

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

**Before Administrative Judges:
E. Roy Hawkens, Presiding Officer
Dr. Richard F. Cole, Special Assistant
Dr. Robin Brett, Special Assistant**

In the Matter of:)
)
) Docket No.: 40-8968-ML
Hydro Resources, Inc.)
P.O. Box 777) Date: May 30, 2006
Crownpoint, NM 87313)
_____)

**SUPPLEMENTAL BRIEF REGARDING FINAL ENVIRONMENTAL IMPACT
STATEMENT ADEQUACY FOR THE CROWNPOINT URANIUM PROJECT**

Hydro Resources, Inc. (HRI), by its undersigned counsel of record and pursuant to an Order dated May 16, 2006 issued by the Presiding Officer, hereby submits this Supplemental Brief Regarding Final Environmental Impact Statement (FEIS) Adequacy for HRI's Crownpoint Uranium Project (CUP). For the foregoing reasons, HRI asserts that the CUP's FEIS is adequate and that HRI's NRC license should be sustained.

I. BACKGROUND AND PROCEDURAL HISTORY

On January 6, 2006, the Licensing Board issued LBP-06-01 in which the Presiding Officer held that, for purposes of HRI's and NRC Staff's dose assessments for the CUP, radiological air emissions from mining spoils at the Church Rock Section 17 uranium recovery site (Section 17) constituted "background radiation" as defined in 10 CFR Part 20. See 10 CFR §§ 20.1003 & 20.1301(a)(1). Dose assessments based on this assumption were included in the Final Environmental Impact Statement (FEIS) for the CUP. See United States Nuclear Regulatory Commission, NUREG-1508, *Final*

Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico (February, 1997). Intervenors petitioned the Commission for review pursuant to 10 CFR §§ 2.786(b) and 2.1253 and, in CLI-06-7, the Commission granted review so that it “could resolve the ‘background radiation’ issue definitively.” *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-06-7, 63 NRC 165 (2006).

On March 22, 2006, the Presiding Officer solicited the input of HRI, NRC Staff, and Intervenors as to whether a decision on the final contention in this litigation, adequacy of the FEIS, should be stayed pending the Commission’s review of LBP-06-1. All parties concurred that the Presiding Officer’s decision should be stayed pending the Commission’s review of LBP-06-1.

On May 16, 2006, CLI-06-14 was issued in which the Commission concurred with the Presiding Officer’s decision that “radioactive residue from previous mining activity amounts to ‘background radiation’ and does count toward the 0.1 rem dose limit applicable to new *in situ* facility licenses.” *In the Matter of Hydro Resources* (Crownpoint Uranium Project), CLI-06-14, slip op. at 2 (May 16, 2006). As a result, the Commission determined that the Presiding Officer “had ample basis to conclude that mining spoils near the site of HRI’s leach mining operation does not contribute to the TEDE for the ‘licensed operation’ and...should be considered background radiation” and that “[p]olicy considerations do not support revoking HRI’s license.” *Id.* at 12-13.

After issuance of CLI-06-14, on May 16, 2006, the Presiding Officer promptly notified all parties that the decision-making process for the “FEIS adequacy” contention will proceed and that all parties are to submit supplemental briefs regarding the potential

impact of the Commission's decision on the "FEIS adequacy" issue. In response to the Presiding Officer's directive, HRI hereby submits this brief and asserts that the Presiding Officer should approve the dose assessment analyses in the FEIS and deem the FEIS and the HRI's license adequate to protect public health and safety and the environment.

II. ARGUMENT

Prior to addressing the potential impact of CLI-06-14 on the Presiding Officer's evaluation of the FEIS, HRI notes that the scope of this supplemental brief is specifically limited to the FEIS dose assessments and the manner in which such assessments were completed for the Section 17 site. Thus, for purposes of the other issues associated with the "FEIS adequacy" contention, HRI rests on the arguments presented in its July 28, 2005 written presentation. *See In the Matter of Hydro Resources, Inc. (Crownpoint Uranium Project), Hydro Resources, Inc.'s Response in Opposition to Intervenors' Written Presentation Regarding Environmental Impact Statement Adequacy (July 28, 2005).*

A. The Commission's Decision in CLI-06-14 Affirms the FEIS Assumptions Used to Calculate Dose Assessments for the CUP

1. The Limited Scope of LBP-06-1 and CLI-06-14

Pursuant to an agreement between HRI and Intervenors prior to the commencement of Phase II of this litigation, the "air emissions" contention was strictly limited to the Section 17 site. Moreover, the written presentations submitted to the Presiding Officer and the briefs submitted to the Commission have focused on the question of whether radiological air emissions from mining spoils at Section 17 constitute "background radiation" and, if not, would including such air emissions in the site TEDE make the FEIS' dose assessment for the site exceed 10 CFR Part 20 requirements for

members of the public. Necessarily, the potential impact(s) of CLI-06-14 on the "FEIS adequacy" contention pending before the Presiding Officer is strictly limited to whether the Commission's decision renders HRI's and NRC Staff's dose assessment for Section 17 unacceptable pursuant to NRC regulations. Indeed, the Commission specifically stated in CLI-06-14 that "[t]he issue we consider today deals exclusively with how to classify the radiation attributable to the existing mining spoil [at Section 17]." CLI-06-14 at 5. Thus, all parties' briefs before the Commission were strictly limited in scope to this one question.

