

DOCKETED  
USMBC  
LBP-99-18  
May 11, 1999

'99 MAY 11 P3:05

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

Before Administrative Judges:  
Peter B. Bloch, Presiding Officer  
Thomas D. Murphy, Special Assistant  
Robin Brett, Special Assistant

SERVED MAY 11 1999

In the matter of

HYDRO RESOURCES, INC.  
(2929 Coors Road  
Suite 101  
Albuquerque, New Mexico 87120)

Docket No. 40-8968-ML

Re: Leach Mining  
and Milling License

ASLBP No. 95-706-01-ML

PARTIAL INITIAL DECISION  
(Technical Qualification Issues)

This Partial Initial Decision is one of several decisions covering challenges to proposed in situ leach (ISL) uranium mining operations for which License SUA-1508 has been issued to Hydro Resources, Inc. (HRI). This Decision addresses Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) (collectively, "Intervenors") joint written presentations on technical and financial qualification issues,<sup>1</sup> pursuant to 10 C.F.R. § 2.1233. It also considers responses to my

---

<sup>1</sup>Eastern Navajo Diné Against Uranium Mining And Southwest Research And Information Center's Brief, January 11, 1999 (Intervenors' Qualifications Brief); HRI Response, February 11, 1999; Staff Response, February 18, 1999.

questions of March 3. The responses were filed on March 15 (HRI Question Response and Staff Question Response) and March 29, 1999 (Intervenors' Question Response).

This partial initial decision does not consider issues related to financial assurance for decommissioning. See LBP-99-13, 49 NRC \_\_\_, March 9, 1999.

I. HRI's Technical Qualifications

A. Intervenors' Argument

SRIC and ENDAUM are concerned with the conclusion in the Staff's December 4, 1997 Safety Evaluation Report (SER) that HRI meets technical qualifications requirements merely because HRI has proposed minimum acceptable qualifications for key staff positions. Intervenors argue that HRI cannot qualify merely by describing criteria for as yet unfilled positions. They also argue that HRI relies for its credentials on allegedly deficient work done for Uranium Resources, Inc. (URI), which is HRI's parent firm.

Intervenors set forth extensive arguments concerning the need for the NRC to examine the qualifications of URI before deciding that HRI is qualified by training and experience to conduct this project. Intervenors' Brief at 3-10. They then argue that the experience gained by URI is not applicable to the HRI project because the Crownpoint mining will be at greater depth (1840 to 2290 feet in Utah, compared to 760 feet to 1030 feet in Texas) and because the Crownpoint water is of better quality. Intervenors' Brief at 10-12. They also allege that URI encountered some problems in Texas that indicate that it is not qualified to do the work in Utah. Intervenors' Qualifications Brief at 12-14.

## B. Findings and Conclusions

I find that Mark Pelizza, who has 19 years of employment with URI (including three years as Vice President of Health, Safety and Environmental Affairs), has extensive relevant experience. HRI Question Response at 2-6 (13 projects). He has supervised all radiological and non-radiological health, safety and environmental planning activities associated with HRI. *Id.* at 2.

I am not persuaded to disregard that experience by Intervenors' assertion that the Crownpoint Uranium Project will allegedly be conducted with deeper wells than HRI personnel previously employed or on the ground that the Crownpoint water is cleaner. Furthermore, I find, after consulting with my special advisors, that Mr. Pelizza's affidavits demonstrate necessary analytical abilities and knowledge of the field. I also find that HRI is correct in stating that "HRI already has uniquely qualified key personnel who form the core of the company's expertise." *Id.* at 7-9.

Intervenors' argument, which is presented in just three pages of its Brief, is unpersuasive. For example, Intervenors refer to Table 3 of the Written Testimony of Dr. William P. Staub, Ph.D. filed as Exhibit 2 to Intervenors' Brief Concerning Ground Water Protection Issues. Intervenors' Brief at 12. Intervenors do not, however, explain why the occurrence of excursions in URI projects indicates that URI or the HRI personnel employed by URI, were technically incompetent. Similarly, Intervenors allege that URI failed to restore seven of its eight well fields to the 0.020 mg/L proposed Environmental Protection Agency drinking water standard and that it permitted a "final restoration value for uranium at the Rosita mine . . . [that was] a threefold increase in average baseline." Intervenors'

Brief at 13. It is, however, not at all clear that either the occurrence of excursions or a failure to restore water purity to baseline measurements is a demonstration of incompetence.

To successfully cast doubt on technical competence, there would need to be a reasonable basis to doubt the technical analyses or the implementation done by URI. As it is, I have before me evidence that certain excursions occurred and that baseline water quality was not restored. I have no basis for finding that URI failed to plan appropriately for the risk of these excursions when it should have, that it treated the excursions incorrectly when they occurred, or that it failed to learn from its experience.

On the other hand, my special assistants and I have reviewed technical submissions from HRI's experts and I am satisfied that these experts show a high degree of technical sophistication and skill. I am satisfied that Mark Pelizza, in particular, has demonstrated the technical skills and abilities required to qualify for this license. Accordingly, I find that the concern that HRI is unqualified should not affect its license to conduct this project.

