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May 16, 1997

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Dear Joe:

In March of this year, the Nuclear Regulatory Commission (NRC) transmitted to Hydro Resources, Inc. (HRI) a Final Environmental Impact Statement (FEIS) assessing HRI's proposal to construct and operate the Crownpoint Uranium Solution Mining Project. (NUREG-1508). HRI has carefully scrutinized the FEIS and has some comments and concerns to share with NRC. This letter and attachments thereto set forth in some detail those comments and concerns which are intended to be constructive (even if critical at times) in the spirit of the candid, ongoing dialogue between HRI and NRC.

First, read as a whole, HRI regards the FEIS as a difficult job well done. This is particularly true in light of the complexity and number of the issues, the duration of the effort, the post-URFO staff changes and the multiple potentially interested parties involved. Although HRI frequently expressed its concerns regarding the time and expense involved due to perceived regulatory overkill, nevertheless, the FEIS represents a major commitment of resources and effort on the part of NRC that is appreciated.

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Second, although acknowledging the general quality of the document, HRI has identified some items in the FEIS that are erroneous and some that suggest inconsistent (or at least apparently inconsistent) NRC treatment. And, HRI has identified a category of concerns which in our judgment involve the unfortunate use of certain *action* and *descriptive*

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language -- unfortunate, because HRI does not believe that NRC intended to create the potentially negative impression conveyed by some of the language in the FEIS. (See Attachment A) However, HRI recognizes that such errors, potential inconsistencies and vocabulary problems are not unexpected in a document of this size, scope and complexity.

Finally, HRI continues to be concerned that NRC's analysis of the potential impacts of HRI's proposed operations on groundwater, and specifically the drinking water wells in Crownpoint, may lead independent-minded readers (much less those looking for problems to hang their protests on) to erroneous conclusions. HRI realizes that the EIS process requires identification and evaluation of a wide range of *potential* impacts associated with a licensee proposal. However, after evaluating such potential impacts, NRC must put them in proper perspective in reaching conclusions about the proposed activity. When putting *potential* impacts in perspective, it is particularly important, to state clearly whether such impacts are adverse, are likely/probable or unlikely/improbable and, if likely/probable, whether such impacts likely are significant or insignificant. NRC's treatment of unlikely/improbable and insignificant *potential* impacts of HRI's proposed activities is in some cases inconsistent and, thus, potentially misleading. In other cases, NRC does not adequately close the analytical loop. For example, if a *worse case* assumption is utilized that suggests the possibility of certain adverse impacts, it could stimulate unnecessary controversy if NRC fails to point out that realistically any such impacts are extremely unlikely. Some of the unfortunate language in the FEIS may be attributable to the FEIS process itself wherein the primary focus is on considering all *potential* impacts without necessarily a similar focus on providing the proper perspective on any such *potential* impacts. The licensee *proposes* and NRC *disposes* but only on the bases of sound scientific and technical impacts analyses -- reliance on *conservative* assumptions about *potential* impacts, while an appropriate component of an EIS analysis, must, nevertheless, be tempered by the real world perspective provided by sophisticated technical submittals by the licensee. For example, while conservative assumptions may help to bound the impacts analyses, they must give way to sound scientific and technical presentations that demonstrate that potential excursions can be controlled with relatively little difficulty. (See Attachment B)

In the final analysis, HRI believes that the scientific and technical analysis presented to support its license applications demonstrate conclusively that no significant, adverse impacts on the drinking water wells in Crownpoint are even remotely likely. Any apparent conclusion that significant impacts are inevitable, or even likely, given HRI's extensive ISL operating experience, its proposed mining program and the additional protective features negotiated with NRC is not scientifically or technically supportable. As a result, the additional conditions in HRI's license (i.e., drinking water well replacement, premining

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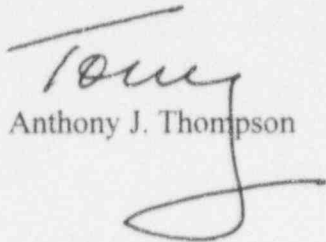
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restoration demonstrations, backup diesel generators, additional monitor wells, etc.), while understandable as part of a conservative, defense-in-depth regulatory strategy or as necessary to satisfy process requirements (i.e., bonding) are not necessary to protect public health with an ample margin of safety.

