

August 24, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S ANSWER TO INTERVENORS' PETITION TO REVIEW LBP-05-17

INTRODUCTION

On August 9, 2005, Eastern Navajo Diné Against Uranium Mining (ENDAUM), Southwest Research and Information Center (SRIC), Grace Sam and Marilyn Morris (collectively, "Intervenors"), submitted "Intervenors' Petition For Review of LBP-05-17" (Intervenors' Petition), requesting that the Commission review the Presiding Officer's July 20, 2005 partial initial decision. This decision rejected the Intervenors' groundwater areas of concern at the Church Rock Section 17, Unit 1 and Crownpoint mining sites. The Staff files this answer, pursuant to 10 C.F.R. § 2.786(b)(3),<sup>1</sup> opposing the Intervenors' Petition.

BACKGROUND

The groundwater concerns at issue here were submitted by the Intervenors in their written presentation dated March 7, 2005,<sup>2</sup> regarding licensee Hydro Resources, Inc.'s (HRI's) plans to conduct *in situ* leach (ISL) uranium mining at its Church Rock Section 17, Unit 1 and

---

<sup>1</sup> The citation to 10 C.F.R. § 2.786(b)(3) is to the regulation in effect prior to the revision of the NRC's Rules of Practice in 10 C.F.R. Part 2, which became effective February 13, 2004. Because this proceeding commenced prior to the effective date of the revision, the former Part 2 rules still apply, and the former sections are referenced throughout this filing. Under the former Part 2, Subpart L hearing procedures, "areas of concern" rather than contentions are litigated.

<sup>2</sup> See "[Intervenors'] Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License With Respect To: Groundwater Protection, Groundwater Restoration, and Surety Estimates" (March 7 Brief).

Crownpoint sites in New Mexico.<sup>3</sup> HRI's license (issued in January 1998) authorizes ISL mining and related process activities at these sites after various license conditions (LCs) are met. HRI's "Church Rock site" includes contiguous portions of Sections 8 and 17. In 1998, the (former) Presiding Officer split this adjudicatory proceeding into phases,<sup>4</sup> whereby all areas of concern pertaining to HRI's Church Rock Section 8 site would be considered first. The Intervenor's groundwater areas of concern pertaining to HRI's Church Rock Section 8 site were fully adjudicated in 1999 - 2000. The Presiding Officer's decision addressing the areas on concern is documented in LBP-99-30, 50 NRC 77, 84-109 (1999), wherein the (former) Presiding Officer rejected all of the Intervenor's Section 8 groundwater concerns. In CLI-00-12, the Commission denied the Intervenor's petition to review this portion of LBP-99-30. See CLI-00-12, 52 NRC 1, 3 and n.1 (2000).

## DISCUSSION

### I. Legal Standards Governing Petitions to Review Presiding Officer Decisions

Pursuant to 10 C.F.R. § 2.786(b)(1), "a party may file a petition for review with the Commission" within fifteen (15) days after service of a full or partial initial decision by a

---

<sup>3</sup> As described in NUREG-1508, "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project" (February 1997) (FEIS), HRI plans to use existing and new surface facilities at each site to extract and process uranium from aqueous mining solutions. HRI would use a pattern of injection and production wells drilled into each ore zone. FEIS, at 2-2. Groundwater within the wellfield or production zones – all of which are located in the Westwater Canyon Member of the Morrison Formation – would be fortified with dissolved oxygen and sodium bicarbonate to make the lixiviant used in ISL mining. *Id.*, at xix. The lixiviant would be injected underground and continuously refortified and recirculated to oxidize and dissolve uranium minerals within the existing ore zones. *Id.*, at 2-6. Uranium would be recovered from the "pregnant" lixiviant by circulating it through ion exchange columns. *Id.* at 2-9. The resulting uranium slurry would be transported by truck from the satellite Church Rock and Unit 1 facilities to the central Crownpoint facility, where it would be dried and processed into yellowcake. After conclusion of the mining operation and aquifer restoration, all ISL mining wells would be plugged and abandoned, processing facilities would be decontaminated or decommissioned, all contaminated materials would be removed to a licensed waste disposal site, and all disturbed areas would be surveyed, decontaminated to acceptable levels, recontoured, revegetated and released for unrestricted use. See FEIS, at xx.

<sup>4</sup> See unpublished orders (dated September 22, 1998 and October 13, 1998).

Presiding Officer. A petition for review under this provision must contain the following:

- (1) A concise summary of the decision on which review is sought;
- (2) A statement (including record citation) where the matters of fact or law raised in the petition for review were previously raised before the presiding officer and, if they were not why they could not have been raised;
- (3) A concise statement why in the petitioner's view the decision is erroneous; and
- (4) A concise statement why Commission review should be exercised.

