 50. The Presiding Officer should reject the Intervenors' backdoor attempts to raise issues outside the scope of this phase of the proceeding.

[14] In CLI-98-16, the Commission took review, *sua sponte*, and reversed the Presiding Officer's admission of an area of concern regarding the "failure to obtain the proper permits from the Navajo Nation." 48 NRC 119 (1998). The Commission stated that it was not in the business of enforcing "other agencies' requirements" nor may an applicant "rely on its license from the NRC as a waiver of its obligation to obtain permits required by other agencies." *Id*., at 121.

As the Commission noted in CLI-99-22, "[t]he new circumstance must reveal a 'seriously different picture of the environmental impact of the proposed project.'" CLI-99-22, 50 NRC at 14, *citing Sierra Club v. Froehlke*, 816 F.2d 205 (5th Cir. 1987). Indeed, "[n]ot every change requires a supplemental EIS; only those changes that cause effects which are significantly different from those already studied." *Davis v. Latschar,* 202 F.3d 359, 369 (D.C. Cir. 2000). Absent any indication that the DNRPA will result in a significantly new potential impact not considered in the FEIS, supplementation is not warranted. Indeed, as the Commission already stated in this proceeding, "it is incumbent upon the Intervenors to identify, with some specificity, what the alleged deficiencies are."[15] CLI-01-04, 53 NRC at 31. Accordingly, the Intervenors' contention that passage of the DNRPA requites supplementation lacks any basis and should be rejected.

VII. Summary of Previous Evidence and Decisions Regarding NEPA

A. Summary of Staff Evidence Regarding NEPA

The NRC Staff has submitted six previous filings related to the adequacy of the Staff's NEPA documentation: (1) "NRC Staff Response to Intervenor Presentations on NEPA Issues (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation)" (April 1, 1999) (LL9904050100) and the attached affidavit of Robert D. Carlson (LL9904050104); (2) "NRC Staff's Response to Intervenor's Presentation on Cumulative Impact and Segmentation Issues" (April 1, 1999) (LL9904050118); (3) "NRC Staff's Response to Intervenor Motions For Leave to File a Reply to HRI and Staff Presentations on NEPA (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation)" (April 19, 1999) (LL9904210031); (4) "NRC Staff Response to Questions Posed in April 21 Order" (May 11, 1999) (LL9905130188) with the affidavits of

[15] If the NRC Staff were obligated to conduct a detailed technical analysis of every potential novel circumstance after an FEIS has been issued, simply on the basis of generalized or unsupported assertions of significant environmental impact, the Staff's environmental review could prove limitless. *See* CLI-04-39, 60 NRC at 660.

William H. Ford (LL9905130191) and Robert D. Carlson (LL9905130194); (5) "NRC Supplemental Response to Questions Posed in April 21 Order" (June 7, 1999) (LL9906100025) and the attached affidavit of Robert D. Carlson (LL9906100028); and (6) "NRC Staff's Answer to Intervenors' Motions to Supplement FEIS" (June 25, 2004) and the attached affidavits of Ron C. Linton and Richard A. Weller (ML041810325).

B. Summary of Presiding Officer Decisions Regarding NEPA

Although not a NEPA decision, the Presiding Officer determined in LBP-98-9 (47 NRC at 283) that the Intervenors' concerns regarding existing radiological conditions in and around HRI's Church Rock site are not germane to the proceeding.

In LBP-99-30, the Presiding Officer addressed the Intervenors' arguments regarding the adequacy of the Staff's FEIS as well as their cumulative impact arguments. In the NEPA adequacy portion of the decision, the Presiding Officer addressed each of the Intervenors' concerns including the adequacy of the purpose and need statement, the adequacy of the cost-benefit analysis, impacts on groundwater, relocation of individuals, environmental costs of air emissions, environmental costs of liquid waste disposal and cultural impacts, environmental costs or health impacts, the appropriate values of certain FEIS costs, adequacy of alternatives, failure to supplement the FEIS, the impact of mitigative measures, displacement of livestock grazing, and secondary effects. 50 NRC at 112-118. In the cumulative impacts issues portion of LBP-99-30, the Presiding Officer addressed the Staff's treatment of cumulative impacts related to radiological and health effects, groundwater effects, effects on cultural resources, cumulative impacts from disposal of liquid waste, and socioeconomic and infrastructure cumulative impacts. *Id*., at 119-121. Ultimately, the Presiding Officer concluded that "none of the Intervenors' concerns have been found to require relief." *Id*., at 124.