HRI understands its responsibility as an NRC licensee under the Atomic Energy Act to protect public health, safety and the environment. HRI will embrace and fulfill its responsibilities. HRI is hopeful that the attached comments will alert NRC to items in the FEIS that can be corrected or clarified, particularly where necessary to promote a fuller understanding of the issues by any potentially interested parties.

Please call me should any of our comments be confusing or if you wish to discuss any of them.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tony', with a large, stylized flourish extending from the bottom of the signature.

Anthony J. Thompson

AJT/clh

**HRI'S COMMENTS ON CROWNPOINT URANIUM SOLUTION MINING
PROJECT FEIS (NUREG-1508)**

I. Attachment A

1. Section 1.7, p. 1-5 -- "The States authority under the SWDA [sic] does not extend to any parts of the proposed project that would be Indian country, such as allotments, land held in trust for the Navajo Nation, and land within a Dependent Indian Community, where EPA retains authority over UIC Permitting."

- The reference to Safe Water Drinking Act (SWDA) is incorrect. It should be the Safe Drinking Water Act (SDWA) -- the acronym SWDA stands for the Solid Waste Disposal Act.
- Is NRC intending to explain a jurisdictional issue or simply attempting to paraphrase the definition of Indian country from 18 U.S. Code § 1151? If the latter is true, then the paraphrase is incorrect. 18 U.S. Code § 1151 defines Indian country as: (a) All land within the limits of any *Indian reservation* under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) All dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and within or without the limit of a State; and (c) All Indian allotments, the Indian titles to which have not been extinguished, including right-of-way running through the same. (emphasis added)

Note that § 1151 above refers to "reservation" not "trust" land. As noted, the application of these definitional criteria is the subject of a major jurisdictional dispute between the Navajo Nation and the State of New Mexico. (See also -- Sec. 4.12.1, p.4-114).

2. Section 2.1.1.1, p.2-2 -- "Designing, constructing, *testing* and operating "injection wells would be subjected to regulation primarily through the UIC control program conducted by EPA/New Mexico for Class III wells. (emphasis added)

- On p.2-5, the FEIS discusses the fact that mechanical *testing* is subject to NRC licensing conditions. The intended distinction between NRC and EPA/New Mexico jurisdiction likely will not be obvious to the uninitiated. Indeed, as will be noted hereafter, discussions of NRC jurisdiction as opposed to EPA, state or tribal jurisdiction throughout the FEIS could leave the inexperienced reader in a state of total confusion. (See also; A.3.1., p. A-4; A.3.2., p. A-5)

3. Section 2.1.24, p.2-18-19 -- The FEIS states that: "During groundwater restoration, because evaporation pond capacity may be exceeded, HRI could dispose of excess wastewater by deepwell injection, land application, or surface discharge subject to prior NRC approval." (p.2-18) The FEIS goes on to note that state or EPA irrigation/water use standards would regulate land application, "generally using a zero-release NPDES permit." Additionally, NRC would require HRI to decontaminate areas if radionuclide accumulation exceeds decommissioning standards. With respect to surface discharge, the FEIS asserts that "generally, radionuclides in wastewater authorized for this method of disposal are subject to release limits found in NRC regulations." (p.2-19).

- This discussion is confusing when related to other statements in the FEIS regarding regulatory jurisdiction, and conflicts with NRC's Staff Technical Position (STP) on Effluent Disposal (DWM-95-01). Why is NRC approval required for land application of restoration wastewater? The STP provides that restoration wastewater is "mine wastewater" that is not subject to NRC jurisdiction but rather is subject to EPA release limits in 40 C.F.R. Part 440;
- Also, the FEIS states that: "NRC does not have statutory authority for permitting injection wells, granting aquifer exemptions *permitting surface water discharges, or permitting land application of treated wastewater*;" (p. A-5) (emphasis added)
- Moreover, if NRC does not have authority to permit land application of restoration (mine) wastewater, then NRC has no authority to require decontamination and decommissioning of areas which are irrigated with such fluids. (The same principles are relevant to the discussion of land application on p. 4-7).
- With respect to surface discharge under an NPDES permit, NRC's 10 C.F.R. Part 20 release limits only would be relevant to releases of "process water." (STP-DWM-95-01). Therefore, with respect to release of restoration/mine wastewater, NRC's limits would not be applicable. Moreover, EPA regulations forbid HRI from releasing "process" wastewater under an NPDES permit. 40 C.F.R. Part 440.34(a)(b)(1). (See also p.4-116-117 which appears to reflect the incorrect assumption that HRI can get an NPDES permit for release of "process wastewater.")