10 C.F.R. § 2.786(b)(2)(i-iv). As a matter of its discretion, the Commission may grant review of Presiding Officer decisions based on whether a "substantial question" exists regarding the following considerations:

- (1) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (3) A substantial and important question of law, policy or discretion has been raised;
- (4) The conduct of the proceeding involved a prejudicial procedural error;
- (5) Any other consideration which the Commission may deem to be in the public interest.

10 C.F.R. § 2.786(b)(4)(i-v); *see also Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 28 (2001). These standards are incorporated into Subpart L proceedings by 10 C.F.R. § 2.1253. *See Babcock and Wilcox* (Pennsylvania Nuclear Services Operations, Parks Township, PA), CLI-95-4, 41 NRC 248, 249 (1995).

In addition, as the Commission noted in its earlier determination declining to undertake review of the Presiding Officer's decision on Section 8, while it retains the "discretion to undertake a *de novo* factual review where appropriate," the Commission ordinarily attaches "significance to the presiding officer's evaluation of the evidence," and does not "second-guess

[a presiding officer's] reasonable findings.” CLI-00-12, *supra*, 52 NRC at 3 (citations omitted).

As discussed further below, these “principles of appellate review “ (*id.*) set forth above are equally applicable here.

II. Review of LBP-05-17

A. The Intervenor’s Hearing Rights Were Not Violated

The Intervenor’s first argue that the Presiding Officer violated their hearing rights under the Atomic Energy Act (AEA) by allowing HRI to establish certain hydrologic parameters pursuant to license conditions after the hearing is closed including, for example, baseline groundwater conditions. See Intervenor’s Petition, at 3-6. This argument is based on their claim that the Administrative Procedure Act (APA) requires a hearing for the parameters controlled by license conditions. *Id.*, at 3-4. However, this argument is without merit and should be rejected.

The Intervenor’s contend that the AEA’s exemption from hearings on issues in which decisions “rest solely on inspections, tests or elections” does not apply to the conditions in HRI’s license. *Id.*, at 4; see also, *Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission*, 735 F.2d 1437, 1449-1450 (1984) (interpreting the extent of the AEA’s hearing requirements under the APA exemptions at 5 U.S.C. § 554(a)(3)). In reaching their conclusion, the Intervenor’s overlooked the critical prerequisite to the APA exemption and thus to the AEA’s hearing requirement – the applicability of 5 U.S.C. § 554 – which states as follows:

- (a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after an opportunity for an agency hearing, except to the extent that there is involved . . .
- (3) proceedings in which decisions rest solely on inspections, tests and elections.

*Id.* (emphasis added). Materials license proceedings, such as this one, are not required by AEA section 189.a to be formal, “on the record” adjudications. *City of West Chicago v. NRC*, 701 F.2d 632, 643 (7th Cir. 1983). Clearly, therefore, Intervenor’s arguments regarding

required hearings lack a statutory basis and are thus misplaced.

Moreover, as the Presiding Officer recognized, the Intervenors have had a full opportunity to identify flaws, omissions, or irregularities in the procedures required by conditions in HRI's license. LBP-05-17, slip op. at 19-20. While agreeing it is "axiomatic" that an intervenor should receive a meaningful hearing on the substantive issues material to the agency's licensing decision, the Presiding Officer nevertheless determined that, assuming HRI complies with the methodologies required by license condition, the post-hearing resolution of groundwater baseline and UCLs will not endanger the public health and safety and, thus, holding the hearing open would "serve no purpose." *Id.*, at 20 n.11 citing *Consolidated Edison Co. of New York, Inc.* (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951-952 (1974).

The Presiding Officer is also alleged, according to the Intervenors, to have ignored the Intervenors' evidence that license conditions 10.21, 10.22, 10.23 and 10.31 (pertaining to baseline groundwater quality, upper control limits (UCLs), pump testing, and fracture testing, respectively) leave room for HRI to exercise judgment or discretion. Intervenors' Petition, at 5. The Intervenors cite two specific examples of evidence, which, they assert, were ignored by the Presiding Officer: (1) Dr. Abtiz's testimony regarding the methodology for calculating baseline groundwater quality, and (2) license conditions that leave it to HRI to determine the placement of pump tests. Intervenors' Petition, at 5. However, the Presiding Officer repeatedly addressed – and rejected – the specific issues raised by the Intervenors. See *e.g.*, LBP-05-17, slip op. at 19, 20, 21, and 22-30. With respect to both issues, the Presiding Officer concluded that the Intervenors overlooked that the challenged license conditions, coupled with the procedural protocol mandated in HRI's Consolidated Operations Plan (COP), provide a highly-detailed, prescriptive methodology for establishing groundwater baselines, UCLs, and hydrological properties of the aquifer. See LBP-05-17, slip op. at 19, 22-26, 27-30. Indeed, the Commission has previously approved the Staff's reliance on license conditions to incorporate and implement

portions of HRI's COP and its attendant procedures. See CLI-00-12, 52 NRC at 4-5 (2000).

