



~~LETTERS~~ CORRESPONDENCE

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

DOCKETED
USNRC

July 10, 1998

'98 JUL 13 P2:50

Mr. Richard F. Clement, Jr., President
Hydro Resources, Inc.
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Albuquerque, NM 87120

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

SUBJECT: RESPONSES TO STAFF'S NATIONAL HISTORIC PRESERVATION ACT
LETTERS DATED MAY 20, 1998

Dear Mr. Clement:

By letters dated June 1, 3, and 24, 1998, the U.S. Nuclear Regulatory Commission (NRC) staff received responses to the subject letters from the Bureau of Land Management (BLM), the Office of the New Mexico State Historic Preservation Officer (NMSHPO), and the Navajo Nation Historic Preservation Department (NNHPD), respectively. These responses are discussed below. As of the date of this letter, no other responses have been received.

The NMSHPO concurred with the NRC staff's proposed finding that Hydro Resources, Inc. (HRI) undertakings on Section 8 at the Church Rock site, and Section 12 north of Crownpoint, would have no effect on the historic properties located therein which are eligible for inclusion in the National Register of Historic Places -- provided such properties "are fenced and avoided by construction, mining, or other ground-disturbing activities."

The NMSHPO had comments concerning six other potentially eligible sites (LA 116116, 116117, 116119, 116121, 116129, and 117317) located on Sections 8 and 12. Five of the six sites are on the public lands portion of Section 8 (i.e., the northeast quarter and western half of Section 8). These public lands are administered by the BLM and are not part of HRI's proposed mining area (although HRI owns patented Federal mining claims on these lands). LA 116129 is located on Section 12 land owned jointly by HRI and a private individual. The only potential mining-related use of the lands on which the six sites are located would be for application of treated waste water. Such use of these land parcels is one of several waste water disposal options available to HRI, as discussed in Sections 2.1.2 and 4.2.1 of the Final Environmental Impact Statement for the proposed Crownpoint, New Mexico, *in situ* leach uranium mining project. Should irrigation operations come within 100 feet of any of the sites identified above, placement of protective fencing around the site would be necessary.

The BLM's response states that if HRI's mining activities expand beyond the southeast quarter of Section 8 onto Section 8 public lands, "we agree that as long as significant or potentially significant cultural properties are avoided the undertaking will have no effect on the properties located there." Any such expansion of the mining area would first require HRI to submit a license amendment application to the NRC.

The NNHPD response asserts that the Navajo Nation has jurisdiction over the above-described Sections 8 and 12, in addition to control of the trust lands on Section 17 at HRI's Church Rock

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site. Other than this assertion of jurisdiction, the NNHPD response largely agrees with the NMSHPO's concurrence on the NRC staff's no effect finding, except the NNHPD specifies that the proposed protective fencing on Sections 8 and 12 be placed so as to create buffer areas extending 50 feet around each eligible historic property. Regarding Section 17, the NNHPD response expressed no disagreement with the NRC staff's finding that no historic properties are located there, and approved HRI's undertaking pursuant to the Navajo Nation Cultural Resources Protection Act (NNCRPA).

Until the jurisdictional issues are resolved by the litigation now pending in the United States Court of Appeals for the Tenth Circuit, the effect of the NNHPD comments regarding Sections 8 and 12 will be uncertain.

Based on the NMSHPO concurrence discussed above, and pursuant to 36 CFR § 800.5 (b), the National Historic Preservation Act (NHPA) process is concluded with respect to Sections 8 and 12. Additionally, based on the NNHPD approval discussed above, the NNCRPA process is concluded with respect to Section 17. Accordingly, HRI may proceed with its planned mining-related activities in these areas to the extent authorized by its NRC Materials License SUA-1508. However, if HRI cannot meet any of the following conditions, it must notify the NRC immediately and cease ground-disturbing activities in the affected area.

1. Activities must be restricted to Sections 8 and 17 (T16N, R16W) and Section 12 (T17N, 13W), which constitute the areas covered under this NHPA/NNCRPA consultation. Additional NHPA and/or NNCRPA consultations will be required prior to any additional undertakings which HRI may pursue under its NRC license on other lands.
2. All eligible and potentially eligible historic properties on Sections 8 and 12 will be fenced, as necessary, to preclude intrusion during any construction, mining, or other ground-disturbing activity. The recommended fencing (as identified in the Museum of New Mexico, Office of Archaeological Studies, "Cultural Resources Inventory of Proposed Uranium Solution Extraction and Monitoring Facilities at the Church Rock Site and of Proposed Surface Irrigation Facilities North of the Crownpoint Site, McKinley County, New Mexico" (OAS Report), dated 1997) would serve both as a mechanical equipment barrier, and to discourage casual foot traffic trespass. Fencing would remain in place throughout construction and mining phases, and it would not be removed until after site reclamation processes have been concluded following completion of mining. This protective measure will assure that the characteristics of the historic properties will not be changed by the undertaking.
3. All ground-disturbing activities within the vicinity of the historic properties (the areas as identified in the OAS Report) will be monitored by an archaeologist who will have authority to stop ground-disturbing activity in the event that previously undetected subsurface cultural resources are identified. If such a find occurs, the NRC (Mr. Robert Carlson, 301-415-8165), the NNHPD (520-871-7132), and the NMSHPO (505-827-6320) must be notified within 24 hours of the find. The

R. Clement, Jr.

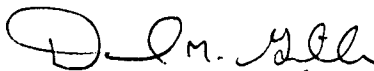
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development of treatment protocols for the unexpected discovery of human remains will be initiated as necessary within the framework of 36 CFR § 800.11, the Native American Graves Protection and Repatriation Act, and applicable New Mexico and Navajo Nation regulations regarding treatment of unmarked burials and protection of human remains.

Should unanticipated circumstances arise such that an effect on any eligible or potentially eligible historic property cannot be avoided, NHPA and/or NNCRPA consultations must be reopened.

If you have any questions concerning this subject, please contact Mr. Robert Carlson of my staff at (301) 415-8165.

Sincerely,



Joseph J. Holonich, Chief
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Office of Nuclear Material Safety
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cc: HRI Service List
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HRI Mailing List - Letter dated July 10, 1998

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'98 JUL 13 P2:51

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