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October 18, 2010

United States Nuclear Regulatory Commission  
Attn: Mr. Keith McConnell, Deputy Director  
Decommissioning and Uranium Recovery  
Licensing Directorate  
Division of Waste Management and Environmental  
Protection  
Office of Federal and State Materials and  
Environmental Management Programs  
Washington, D.C. 20555-0001

Dear Mr. McConnell:

By this letter, Hydro Resources, Inc., current holder of United States Nuclear Regulatory Commission (NRC) License No. SUA-1508 for its proposed Crownpoint Uranium Project comprised of four (4) individual in situ uranium recovery (ISR) sites at Church Rock Sections 8 and 17, Unit One, and Crownpoint (hereinafter the "CUP"), hereby submits the attached revisions to its NRC-approved CUP restoration action plans (RAP) submitted pursuant to the Commission's May 25, 2000 directive in CLI-00-08. Enclosed with this letter are complete copies of RAPs for each of the four CUP ISR project sites that are identical to the RAPs previously approved by NRC Staff on April 16, 2001, August 22, 2001, and October 16, 2001, respectively with the exception of minimal revisions required by the Atomic Safety and Licensing Board's (Licensing Board) directive in LBP-04-03 pursuant to administrative litigation and as endorsed by the Commission and the United States Court of Appeals for the Tenth Circuit.<sup>1</sup> As can be seen from the attached RAPs and as will be discussed below, no other changes to HRI's license are being submitted, including no changes to HRI's Consolidated Operations Plan (COP) 2.0, site-specific license conditions or the models and methodologies proposed by HRI in each of its four RAPs for NRC-licensed CUP ISR operations. Given that the record in the aforementioned administrative litigation is extremely complex, the following background and discussion is offered to provide NRC Staff with appropriate perspective on this submittal.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

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<sup>1</sup> Currently, the Commission's final agency action as approved by the Tenth Circuit is being appealed to the United States Supreme Court. Responses to this appeal have been waived by both NRC (dated September 30, 2010) and HRI (dated October 12, 2010) and all parties currently are awaiting a response from the Court on the petition for certiorari.

HRI's License No. SUA-1508 has been the subject of extensive and complex litigation. In April of 1988, HRI submitted a license application for the proposed CUP and, On November 14, 1994, NRC published a Federal Register notice in which members of the public and interested stakeholders were offered an opportunity for an administrative hearing. On December 12 and 14, 1994, various persons and groups submitted requests for a hearing on HRI's license application. On December 21, 1994, the Licensing Board designated a Presiding Officer to consider these various requests for a hearing, and the Presiding Officer issued scheduling orders on January 9 and 20, 1995 to guide the process for pleadings on such requests. On September 13, 1995, the Presiding Officer determined that the proceeding should be held in abeyance pending completion of NRC Staff's review of HRI's license application.

In February/March of 1997, NRC Staff issued its final environmental impact statement (FEIS) for the proposed CUP and, in December of 1997, NRC Staff issued its Safety Evaluation Report for the CUP. Then, on January 5, 1998, NRC Staff issued License No. SUA-1508. On April 11, 1998, the Licensing Board issued LBP-98-5 in which the Presiding Officer denied the intervening parties' request for a stay of the effectiveness of HRI's license. After issuance of HRI's license, on May 13, 1998, the Licensing Board determined that three parties should be granted a hearing.

The Licensing Board's designated Presiding Officer then agreed to a request to bifurcate the litigation by project site and determined that the various challenges to the proposed CUP should be addressed on a project site-by-site basis. Based on this determination, in 1998, the Presiding Officer commenced Phase I of the litigation directed specifically at challenges to HRI's Church Rock Section 8 site.

During Phase I of this litigation, HRI's license prevailed against the challenges in each instance with a single exception. On May 25, 2000 and on appeal of the Licensing Board's decision in LBP-99-13, the Commission, based on its new interpretation of 10 CFR Part 40, Appendix A, Criterion 9 as it relates to ISR facilities, determined that an NRC-approved RAP should be in place prior to the issuance of a license for an ISR project. *See In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), 51 NRC 227 (May 25, 2000). However, even though it determined that NRC-approved RAPs are a prerequisite to the issuance of an ISR operating license, the Commission found that revoking HRI's NRC license was unnecessary and, instead, instituted a *prohibition* on the effectiveness of License No. SUA-1508 until HRI submitted RAPs for each CUP project site *and obtained NRC Staff's approval of same*. Pursuant to the Commission's directive, HRI submitted RAPs to NRC Staff for its consideration and approval and, on the dates noted above, NRC Staff approved HRI's RAPs thereby allowing Phase I of the litigation to continue.