Finally, the Intervenors claim that the Presiding Officer erroneously concluded that Intervenors' hearing rights are not abrogated by HRI's license conditions because Intervenors could, in the future, request an enforcement action from the Staff if there is a factual basis for suspecting that HRI has not adhered to the proper methodology. Intervenors' Petition, at 6. Contrary to Intervenors' statements that "ordinary citizens have no rights whatsoever" in NRC enforcement actions, there is a right for any member of the public to petition for consideration of enforcement action against an NRC licensee. See 10 C.F.R. § 2.206(a); *Massachusetts Public Interest Research Group v. NRC*, 852 F.2d 9, 16-17 (1st Cir. 1988).

Accordingly, the Commission should find that the Intervenors' argument claiming that their hearing rights have been violated does not warrant granting the Intervenors' Petition.

B. Application of "Law of the Case" Doctrine

The Intervenors' second argument is that the Presiding Officer erred in his application of the "law of the case" doctrine.<sup>5</sup> See Intervenors' Petition, at 6-8. Intervenors' argument is based on the claim that the Presiding Officer improperly applied LBP-99-30's Section 8 rulings "to very different factual evidence regarding Section 17, Unit 1 and Crownpoint." Intervenors' Petition, at 6. The Intervenors cite five examples of such evidence (*id.*, at 7-8), but as shown below, their evidence does not establish any factual or technical differences between Section 8 and the other sites that would preclude the Presiding Officer's application of the law of the case nor, perhaps even more fundamentally, were these issues argued before the Presiding Officer.

The Intervenors state that they presented evidence "showing local variability of the aquifer geology," and that such variability "could occur over relatively short lateral spaces, i.e.,

---

<sup>5</sup> 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); see also, *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 249 (D.C. Cir. 1987).

between Section 8 and Section 17.” Intervenor’s Petition, at 7, *citing* Declaration of Spencer G. Lucas (February 25, 2005) (Lucas), at ¶¶ 40-46. As a consequence, they contend that the Presiding Officer should not have applied the law of the case doctrine. In reviewing the cited portion of the Intervenor’s arguments related to Dr. Lucas, however, it can be readily seen that the Intervenor made no such argument. See March 7 Brief, at 76. Moreover, Dr. Lucas did not make any specific statements showing that there are such differences between Section 8 and Section 17. Speaking in general, Dr. Lucas stated only that on a small scale the aquifer geology is lithologically heterogeneous. See Lucas, at ¶ 43.

The Intervenor similarly claim, as a second related example, that they presented evidence that the aquifer geology “is discontinuous locally over very short lateral distances.” Intervenor’s Petition, at 7, *citing* Lucas, at ¶ 21. But again, in citing to this portion of Dr. Lucas in their earlier presentation, the Intervenor did not point to any specific differences between Section 8 and Section 17 in this regard. See March 7 Brief, at 78. Moreover, Dr. Lucas stated only in general that one of the rock units of interest (the “Recapture Member”) is not continuous, “but instead frequently disappears over short outcrop distances.” See Lucas, at ¶ 21.

The Intervenor next cite three examples – all based on the Declaration of Richard J. Abitz (March 3, 2005) (Abitz) – where they claim that LBP-99-30’s Section 8 rulings regarding the geochemical environment at Section 8 were improperly applied to the Section 17, Unit 1 and Crownpoint sites. First, Dr. Abitz, a witness on behalf of the Intervenor, is said to have used site-specific groundwater quality data “from Section 17” to support Intervenor’s concern that natural attenuation would not be sufficient to avoid contaminating underground sources of drinking water. Intervenor’s Petition, at 8, *citing* Abitz, at ¶¶ 65-68. But as the record makes abundantly clear, Dr. Abitz relied here on Section 8 data (*id.*, at ¶¶ 65-67), and he did not show there were any geochemical differences between Section 8 and the Section 17, Unit 1 and Crownpoint sites. Second, the Intervenor vaguely assert that Dr. Abitz “used

