

October 14, 2011

Mr. Mark S. Pelizza
Senior Vice President
Safety, Environmental & Public Affairs
Hydro Resources, Inc.
405 State Highway 121 Bypass
Building A, Suite 110
Lewisville, TX 75067

SUBJECT: REQUEST FOR LICENSE RENEWAL, HYDRO RESOURCES, INC.,
CROWNPOINT URANIUM PROJECT, LICENSE SUA-1580

Dear Mr. Pelizza:

By letter to the U.S. Nuclear Regulatory Commission (NRC), dated August 22, 2002, Hydro Resources, Inc. (HRI) requested NRC License SUA-1580, for its Crownpoint Uranium Project in McKinley County, New Mexico, be renewed for a second term. In its letter, HRI did not request any changes to license conditions, locations, organization, any operational plans or procedures, training requirements or potential health, safety or environmental impacts.

Accordingly, NRC published in the *Federal Register* on December 16, 2002 (67 FR 77084), a "Notice of Timely Receipt and Consideration of Renewal Application for the Crownpoint Uranium Project, Crownpoint, NM, and Opportunity To Provide Comments and To Request a Hearing." No hearing requests were received related to the license renewal. The NRC responded to HRI's August 22, 2002 license renewal request, in a letter dated December 30, 2002, stating that the application was deemed timely filed, and accordingly, the license will not expire until final action has been taken by the NRC. The letter stated that NRC would notify HRI by letter regarding the staff's schedule for reviewing the renewal application.

The Crownpoint Uranium Project has an extensive NRC and Federal court litigation history. At the time of license renewal request, litigation was ongoing regarding the NRC's 1998 licensing decision for the initial construction and operation of the facility. In light of the litigation on the initial application, NRC staff deferred its review of the license renewal application until the challenges to the initial application proceeding were exhausted, or if additional remedies were required as an outcome of litigation, these remedies could be incorporated into a renewed license. On March 10, 2010, the U.S. Court of Appeals for the 10th Circuit, *Morris v. NRC*, 598 F.3d 677 (10th Cir. 2010), *cert. denied* 131 S.Ct. 602 (2010), upheld the NRC's 1998 licensing decision. The U.S. Supreme Court's November 15, 2010, decision to deny certiorari in this matter finally concluded the judicial challenge to License SUA-1580.

Although HRI was granted its initial license on January 5, 1998, the Atomic Safety and Licensing Board (ASLB) prohibited HRI from operating under the license until it cures deficiencies in its restoration action plan (RAP) and its license is modified to reduce the

secondary groundwater restoration standard.¹ See *In the Matter of Hydro Resources, Inc.*, LBP-04-03, 59 NRC 84 (2004), *aff'd, in part*, CLI-04-33, 60 NRC 581 (2004), and *In the Matter of Hydro Resources, Inc.*, LBP-05-17, 62 NRC 77 (2005), *aff'd* CLI-06-01, 63 NRC 1 (2006). On October 18, 2010, in an effort to cure the deficiencies in its RAP and lift the operational prohibition on its license, HRI submitted for NRC staff's review and approval four revised Restoration Action Plans (RAPs) and associated spreadsheets for: (1) Revision of Well Plugging and Abandonment Procedures to the Tremie Tube Process; and (2) Addition of Disposal Site Unloading, Surveys, and Decontamination Costs (ML102940305). NRC staff is currently reviewing this request.

By letter to NRC dated January 21, 2011, HRI requested: (1) a status update on review of its revised RAPs; (2) a response to HRI's position that its license does not yet warrant timely license renewal due to the Commission's prohibition on its use issued in 2000², and the ASLB's subsequent prohibition on its use in LBP-04-03 issued in 2004; and (3) a response to HRI's position that if renewal of its license is necessary, there should be no new notice of an opportunity for a hearing.

With respect to request (1) above, staff continues to actively review HRI's RAP submittal and expects to complete its review by October 30, 2011.