In making this finding, I am aware that it is uncertain when this project will commence or whether the people HRI relies on for its expertise will be available when the project commences. The bleakness of the economic future for the uranium mining industry, testified to by Dr. Michael Sheehan, Ph.D. and Mr. David Osterberg, Intervenors' Brief at Exhibits 1 and 4, is conceded by HRI, as follows (Brief at 13):

HRI acknowledges that Uranium Resources, Inc. and its subsidiaries, including HRI, are experiencing financial difficulties associated with a depressed uranium market. However, as discussed in the attached Affidavit of Joe Card, Uranium Resources, Inc.'s Senior Vice President, Marketing (attached hereto as Exhibit F) the financial and other considerations that go into seeking a license properly are distinguished from the decision-making process surrounding the commencement of operation. HRI agrees with Intervenors that current market conditions do not warrant moving forward to commence active mining operations. As explained by Mr. Card, however, the license

itself is a valuable asset which increases the net worth of the company, facilitates attracting needed development capital, and positions HRI to take advantage of market opportunities when they arise.

HRI's technical qualifications provide a positive indicator that HRI will have a group of technically qualified people when work on the project commences. It is not important that the key personnel are *currently* qualified, as there may yet be years before the rubber meets the road and the project starts. Logically, HRI must be qualified when the project commences. However, I find that HRI is technically qualified at this time. I accept this as adequate proof that it will be technically qualified when it decides to commence this project. See SUA-1508, January 5, 1998 §§ 9.3, 9.7 (radiation safety officer); see Consolidated Operations Plan (COP), Rev. 2, Hearing File 10.3, August 15, 1997 at 128-133.

## II. Must HRI Be Financially Qualified?

ENDAUM and SRIC would have me infer from 10 C.F.R. § 40.32 that HRI must be financially capable of conducting its project. However, none of the language relied on supports this interpretation of the regulations. Intervenors' Qualifications Brief at 15-23. The cited section requires that "the proposed equipment, facilities and procedures must be adequate to protect health and minimize danger to life and property." With the exception of the requirement that there be financial assurance for decommissioning, which has been addressed in an earlier opinion (LBP-99-13, 49 NRC \_\_\_, March 9, 1999), there is no mention of a separate financial qualification. The regulations seems to require only that there be adequate "equipment, facilities and procedures." The adequacy of those items is

not part of the challenge that is contained in the ENDAUM and SRIC brief that is the subject of this PID.

Consequently, the concern about technical qualifications should not stand in the way of having HRI proceed with this project whenever it considers itself sufficiently financially capable to fulfill its licensing commitments. There is no need for the NRC to review the financial aspects of HRI's operation. If it meets the requirements of its license, then it may proceed. If it cannot fulfill those requirements, whether for financial reasons or for any other reasons, then it will be subject to enforcement actions, including shutdown by the NRC should the violations be sufficiently serious.

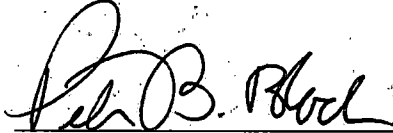
The financial capability argument is, therefore, dismissed because of insufficient basis in the regulations.

#### ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 11<sup>th</sup> day of May, 1999, ORDERED, that:

1. The relief requested by Eastern Navajo Diné Against Uranium Mining (ENDAUM) and the Southwest Research and Information Center (SRIC) in their joint "Brief In Opposition To Hydro Resources, Inc." [HRI] Application For A Materials License With Respect To: Hydro Resources, Inc.'s Lack Of Technical And Financial Qualifications, dated January 11, 1999, is *denied*.
2. There is no reason for further filings or for oral argument.

3. Pursuant to the Commission's order of May 3, 1999, no additional petitions for Commission review shall be filed in this proceeding until the Presiding Officer completes his consideration of all questions related to the "section 8" property (currently expected by June 15, 1999). Within 14 days after the Presiding Officer issues his final decision related to the "section 8" property, each party may file a single petition for review, not to exceed 30 pages, addressing all remaining challenges to decisions rendered by the Presiding Officer. Responses to such petitions for review shall be filed within 14 days after the petition is filed, and shall not exceed 30 pages.



---

Peter B. Bloch, Administrative Judge  
Presiding Officer

Rockville, Maryland

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PART. INIT. DECISION LBP-99-18 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Peter B. Bloch  
Presiding Officer  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Thomas D. Murphy  
Special Assistant  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

John T. Hull, Esq.  
Mitzi A. Young, Esq.  
Office of the General Counsel  
Mail Stop - 0-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Diane Curran, Esq.  
Harmon, Curran, Spielberg  
& Eisenberg, L.L.P.  
1726 M Street, NW, Suite 600  
Washington, DC 20036

Douglas Meiklejohn, Esq.  
New Mexico Environmental Law Center  
1405 Luisa Street, Suite 5  
Santa Fe, NM 87505

Jep Hill, Esq.  
Attorney for Hydro Resources, Inc.  
Jep Hill & Associates  
P.O. Box 2254  
Austin, TX 78768

Herb Yazzie, Attorney General  
Steven J. Bloxham, Esq.  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515



Docket No.(s)40-8968-ML  
PART. INIT. DECISION LBP-99-18

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

Mitchell Capitan, President  
ENDAUM  
P.O. Box 471  
Crownpoint, NM 87313

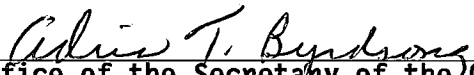
Anthony J. Thompson, Esq.  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, NW  
Washington, DC 20037

Administrative Judge  
Robin Brett  
U.S. Geological Survey  
917 National Center  
Reston, VA 20192

Grace Sam  
P.O. Box 85  
Church Rock, NM 87311

Roderick Ventura  
Samuel D. Gollis  
DNA - People's Legal Services, Inc.  
P.O. Box 306  
Window Rock, AZ 86515

Dated at Rockville, Md. this  
11 day of May 1999

  
Office of the Secretary of the Commission