

RAS 11401

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

DOCKETED 03/23/06

SERVED 03/23/06

Before Administrative Judges:

E. Roy Hawkens, Presiding Officer
Dr. Richard F. Cole, Special Assistant
Dr. Robin Brett, Special Assistant

In the Matter of

HYDRO RESOURCES, INC.
P.O. Box 777
Crownpoint, New Mexico 87313

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

March 23, 2006

ORDER

(Staying Issuance of Decision on Intervenor's NEPA Claims
Pending Commission's Resolution of Appeal of LBP-06-01)

Pending before this Board are NEPA-related claims challenging a 10 C.F.R. Part 40 license application by Hydro Resources, Inc. ("HRI") to perform in situ leach uranium mining in McKinley County, New Mexico.¹ The Intervenor's NEPA-related claims include several issues relating to radiological air emissions. For example, the Intervenor alleges that – with respect to cumulative environmental impacts of radiological air emissions – the FEIS is inadequate, because it: (1) misrepresents existing levels of radiation; and (2) inadequately analyzes cumulative impacts on air quality. See Intervenor's Written Presentation in Opposition to HRI's Application for a Materials License with Respect to NEPA Issues for Church Rock Section 17, Unit 1 and Crownpoint at 21-26 (June 24, 2005).

On February 27, 2006, the Commission in CLI-06-07 granted the Intervenor's request to review this Board's Partial Initial Decision in LBP-06-01 (Jan. 6, 2006), which, inter alia, rejected the Intervenor's assertion that the radiological air emissions incident to HRI's mining operations at the Section 17 site will result in an annual radiation exposure to the general public that exceeds regulatory limits.

¹ The NEPA-related claims are brought by the Eastern Navajo Diné Against Uranium Mining, the Southwest Research and Information Center, Grace Sam, and Marilyn Morris [hereinafter referred to collectively as the Intervenor's].

On March 22, 2006, this Board held a telephone conference call with HRI, the Intervenor, and the NRC Staff. This Board observed that the Commission's resolution of the appeal of LBP-06-01 could have a significant impact on the outcome of several issues in the instant case relating to radiological air emissions. Accordingly, we advised that, in our view, litigative efficiency and judicial economy would be promoted if we withheld a decision in the instant case pending the Commission's resolution of the appeal of LBP-06-01.

This Board asked the parties whether, in light of the above interests militating in favor of a stay, they perceived any reason why this Board should issue a decision on the Intervenor's NEPA-related claims during the pendency of the appeal of LBP-06-01. The parties responded in the negative. They stated that they had no objection to this Board staying issuance of its decision regarding the Intervenor's NEPA-related claims pending the Commission's resolution of the appeal of LBP-06-01.

Accordingly, in furtherance of the policy interests that will be served by a stay, and consistent with the parties' assent to a stay, this Board hereby stays the issuance of a decision pertaining to the Intervenor's NEPA-related claims pending the Commission's resolution of the appeal of LBP-06-01.

It is so ORDERED.

BY THE PRESIDING OFFICER²

/RA/

E. Roy Hawken
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 23, 2006

² Copies of this Order were sent this date by Internet e-mail transmission to counsel for: (1) HRI; (2) the Intervenor; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (STAYING ISSUANCE OF DECISION ON INTERVENORS' NEPA CLAIMS PENDING COMMISSION'S RESOLUTION OF APPEAL OF LBP-06-01) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (STAYING ISSUANCE OF DECISION ON
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of March 2006