similar site-specific characteristics in his analysis of natural attenuation processes at Crownpoint.” Intervenors’ Petition, at 8, *citing* Abitz, at ¶¶ 77-80. But here as well, Dr. Abitz did not show that the geochemical process he posits would be any different from one site to another. Third, Dr. Abitz’s geochemistry analysis is said to rely on “*ongoing* geochemical trends occurring over time,” and that this analysis is therefore “necessarily different from the evidence Intervenors presented with respect to Section 8.” Intervenors’ Petition, at 8, *citing* Abitz, at ¶¶ 56-57. But here, Dr. Abitz was referencing a “geologic time scale,” covering “thousands of years” (*id.*, at ¶ 56), and his statements thus cannot be applied to the five-year period that elapsed between now and when the Section 8 issues were litigated. Thus, none of the five examples cited by the Intervenors calls into question the Presiding Officer’s application of the law of the case doctrine.

Moreover, the Presiding Officer explicitly rejected the Intervenors’ concerns on their technical and factual merits after assuming *arguendo* that the law of the case doctrine did not apply. See LBP-05-17, slip op. at 39-40, 52-61. With respect to the aquifer geology issues referenced above, the Presiding Officer weighed the Intervenors’ expert opinions against those presented by HRI and the Staff, and found in favor of HRI. See LBP-05-17, slip op. at 52-61. Similarly, with respect to the geochemical issues referenced above, the Presiding Officer weighed the Intervenors’ expert opinions against those presented by HRI and the Staff, and found in favor of HRI. *Id.*, at 39-40. The Intervenors have not presented anything that would indicate a need for the Commission to depart from its earlier judgment regarding the limited circumstances under which review of the Presiding Officer’s weighing of factual evidence might be warranted. See CLI-00-12, *supra*, 52 NRC at 3.

Accordingly, the Commission should find that the Intervenors’ argument regarding the law of the case doctrine does not warrant granting the Intervenors’ Petition.



C. The Presiding Officer Did Not Ignore Significant Evidence

The Intervenors' third argument is that the Presiding Officer ignored critical evidence (including important contradictions in HRI's and the Staff's evidence), and that if such evidence had been considered, the Presiding Officer's conclusions would have been different. See Intervenors' Petition, at 8-10. At bottom, the Intervenors' argument appears to be predicated on their erroneous view that the Presiding Officer's *weighing* of evidence is equivalent to *ignoring* evidence whenever the Presiding Officer did not reach the same conclusion as the Intervenors.

The Presiding Officer is said to have ignored the Intervenors' arguments that HRI's ISL operations would contaminate underground sources of drinking water. See Intervenors' Petition, at 9, *citing* their March 7 Brief, at 73-89. Yet, with respect to the Intervenors' contamination arguments regarding Section 17, the Presiding Officer addresses and rejects each of them, and in doing so, cites each of pages 73-80 of the March 7 Brief. See LBP-05-17, slip op. at 49-57. Similarly, with respect to the Intervenors' contamination arguments regarding Unit 1 and Crownpoint, the Presiding Officer addresses and rejects each of them, and, again, in doing so references each of pages 81-89 of the March 7 Brief. LBP-05-17, slip op. at 58-61.

The Presiding Officer is also said to have ignored the Intervenors' technical arguments that HRI's ISL operations would contaminate underground sources of drinking water, thereby causing federal drinking water regulations to be violated. See Intervenors' Petition, at 9, *citing* Lucas, at ¶¶ 40-51. On the contrary, the Presiding Officer references page 27 of Dr. Lucas' Declaration (which contains ¶¶ 48-49) but proceeds to reject his conclusions. See LBP-05-17, slip op. at 53-54. More importantly, contrary to the Intervenors' representation, neither underground sources of drinking water, nor federal drinking water regulations, are discussed by Dr. Lucas at ¶¶ 40-51 of his Declaration.

The Intervenors further allege that the Presiding Officer improperly ignored relevant scientific literature evidence. See Intervenors' Petition, at 9-10. In fact, the Presiding Officer's

decision in several places reflects his consideration of such evidence. See LBP-05-17, slip op. at 51 n. 24, 54, 59 n. 26, and 61. Since the Presiding Officer clearly took the scientific literature into account, the Intervenors' allegations are erroneous.