In its initial written presentations before the Presiding Officer, both HRI and NRC Staff argued that, for a variety of reasons, radiological air emissions from Section 17 mining spoils constitute "background radiation" and that such emissions need not be considered when calculating site TEDE. On the other hand, Intervenors argued that radiological air emissions from such mining spoils are not "background radiation" and that their inclusion in site TEDE calculations would result in unacceptable radiological doses to members of the public from Section 17. These arguments were, in part, based on the opinion of Judge Peter Bloch, a previous Presiding Officer, who determined that "radioactive air emissions from material left on the mine site, as well as emissions from an underground mine, should be considered part of the TEDE from HRI's operations. See CLI-06-14 at 5-6 citing *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), 49 NRC 261, 266-267, *interlocutory pet. for review denied*, CLI-99-8, 49 NRC 311 (1999). Eventually, HRI's and NRC Staff's position was accepted by the Presiding Officer and, effectively, resulted in an endorsement of the FEIS' TEDE calculations for the Section 17 site. See generally LBP-06-01.

On appeal to the Commission, Intervenor raised similar arguments with no success. *See generally* CLI-06-14. In fact, noting Intervenor's reliance on Judge Bloch's previous decision, the Commission stated:

"Hence, for the reasons given by the phase II Presiding Officer, we disagree with the phase I Presiding Officer that emissions from pre-existing radioactive materials deposited onsite as part of an operation not licensed by the NRC should be considered part of the TEDE from the licensed operation."

CLI-06-14 at 6, fn. 27.

Thus, the Commission's decision in CLI-06-14 expressly rejected the arguments regarding Section 17 radiological air emissions presented by Intervenor.

With respect to the remainder of the arguments raised by Intervenor and opposed by HRI and NRC Staff on this contention, the Presiding Officer determined that Section 17 radiological air emissions will not exceed NRC TEDE limits. *See* CLI-06-14 at 1, *citing* LBP-06-1. While Intervenor's appeal encompassed several aspects of LBP-06-1, the Commission accepted review on the limited question of what constitutes "background radiation" as described above. Thus, for purposes of Section 17 radiological air emissions, the Presiding Officer accepted HRI's and NRC Staff's arguments regarding this issue and the Commission endorsed such arguments by not granting review. Therefore, the only impact such arguments may have on the "FEIS adequacy" contention is that HRI's and NRC Staff's dose assessments in the FEIS and subsequent written presentations have been accepted on their face by the Presiding Officer and/or the Commission.

**2. Impacts of LBP-06-1 and CLI-06-14 on the “FEIS Adequacy”
Contention**

Given the limited scope of CLI-06-14 and the fact that the Presiding Officer and/or the Commission have accepted HRI’s and NRC Staff’s arguments regarding Section 17 radiological air emissions, HRI asserts that the Presiding Officer should reject each of Intervenors’ arguments regarding FEIS adequacy.

Generally speaking, “public dose” is defined to *exclude* “doses received from background radiation” and, thus, constitutes an incremental dose *above* “background radiation.” *See* 10 CFR § 2.1003. Thus, in order to properly classify potential radiological air emissions from licensed operations at an ISL uranium recovery operation, both the applicant/licensee and NRC Staff must determine what the site’s “background radiation” dose is and then must calculate what incremental dose members of the public will receive based on Part 20 requirements. Therefore, a site’s “background radiation” dose is a fundamental component of radiological dose assessments, and failure to properly determine the “background radiation” dose likely would result in a faulty dose calculation.

Given the Commission’s acceptance of LBP-06-1’s conclusion that radiological air emissions from Section 17 mining spoils constitute “background radiation” and the fact that the Presiding Officer has accepted HRI’s and NRC Staff’s arguments regarding the remaining radiological air emissions issues, the FEIS’ dose assessments are correct and should be upheld. The FEIS analysis, which assumes that Section 17 radiological air emissions from mining spoils would be characterized as part of “background radiation,” determined that Church Rock radiological air emissions, “are a small fraction of the regulatory limit.” *See* NUREG-1508 at 4-83. Since this assumption for Section 17 was

deemed correct by the Commission in CLI-06-14 and Intervenors' remaining air emissions arguments for the Unit One and Crownpoint sites were conceded, there is no evidence in the record demonstrating that the FEIS' dose calculations and conclusions for any of the CUP sites are incorrect. Therefore, HRI asserts that the Presiding Officer should sustain the FEIS' conclusions for CUP site dose assessments.