4. Section 3.10.2, Page 3-78-79 -- These communities and much of the area within 80 km (50 miles) of the project sites are in "Indian country" as defined by 18 U.S. Code 1151. . . . nearly any definition, the entire area of impact constitutes an "environmental justice population." (emphasis added)

- First, this statement could be taken as a "legal opinion" on a jurisdictional issue which is the subject of a significant dispute between the Navajo Nation and the State of New Mexico. The statement conflicts with other statements in the FEIS (e.g., Sec. 4.12.1, Page 4-114) wherein a more appropriate position on the issue is set forth - namely, that it is not the function of this FIS process in particular or the NRC in general to arbitrate among the competing jurisdictional claims. (See also -- Section 1.7, p. 1-5, Section 3.10.5, p. 3-86-87).
 - Second, HRI does not agree necessarily with the sweeping statement about an *"environmental justice population."* HRI has no choice about where to locate its ISL operations that are designed to access the uranium ore bodies in question. Therefore, any consideration of concerns about *"environmental justice populations"* cannot rely on the same analytical protocol utilized in the location of a factory when evaluating a proposed mining project and, particularly, an ISL mining operation which is perhaps the least intrusive type of mining operation possible. The ore bodies HRI proposes to mine were not put there by the choice of man, they are unique geologically and to HRI's knowledge do not exist anywhere else in the country.
5. Section 4.3.1, p. 4-37 -- "However, NRC has not yet approved the successful restoration of a production - scale wellfield at any of its licensed sites."
- This statement when paired with the statement in Sec.4.12.1 at p.4-113 (i.e., *"successful restoration of a production - scale wellfield has not previously occurred"*), which is admittedly incorrect, could lead to confusion.
 - The statement that follows on p. 4-37, which addresses Texas approval of restoration at production-scale facilities, although, according to NRC, those restoration demonstrations were conducted in lower quality groundwater than exists in New Mexico, is also misleading. First, although the water in Texas may have higher levels of TDS or chlorides, it has been and is being used as the source of drinking water in those areas. Second, absent any mining in Texas or New Mexico, the groundwater in the mining zones of URI's or HRI's ISL mining projects is not suitable for drinking water because of the high levels of radionuclides in the water (e.g., radon levels between 10,000 and 1,000,000 pCi/l, average radium concentrations of 100 pCi/l and uranium concentrations of 1.5 ppm). Indeed, a primary basis for aquifer exemptions is because the water in the mineralized zone will never be suitable for drinking water. This means that any implication that the mining zone water in New Mexico is somehow pure and pristine drinking water is inappropriate. Thus, whether or not the restoration goals are more stringent in New Mexico because of differences in TDS levels from the water in Texas is irrelevant from a public safety perspective, particularly given

any potential risk comparison between radionuclides and TDS. And, restoration performed at commercial scale facilities in Texas has been approved over and over again by relevant regulatory authorities.

- Therefore, unless there is some significant potential adverse impact on nearby groundwater uses, the differences in restoration goals between Texas and New Mexico cannot be considered of central importance to public health and safety. The statement that "without restoration, water quality *would* be degraded to the point that the groundwater at the sites *could not be used as a source of drinking water without treatment*" is thus extremely misleading (Sec. 4.3.1.1, p. 4-45).
6. Section 4.3.3, p. 4-61 -- "For those items listed as NRC staff *recommendations*, BIA, BLM, and other significant regulatory agencies will be responsible for ensuring that NRC has complied with this guidance."
- HRI will comply with the statutorily authorized regulatory requirements that are relevant to its proposed operations. Any "*guidance*" to NRC may or may not be appropriate and may or may not be relevant.
7. Section 4.3.3; p. 4-62 -- "Prior to conducting mining operations beyond the first wellfield, HRI would be required to develop an NRC-approved groundwater restoration plan for the *entire project*." (emphasis added)
- Presumably, the word "*entire*" here refers to Church Rock only and not to the *entire* project as in Church Rock, Unit 1 and Crownpoint. And, it is HRI's understanding that a restoration demonstration (that would be at the heart of any restoration plan) will be run concurrently with active mining activities at Church Rock. The above-referenced statement could be interpreted by some to mean that mining at Church Rock could be stopped until NRC approves a restoration plan for all three mining sites or that a "pilot" restoration demonstration is required to continue mining at Church Rock. Both interpretations would be incorrect and totally anti-thetical to an economically viable mining operation.
8. Section 4.6.1.1, p. 4-81-82 -- "Land application could result in exposures to individuals, not only during operations but also far in the future, long after operations have ceased." . . . "HRI did not submit a detailed plan for land application and would need to submit a detailed license amendment in the future to use land application for wastewater." . . . "The land application would only be used for *mine wastewater* resulting from restoration at each of the facilities." (emphasis added) It is extremely unlikely that land application of pretreated restoration wastewater will ever result in any significant exposures to individuals. Any such exposures will be well