After the submission of written presentations and oral argument on HRI's NRC-approved RAPs, the Licensing Board issued LBP-04-03 in which several technical deficiencies were noted by the then Presiding Officer that required revisions to the RAPs by HRI. The specific technical deficiencies included amendment of HRI's financial assurance calculation methodology to (1) utilize the tremie line method of well plugging and abandonment; (2) not claim credit for existing site equipment and to base such calculations on estimates from two (2) independent

contractors; and (3) not to assume that site employees can perform multiple, unrelated tasks during decommissioning. Both HRI and the aforementioned opposition groups appealed LBP-04-03 with HRI challenging only the Licensing Board's determination regarding Items 2 and 3 and not the Board's findings regarding Item 1 (utilization of the tremie line method of well plugging and abandonment when calculating financial assurance cost estimates).

After review of the briefs on these issues, the Commission determined that review of HRI's appeal should be granted and that the Licensing Board's determination regarding Items 2 and 3 above should be reversed. *See generally In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-04-33, 60 NRC 581 (December 8, 2004). As a result, the Commission effectively determined that, regarding HRI's NRC Staff-approved RAPs, the only remaining technical deficiency requiring revision would be utilizing the tremie line method of well plugging and abandonment when calculating financial assurance cost estimates.

At the conclusion of this appeal, the Licensing Board appointed yet another Presiding Officer who directed all parties to consolidate arguments regarding the three remaining CUP project sites (Church Rock Section 17, Unit One, and Crownpoint) into a Phase II proceeding. After the submission of written presentations on all challenges to these project sites, including their associated RAPs, the Licensing Board found that HRI's license satisfied all NRC regulations and should be upheld with two (2) additional revisions. *See In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), LBP-05-17, 62 NRC 77 (July 20, 2005). The first revision required HRI to adjust its secondary groundwater restoration standard for uranium from 0.44 mg/L to 0.03 mg/L, which was the new United States Environmental Protection Agency (EPA) maximum contaminant limit (MCL) and which does not have any relationship with the aforementioned RAPs. The second revision required HRI to adjust its financial assurance calculation methodology to reflect the addition of unloading, surveying, and decontamination, if necessary, of transport conveyances transporting waste materials from the CUP project sites to an appropriately licensed/permitted disposal site.<sup>2</sup> HRI did not appeal these Licensing Board determinations to the Commission.

After issuance of LBP-05-17 which, as noted above HRI did not appeal, the Commission found that the Phase II findings of the Licensing Board, including the two technical deficiencies noted by the Phase II Licensing Board, should be upheld. Accordingly, the two technical deficiencies from Phase II, along with the one remaining item from Phase I, are all that remains to be addressed prior to lifting the prohibition on the effectiveness of HRI's License No. SUA-1508.

After completion of the administrative litigation at the Commission level, the opposition groups appealed the Commission's final agency action to the Tenth Circuit and, on March 8, 2010, the Court upheld the Commission's decisions which effectively endorses HRI's license assuming the aforementioned three technical deficiencies are addressed to NRC Staff's satisfaction. *See generally Morris v. U.S. Nuclear Regulatory Com'n*, 598 F.3d 677 (10<sup>th</sup> Cir.

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<sup>2</sup> It is worth noting that HRI is required to have a signed disposal contract in place for disposal of 11e.(2) byproduct material prior to commencing licensed ISR operations (and not prior to the issuance of an ISR operating license). Attached to this submittal is a signed disposal contract with Denison Mines, and it is this contract upon which HRI's RAP revisions are based.

March 8, 2010). As stated above, the Tenth Circuit's decision is currently on appeal to the Supreme Court.

While the administrative litigation was ongoing, on August 22, 2002, HRI submitted a request to renew License No. SUA-1508 and, on December 16, 2002, NRC Staff deemed this renewal request timely and provided notice to members of the public and interested stakeholders, including those parties admitted to the aforementioned administrative litigation. NRC Staff offered these persons and groups thirty days to submit a request for a hearing, and no hearing requests were filed in compliance with that deadline. Other than to assure that HRI's license is valid and in good standing, HRI's license renewal request is a separate agency action and has no relevance to HRI's current submittal.

## **II. BASIS FOR CURRENT SUBMITTAL**

### **A. General Bases for Current Submittal**

Despite the pendency of a decision on whether to grant certiorari to review the Tenth Circuit's decision, HRI believes that it must address each of these remaining deficiencies with NRC Staff to ensure that the prohibition on the effectiveness of its license imposed by the Commission in CLI-00-08 is lifted and that the pre-operational processes for constructing and operating the first of its CUP project sites (Church Rock Section 8) can commence in an efficient and effective manner while being adequately protective of public health and safety and the environment.

The current submittal is limited in scope and is tailored *solely* towards addressing the three remaining technical deficiencies noted above. As a general proposition, a license application for an ISR project requires an applicant to submit a RAP for NRC approval that contains a methodology for calculating financial assurance cost estimates that may be used throughout the lifecycle of the proposed project. HRI's submittal does not change or alter any aspect of the methodology used in each of the four site-specific RAPs submitted by HRI, approved by NRC Staff, and subsequently endorsed with very limited exceptions by the Licensing Board, Commission, and Tenth Circuit. Based on this, HRI asserts that the current methodology used in the NRC-approved RAPs is not subject to further scrutiny by any opposition parties.