In LBP-04-23, the Presiding Officer addressed the Intervenors' motions to reopen and supplement the record for Sections 8 and 17 in order to consider the proposed Springstead

Estates Project. *See generally* 60 NRC 441. The Presiding Officer looked at each of the Intervenors' specific arguments of possible impacts including horizontal excursions, vertical excursions, impact on mine workings, airborne emissions, emissions due to facility type, traffic impacts, and environmental justice. *Id*. In each instance, the Presiding Officer found that no further supplementation was necessary. *Id*.

C. Summary of Commission Decisions Regarding NEPA

In CLI-01-04, the Commission granted review of, and affirmed, LBP-99-30. 53 NRC 31. The Commission stated that the Intervenors' petition for review was infused with claims that the Presiding Officer – and the FEIS – underestimated particular environmental costs of the project, but noted that those same fact-specific, technical arguments had been previously rejected by the Presiding Officer and the Commission. *Id*., at 45. Thus, the Commission found no basis to revisit LBP-99-30's fact-based conclusions on groundwater, air emissions, liquid waste disposal, cultural resources, and health impacts. *Id*. at 46.

However, the Commission did find several issues that warranted additional review and comment. *Id*. The Commission addressed the burden of proof, the project purpose and need, the cost-benefit analysis issues (secondary benefits and land use), supplementation of the FEIS (PBL, scope of alternatives, and staff affidavit), the Staff's evaluation of alternatives (no action, other alternatives, comparison of alternatives), and cumulative impacts (inter-regional, area-specific, radiological information, and burden of proof). *Id*. at 47-64. The Commission ultimately affirmed the Presiding Officer's decision in LBP-99-30. *Id*. at 71.

In CLI-04-39, the Commission denied the Intervenors' petition for review of LBP-04-23 regarding the proposed Springstead Estates development. 60 NRC at 658. The Commission noted that the Presiding Officer, in a highly fact-based technical decision, found no evidence that the proposed housing development might cause effects that are significantly different from those already studied in the FEIS. *Id*., at 659. The Commission recognized that its decision

applied to both Sections 8 and 17 and "agree[d] with the Presiding Officer that there is no reason warranting FEIS supplementation as to either site." *Id*., at 658 fn.2. The Commission went on to discuss the burden of proof with respect to FEIS supplementation and also touched on environmental justice and public participation issues. *Id*., at 659-661.

D. Comparison of Section 8 to Section 17, Unit 1 and Crownpoint

As noted in the February 3 Order, the Intervenors agreed to forego presenting any new evidence with respect to the NEPA area of concern (*i.e.*, adequacy of EIS (cumulative impacts, mitigation actions)) and instead filed "a pleading incorporating by reference their arguments raised with respect to the adequacy of the EIS for Section 8, thereby preserving those arguments with respect to Section 17, Unit 1, and Crownpoint." February 3 Order, at 1-2. Thus, in their June 24 Brief, the Intervenors did not focus their concerns on any particular project area. Instead, they raised NEPA issues that applied project-wide (*e.g.*, adequacy of alternatives or purpose and need) or merely repeated previously discredited arguments regarding the potential for significant impacts (*e.g.*, groundwater or air emission impacts). For this reason, there are no relevant differences between Section 8, Section 17, Unit 1, or Crownpoint that warrant reversal of prior Presiding Officer or Commission law of the case, nor is there any basis to support the Intervenors' arguments on the merits.

CONCLUSION

Based on the above, the Staff requests that the Presiding Officer reject the Intervenors' NEPA areas of concern.

Respectfully submitted,

/RA/

Tyson R. Smith
John T. Hull
Counsel for NRC Staff

Dated at Rockville, Maryland
this 12th day of August, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 40-8968-ML
HYDRO RESOURCES, INC.	)	
P.O. Box 777	)	
Crownpoint, NM 87313	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENORS' PRESENTATION ON NEPA ISSUES" in the above-captioned proceeding have been served on the following persons by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**), on this 12th day of August, 2005.

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