within the variations in local natural background exposures. Thus, the statement is potentially inflammatory and could stimulate unnecessary concerns.

As noted in 3., supra, the statements in the FEIS and the STP (DWM-95-01) suggest that NRC has no authority to permit land application of "mine wastewater" and, similarly, has no reason to develop an "intruder" risk analysis.

9. Section 4.12.1, Page 4-115 -- "A specific issue regarding water rights at the Church Rock site was mooted by the State's district court when it ruled that the water rights HRI (through URI) sought to transfer were inadequate. . . . "NRC as an agency of the Federal government has an obligation to recognize and protect the tribal sovereignty of the Navajo Nation. In addition, the *context and mandates* of environmental justice suggest that the Navajo Nation (because the Navajo people would potentially be affected) *should be involved in the process to administer the utilization of water rights.*" (emphasis added)

- This statement only partially describes the finding of the State District Court and, therefore, is misleading. The court also found that, since Sections 8 and 17, Township 16 North, Range 16 West, N.M.P.M., in question as to jurisdiction are not within the Navajo Nation nor are they Indian country, they are subject to State law and that court's jurisdiction. There does not appear to be any necessity for the above quoted statement.
- The FEIS states that it is not "the role of the EIS in particular and NRC in general to arbitrate among competing claims regarding the administration of water rights." See also 5.a., supra). Yet, in the above-referenced text, NRC proceeds to do just that pursuant to "*the context and mandates of environmental justice*," whatever that phrase means. Moreover, in addition to this ill-advised recommendation, NRC has not yet defined its appropriate role in dealing with "Indian Nations." (See Attachment C-- "Should NRC define its Indian trust responsibilities, and relationships with Indian Nations by a statement of policy?")

10. Section 4.12.4, p. 4-117 -- "The proposed project may result in a positive environmental health effect at the Church Rock site. This effect would occur because some areas of the site have higher concentrations of residual radioactivity (from previous mining activities) than would be allowed in decommissioning the site under the proposed action. Therefore it *may* be cleaned up as part of the wellfield decontamination." (emphasis added)

- "May" is the operative word since waste from previous conventional mining activities is not subject to NRC radiological standards. The affects of the previous mining, however, will be considered in the pre-ISL baseline determination.

11. Section 4.13.3., p. 4-121 -- "As proposed by HRI, the project *would* make a *significant* contribution to cumulative impacts on groundwater in the region (Section 4.3)." (emphasis added)

See also Section 4.13.12.; p 4-127 -- "Although the FEIS concludes that impacts to groundwater quality and consumption *would be significant*, the NRC Staff requirements and recommendations would reduce the likelihood of impacts." (emphasis added)

- Here again, the FEIS chooses "*would*" and "*significant*" which HRI regards as erroneous. "*Could*" would be a better choice of words than "*would*" and without something more than *conservative assumptions* labeling impacts as *significant* cannot be justified. In other words, in an EIS analysis, it would not be inappropriate to state that there "*could*" be "*potentially significant*" impacts if a series of adverse events were to take place. However, the "*likelihood*" or "*probability*" of such events actually happening would need to be considered to put the analysis in its proper "*perspective*."
- The statements referenced above directly conflict with statements like those at A.6.2.1, -- "Although the magnitude of potential impacts to the town of Crownpoint wells in "*not definitive*", the NRC Staff's requirement to move the wells before mining can occur at the Crownpoint site is consistent with the "*conservative*" licensing approach used by NRC to mitigate "*potential*" risk and ensure the protection of public health."
- A.6.2.2, p. A-23 -- "In conducting this analysis, the NRC staff decided that the water quality in the town of Crownpoint wells "*could*" be degraded, but not to the point that federal drinking water standards and the uranium concentration limit from 10 C.F.R. § 20 (Appendix B, Table 2) would be exceeded. (See also, A.6.2.3., p.A-24)