HRI's license also contains a condition (License Condition 9.5) that requires revised financial assurance cost estimates immediately prior to the commencement of licensed ISR operations. This requirement relates to the actual dollar amount required to satisfy Criterion 9 of 10 CFR Part 40, Appendix A financial assurance requirements for source material recovery operations (which HRI plans to satisfy immediately prior to commencing licensed ISR operations at the Church Rock Section 8 project site); however, it does not relate to the methodology approved by NRC for calculating financial assurance in each site-specific RAP. As a result, the instant submittal only revises specific financial assurance cost estimates to satisfy the directives of the Licensing Board, as endorsed by the Commission and the Tenth Circuit.

## **B. HRI's Current Submittal**

HRI's submittal is comprised of revised copies of its four previously approved RAPs for each of the four CUP ISR project sites. The revised RAPs make no changes whatsoever to the methodologies for restoration, decommissioning and decontamination (D&D), and calculation of financial assurance cost estimates, each of which has been approved by NRC Staff, the Licensing Board, the Commission, and the Tenth Circuit. Indeed, the revised RAPs are merely photocopies of the previously approved RAPs with the additional information required by the Licensing Board during the course of the administrative litigation. The following discussion provides NRC Staff with a brief discussion of the substance of the limited RAP revisions:

### **1. Revision of the Secondary Groundwater Restoration Standard for Uranium From 0.44 mg/L to 0.03 mg/L**

Pursuant to LBP-05-17, the Licensing Board directed HRI and NRC Staff to revise the secondary groundwater standard for uranium at the CUP from the originally proposed 0.44 mg/L to 0.03 mg/L. This directive was instituted based on a challenge raised by the aforementioned opposition groups that was not disputed by HRI and, as a result, became a Licensing Board directive that was not disturbed on appeal to the Commission or the Tenth Circuit. Based on this directive, effective March 16, 2006, NRC Staff unilaterally and without dispute from HRI issued License Amendment 3 changing the secondary groundwater standard for uranium at the CUP ISR project sites from 0.44 mg/L to 0.03 mg/L. Therefore, HRI's current submittal does not contain any documentation, data or analyses related to this Licensing Board directive.

### **2. Revision of Well Plugging and Abandonment Procedures to the Tremie Tube Process**

Pursuant to LBP-04-03, the Licensing Board directed HRI to revise its well plugging and abandonment procedures to utilize the tremie tube method of well plugging and to provide for revised financial assurance cost estimates for this specific budget line item. According to this directive, HRI is required to replace the currently approved line-items dedicated to well plugging and abandonment in each of the four site-specific RAPs with new cost estimates based on using the tremie tube method. To satisfy this directive, HRI has enclosed four revised RAPs, including Section 4 Narrative and Attachments E-4-1 and E-4-2 replacements that list the revised financial assurance calculation for the tremie tube process and the standard operating procedure for the process as a replacement for the previously listed direct placement procedure.

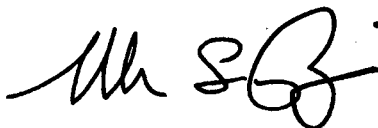
### **3. Addition of Disposal Site Unloading, Surveys, and Decontamination Costs**

LBP-05-17 directed HRI to include financial assurance cost estimates in its RAPs for disposal site unloading, surveying, and decontaminating transport conveyances used for disposal of wastes generated at the CUP ISR project sites. The revised financial assurance cost estimates are supported by HRI's current disposal contract with Denison Mines which is included in Section 5, Attachment E-5-3. Additional cost data as required by LBP-05-17 as well as the resulting changes in per unit costs for 11e.(2) and non-11e.(2) byproduct material disposal are noted in Attachment E-5-2. The final per unit costs are incorporated, as applicable, into the final

financial assurance calculations in the Introduction Summary Table, Section 5 Equipment Removal, Section 6 Wellfield Decommissioning, Section 7 Building Decommissioning, Section 8 Surface Reclamation, Section 9 Summary and Profit, and Section F Surety Funding Schedule A.

With the revised information included in this submittal in compliance with the directives of the Licensing Board, HRI asserts that, upon approval by NRC Staff of Items 2 and 3 above (Item 1 already having been addressed by the Staff in License Amendment 3), the prohibition on the effectiveness of License No. SUA-1508 imposed by the Commission in CLI-00-08 should be lifted as the technical deficiencies identified in the administrative litigation will have been addressed. All issues associated with HRI's RAPs have been fully litigated by the Licensing Board, the Commission, and the Tenth Circuit (with a petition for certiorari pending at the Supreme Court) and all additional requirements imposed in the administrative litigation process will have been satisfied upon NRC Staff's approval of HRI's submittals. Accordingly, HRI respectfully requests that, upon approving the information in this submittal, NRC Staff issue a letter notifying HRI that the prohibition on the effectiveness of License No. SUA-1508 has been lifted. HRI appreciates NRC Staff's efforts in the licensing and administrative litigation processes and please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mh SGP', with a small dot at the end of the signature.

Mark S. Pelizza  
Senior Vice President  
Safety, Environmental & Public Affairs