Finally, the Intervenors claim that the Presiding Officer accepted, "without critical analysis, contradictory evidence presented by HRI and the Staff" regarding the properties of the rock unit containing the relevant aquifer. Intervenors' Petition, at 10. Instead, HRI and the Staff consistently stated that while the rock unit containing the relevant aquifer is lithologically heterogeneous, it is hydrologically homogeneous. See Mark Pelizza Affidavit at ¶ 138 (for HRI); see *also* Affidavit of Stephen J. Cohen at ¶ 25 and Affidavit of William von Till at ¶ 18 (for the Staff). The Intervenors acknowledge, albeit only in a footnote, that rather than contradicting each other, the Staff/HRI opinions are only contradictory to the Intervenors' position. See Intervenors' Petition, at 10 n.2. In short, the Intervenors' disagreement with the Presiding Officer's conclusion is not, by itself, enough to require Commission review of those conclusions.

Accordingly, the Commission should find that the Intervenors' argument claiming that the Presiding Officer ignored critical evidence does not warrant granting the their Petition.

#### CONCLUSION

For the reasons stated above, the Intervenors have failed to satisfy the requirements of 10 C.F.R. § 2.786 so as to warrant Commission review. Accordingly, the Staff recommends that the Intervenors' Petition be denied.

Respectfully submitted,

*/RA/*

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

Dated at Rockville, Maryland  
this 24<sup>th</sup> day of August, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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 ANSWER TO INTERVENORS' PETITION TO REVIEW LBP-05-17" 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 24<sup>th</sup> day of August, 2005.

Administrative Judge, E. Roy Hawken \* \*\*  
Presiding Officer  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop T-3 F23  
Washington, D. C. 20555  
Email: [erh@nrc.gov](mailto:erh@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, D. C. 20555  
Email: [rhc1@nrc.gov](mailto:rhc1@nrc.gov)

Jep Hill, Esq.  
Jep Hill and Associates  
P.O. Box 30254  
Austin, TX 78755

Mark S. Pelizza, President \*\*  
Uranium Resources Inc.  
650 S. Edmonds Lane  
Lewisville, TX 75067  
Email: [mspelizza@email.msn.com](mailto:mspelizza@email.msn.com)

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

Eric Jantz \*\*  
Douglas Meiklejohn  
Sara Piltch  
New Mexico Environmental Law Center  
1405 Luisa Street, Suite 5  
Santa Fe, NM 87505  
Fax: 505-989-3769  
Email: [ejantz@nmelc.org](mailto:ejantz@nmelc.org)  
[dmeiklejohn@nmelc.org](mailto:dmeiklejohn@nmelc.org)  
[spiltch@nmelc.org](mailto:spiltch@nmelc.org)

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

Anthony J. Thompson, Esq. \*\*  
Chris Pugsley, Esq.  
Anthony J. Thompson, P.C.  
1225 19th Street, N.W., Suite 200  
Washington, D. C. 20036  
Fax: (202) 496-0783  
E-mail: [ajthompson@athompsonlaw.com](mailto:ajthompson@athompsonlaw.com)  
[cpugsley@athompsonlaw.com](mailto:cpugsley@athompsonlaw.com)

Office of the Secretary \* \*\*  
Attn: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: OWFN-16 C1  
Washington, D. C. 20555  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Administrative Judge, Robin Brett \*\*  
2314 44th Street, N.W.  
Washington, D.C. 20007  
Fax: (703) 648-4227  
E-mail: [rbrett@usgs.gov](mailto:rbrett@usgs.gov)

Levon Henry, Attorney General  
Steven J. Bloxham, Esq.  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515

William Zukosky \*\*  
DNA-People's Legal Services, Inc.  
222 East Birch  
Flagstaff, AZ 86001  
E-mail: [wzukosky@dnalegalservices.org](mailto:wzukosky@dnalegalservices.org)

Laura Berglan \*\*  
DNA-People's Legal Services, Inc.  
P.O. Box 765  
Tuba City, AZ 86045  
E-mail: [lberglan@dnalegalservices.org](mailto:lberglan@dnalegalservices.org)

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

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

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

David C. Lashway, Esq. \*\*  
Hunton & Williams LLP  
1900 K Street, NW  
Washington, D.C. 20006-1109  
E-mail: [dlashway@hunton.com](mailto:dlashway@hunton.com)

Geoffrey H. Fettus \*\*  
Natural Resources Defense Counsel  
1200 New York Ave, N.W.  
Suite 400  
Washington, D.C. 20005  
E-mail: [gfettus@nrdc.org](mailto:gfettus@nrdc.org)

Susan C. Stevenson-Popp \* \*\*  
Law Clerk  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, DC 20555  
E-mail: [scs2@nrc.gov](mailto:scs2@nrc.gov)

/RA/

---

Tyson R. Smith  
Counsel for NRC Staff