With respect to request (2) above, the NRC staff disagrees with HRI's position that the operational prohibition imposed by the ASLB and the Commission on HRI's license acted to postpone or toll the expiration date. The NRC's regulations in 10 CFR 40.42(a) expressly states,

Each specific license expires at the end of the day on the expiration date ***stated in the license*** unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expired at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination. (emphasis added)

Absent an explicit ASLB or Commission modification of HRI's license expiration date, HRI's license was to expire on January 5, 2003. In this instance, HRI submitted its renewal application more than 120 days prior to its license expiration date and was notified by the NRC

¹ On March 16, 2006, the NRC staff administratively amended HRI's license to reflect the ASLB's decision that the secondary groundwater restoration standard be reduced to 0.03 mg/L uranium by removing the reference to the specific uranium level such that the license provides that "the water quality at each individual well head does not exceed the EPA's primary and secondary drinking water standards . . ." (ADAMS Accession No. ML052720224.)

² By Order issued on May 25, 2000, the Commission chose to "prohibited [HRI] from using its license until the NRC staff has approved its decontamination, decommissioning and reclamation plan, including the requisite financial assurance plan and cost estimate." *In the Matter of Hydro Resources, Inc. (Ruling on Restoration Action Plan)*, CLI-00-08, 51 NRC 227, 242 (2000).

that it was in timely renewal, such that its license will continue to be effective until the Commission makes a final determination on its renewal application. The NRC staff has deferred its review of the license renewal application pending completion of the staff's review of HRI's RAP submittal.

With respect to request (3) above, the staff has determined that a new notice and opportunity for hearing for the license renewal application will not be required. Instead, HRI is requested to submit an updated Environmental Report (ER) for the renewal application. Once HRI submits an updated ER, the NRC staff will prepare a draft Environmental Assessment for the licensing action, the results of which will be noticed in the *Federal Register* and made available for comment. Nontimely filings of petitions and contentions are governed by the NRC's regulations at 10 CFR 2.309.

With respect to NRC's review of the license renewal application, NRC staff has determined the following:

- The license renewal application is deemed timely filed and the current license will not be deemed expired until the application has been finally determined in accordance with 10 CFR 2.109.
- The current prohibition of the use of the license will remain in effect until the staff's review of the revised RAPs is complete and the NRC staff has notified HRI that the conditions for removal of the prohibition have been satisfied. This review is expected to be complete by October 30, 2011.
- HRI is requested to submit an updated ER for license renewal as required by 10 CFR 51.60. The ER should follow the format and technical content described in NUREG-1748, "Environmental Review Guidance for Licensing Action Associated with NMSS Programs." NRC staff requests, at a minimum, six copies of the ER. The ER should be filed no later than 6 months from the date of this letter, or as otherwise agreed upon by HRI and NRC staff.
- The schedule for the license renewal application review will not be determined until after receipt and acceptance of the ER for review.

If you have any questions concerning this letter, please contact Ron Linton at (301) 415-7777, or by e-mail at ron.linton@nrc.gov. The staff is available to meet with you regarding the items discussed in the letter, if requested.

M. Pelizza

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Keith I. 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

Docket No.: 040-08968
License No.: SUA-1580

cc:
Jerry Schoeppner, P.G. (NMED)
David Mayerson (NMED)
HRI service list (enclosure)

M. Pelizza

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Sincerely,

/RA/

Keith I. 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

Docket No.: 040-08968
License No.: SUA-1580

cc:
Jerry Schoeppner, P.G. (NMED)
David Mayerson (NMED)
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NAME	RLinton via email	BGarrett	SCohen for BVonTill	KHsueh	BJones NLO via email	KMcConnell
DATE	8/3/2011	8/3/2011	9/7/2011	9/12/2011	9/1/2011	9/ /2011

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HRI Service List

Eric D. Jantz, Esq.
New Mexico Environmental Law Center
1405 Louisa Street, Suite 5
Santa Fe, New Mexico 87505

Zackeree Sean Kelin, Esq.
DNA-Peoples Legal Services, Inc.
P.O. Box 306
Window Rock, Arizona 86515

Diane Curran, Esq.
Harmon, Curran Spielburg & Eisenberg, L.L.P.
1726 M Street, N.W. Suite 600
Washington, D.C. 20036

Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC
1225 19 Street, N.W. Suite 300
Washington, D.C. 20036

Louis Denetsosie, Esq.
David A. Taylor, Esq.
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, Arizona 86515

Enclosure