II. Attachment B

1. Section 2.1.4.4, Page 2-28 -- "If restoration to *pre-established* groundwater quality standards could not be achieved, mining at the Church Rock site would cease and no mining would be allowed at either the Unit 1 or Crownpoint site." (emphasis added)
 - HRI does not believe that NRC intended to convey the inflexibility conclusion the sentence appears to suggest. This statement is inconsistent with the restoration discussion set forth in Section 4.3, p. 4-27-28 which states that "consistent with relevant statutory and regulatory provisions and the provisions of other NRC ISL licenses, if it found that it were impracticable to restore to primary or secondary goals, HRI might request a license amendment that would allow some change in restoration requirements on a parameter-by-parameter basis (HRI 1996g)." Under such circumstances, HRI would have to "make a demonstration to NRC that leaving the parameter at the higher concentration would *not be a threat to public health and safety* and that, on a parameter-by-parameter basis, *water use would not be significantly degraded*." (emphasis added) This type of showing is inconsistent with the word "*preestablished*" and the rigid limit it implies and it should be restated.
 - In essence, HRI would be required to make an ACL-type demonstration regarding risk plus an ALARA analysis taking into account premining groundwater quality, existing and potential future water use, impacts on nearby sources of water, etc. As HRI has suggested, the water in the mining zone is not a drinking water source *prior* to mining due to the high radionuclide concentrations (e.g., radon) much less after mining. So the question then becomes, what is the significance of impacts, if any, on nearby present or potential future water users?
 - See also, Section A.6.1.2, p. A-21. It is incorrect to assert that restoration to a protective health based quality level would not constitute successful restoration.
2. Section 4.3.1.1, p. 4-40 -- Water quality impacts during mining are related to *potential* contamination from unanticipated releases of mining fluids, which are referred to as excursions. "Groundwater *consumption* is minimal during the mining phase and is not considered a significant impact." (emphasis added)
 - These statements are confusing when compared to the statement in Section 4.13.12, p. 4-127 which states: "Although the FEIS concludes that impacts to groundwater quality and consumption *would be significant* ..." This latter statement is incorrect since NRC has not and cannot demonstrate that

the potential impacts of HRI's proposed ISL mining activities "*would be significant.*" (emphasis added)

- The juxtaposition of these two statements demonstrate a drafting problem that surfaces frequently in the FEIS regarding the failure to use the word "potential" to modify "impacts" and use of the word "significant" to describe such impacts. The staff analysis utilizes "conservative" assumptions (i.e., "This assumption is based on a *conservative view* that the greatest *potential* for impact ..." (*See Sec. 4.3.1.2, p. 4-51*) to provide a margin of safety in its evaluation but any such assumptions are not on a scientific or technical demonstration that adverse impacts *will* occur or that, if they do, they will be *significant*.
 - HRI recognizes that there is a difference in water consumption during the mining phase versus the restoration phase, however, the statement that consumption and quality impacts will be significant is misleading in the extreme without defining "significant." The State Engineer will not approve operations that will adversely impair the rights of senior water rights owners. There will be much less consumption than there was in the underground mining operations that took place at the Churchrock site. Quality cannot be significantly impacted if the water is returned to the same quality as originally established at baseline. A retraction or explanation of this statement is important to assist a reader in understanding the positive conclusions of the FEIS.
3. Section 4.3.1.1, p.4-41 -- "The closeness of the Crownpoint site to the town's water supply wells indicates that a potential excursion could ultimately travel to the supply wells, since pumping supply wells causes groundwater flow under the Crownpoint site to converge at the wells."
- This statement "suggests" that there is a *reasonable* possibility that contamination of the town water wells might result from a hypothetical excursion at HRI's proposed ISL project. First, because the demonstrated hydraulic gradient in the vicinity of the Crownpoint water wells is no greater than 20 feet per year and HRI must either correct an excursion within 60 days or cease operations until it is corrected, it is extremely misleading to imply that there is even a minimal likelihood of operational solutions reaching town water wells. The nearest proposed Crownpoint mining well is about a quarter of a mile (*if the town wells are not moved*), thus, even from the nearest Crownpoint mining wells it would take sixty-six years to reach the drinking water wells. Second, although HRI strongly disagrees technically about the likelihood of solutions reaching town water wells, it has agreed to move the wells and, therefore, the statement mentioned above is no longer operative.