B. The FEIS Demonstrates that the CUP Does Not Pose A Significant Threat to Protect Public Health and Safety from Cumulative Impacts of Radiological Dose

Finally, as a result of the Commission's acceptance of HRI's and NRC Staff's "background radiation" determinations and as stated in HRI's July 28, 2005 written presentation, the FEIS contains adequately detailed information concerning existing and continuing releases of radioactivity at the CUP sites, specifying that early mining operations will result in exposures to releases of radioactivity but noting that proposed activities will cause significantly less releases of radioactivity. *See* FEIS at ¶ 4.13.6, p. 4-124-25. In addition, the FEIS also properly evaluates the potential health impacts of past uranium mining at Section 17, and it provides an accurate assessment of the potential impacts the CUP would have on radiation levels in the area. *See id.* at ¶ 4.13.6 at, p. 4-124-25 (noting that the CUP would make a minor contribution to cumulative impacts in terms of health physics and radiological impacts). Therefore, the FEIS' health and safety analyses regarding potential radiological dose satisfies NEPA and should be upheld.

Further, ample safeguards are present in HRI's license to ensure no adverse impacts from potential radiological doses. Existing radiation levels at the Church Rock sites, as well as Unit One and Crownpoint, are included in HRI's license application and, in accordance with HRI's NRC license and the Consolidated Operations Plan (Revision

2.0) (COP), radiation will be measured again before operations begin at the site. Any radiation observed at that time will establish background levels against which operational impacts will be measured. *See* SUA-1508, License Conditions 9.8 & 10.30. It is likely that background gamma radiation will be elevated due to the presence of the naturally occurring radioactive materials (i.e., mine waste) noted above. *Id.*

III. CONCLUSION

For the reasons discussed above, HRI asserts that the only impact(s) of CLI-06-14 on the "FEIS Adequacy" contention is to further ratify the arguments presented by HRI and NRC Staff in their July 28, 2005 and August 12, 2005 written presentations regarding this contention. Therefore, HRI respectfully requests that the Presiding Officer reject each of Intervenors' arguments regarding FEIS adequacy.

Respectfully Submitted,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036
(202) 496-0780
(telefax) (202) 496-0783
ajthompson@athompsonlaw.com
cpugsley@athompsonlaw.com

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of Hydro Resources Inc.'s Supplemental Brief Regarding Final Environmental Impact Statement Adequacy for the Crownpoint Uranium Project in the above-captioned matter has been served upon the following via electronic mail and U.S. First Class Mail or "expedited service" as indicated by an asterisk on this 30th day of May, 2006.

Administrative Judge*
E. Roy Hawkins
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop T3F23
Rockville, MD 20852
Email: erh@nrc.gov

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

Administrative Judge*
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop T3F23
Rockville, MD 20852
Email: rfc1@nrc.gov

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

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

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

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

William Zukosky
DNA-Peoples' Legal Services, Inc.
201 East Birch Avenue, Suite 5
Flagstaff, AZ 86001-5215
Email:
wzukosky@dnalegalservices.org

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

David C. Lashway, Esq.
Hunton & Williams, LLP
1900 K Street, N.W.
Washington, DC 20037
Email: dlashway@hunton.com

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

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

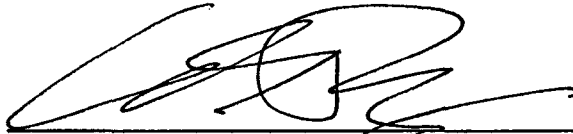
Eric Jantz, Esq.*
Douglas Meiklejohn, Esq.
Heather L. Green
Sarah Piltch
New Mexico Environmental Law
Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
Email: ejantz@nmelc.org
Email: meikljhn@nmelc.org
Email: Hgreen@nmelc.org

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

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

John T. Hull, Esq.*
U.S. Nuclear Regulatory Commission
Office of the General Counsel
11545 Rockville Pike
Mail Stop: O-15D21
Rockville, MD 20852
Email: jth@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory
Commission
Mail Stop: O-16G15
Washington, DC 20555-0001



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

THOMPSON & SIMMONS, PLLC.

1225 19th Street, N.W., Suite 300
Washington, D. C. 20036
202.496.0780/202.496.9111
Fax: 202.496.0783

440 Meadow Street,
Waterbury, Connecticut 06702

ANTHONY J. THOMPSON
ajthompson@athompsonlaw.com
Admitted in D.C. and Virginia

CHARLES T. SIMMONS
csimmons@athompsonlaw.com
Admitted in CT and D.C.

CHRISTOPHER S. PUGSLEY
cpugsley@athompsonlaw.com
Admitted in MD

May 30, 2006

BY ELECTRONIC MAIL, U.S. FIRST CLASS MAIL

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

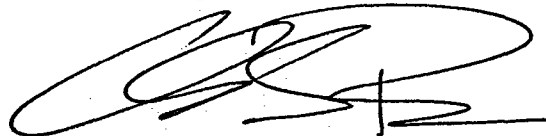
Re: In the Matter of: Hydro Resources, Inc.
Docket No: 40-8968-ML

Dear Sir or Madam:

Please find attached for filing Hydro Resources, Inc.'s Supplemental Brief Regarding Final Environmental Impact Statement Adequacy for the Crownpoint Uranium Project in the above-captioned matter. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the self-addressed, postage prepaid envelope attached herewith.

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

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC.
Counsel of Record to HRI

Enclosures

(hydro resourcesCOVERLETTTER 053006.doc)