4. Section 4.3.1.1, p. 4-41 -- "Therefore, there should be adequate time for corrective action if an excursion occurred."
 - The language used here introduces an element of doubt regarding HRI's ability to control any excursions. As shown in our various submittals, given the fluid velocities (4.6 to 19.6 feet per year) involved, any excursion can be easily contained and controlled, and the phrase "there should be adequate time" needs to be explained.
5. Section 4.3.1.1, p. 4-43 -- "However, NRC staff also consider that upper monitor wells may not detect an excursion if a strong groundwater gradient is present because the wells do not encircle the well field area, but are commonly located in the center of the well fields."
 - Again, the hint of uncontrollable water movement is introduced by the phrase "wells may not detect an excursion if a strong groundwater gradient is present" As noted above and in submittals to the NRC, the fluid velocities, in the Westwater Canyon formation, at the closest point of the proposed ISL project to the Town water wells would range from 4.6 to 19.6 feet per year (Figure 3.10, p 3-28) with only the town wells pumping and no attempt made to control or contain an excursion. This does not indicate a strong groundwater gradient is present. The overlying sand (the Dakota) will have much smaller volumes of water produced from it (maybe a few tens of gpm) and would have a correspondingly lower water velocity. In addition, HRI agreed to place observation wells in down gradient positions completed in overlying horizons as a defense-in-depth measure to eliminate this potential concern.
6. Section 4.3.1., p. 4-43 -- "Should an excursion occur down-gradient of the Dakota Sandstone aquifer monitor wells, the excursion may move undetected toward the town water supply wells. This is important, because three of the town of Crownpoint's water wells (...) are completed in the Dakota Sandstone as well as the Westwater Canyon Member . . . This means that should a vertical excursion take place in the Dakota Sandstone or the Cow Springs aquifer, contamination could move toward the Crownpoint water supply wells."
 - In the 10/10/96 "closeout" of Question 63 (concerning monitoring of the underlying Cow Springs aquifer), the NRC states: "... transmissivity [for the Cow Springs] is relatively low . . . There is a significant hydraulic-head difference between the overlying Morrison Formation and the Cow Springs Formation. The Cow Springs has a higher hydraulic-head than the Morrison Formation. Thus,

keeping water from the Morrison from flowing downward into the Cow Springs. The NRC staff consider this comment closed."

- Also in Section 4.3.1.2, p. 4-52 (concerning Unit I). "In addition to the construction of Dakota Sandstone monitor wells above the mine zone, HRI proposes to drill three to five monitor wells in the overlying Dakota Sandstone aquifer between Unit 1 well fields and the town of Crownpoint water supply wells (HRI 1996k)," 10/18/96. This same commitment would have been made for the Crownpoint project if we had not already committed to moving the town water wells prior to starting of mining. The latter commitment makes the discussion of possible contamination of the town water wells even more abstract.
7. Section 4.3.1.3, p. 4-54 -- "Since it cannot be guaranteed that the mine workings do not extend beyond the injection and production wells of the well field, the workings may form preferential pathways for lixiviant movement away from the well field."
- NRC is aware that HRI has extensive and detailed maps of the mine workings described above. In its 10/10/96 letter to Mark Pelizza "closing" the comment for Question 88 (concerned with mineworkings in Sec 17 at Churchrock), the NRC stated that: "HRI has good records of these tunnel locations." "Because the mine workings will be completely contained within the boundaries of the mining well field, the existing shafts and tunnels will not cause a significant problem with hydraulic control of mining fluids." In addition, this statement calls into question one of the NRC findings stated earlier on page 4-54: "This means that the detection of horizontal excursions would not be degraded by the presence of the mine workings." Therefore, this statement should be deleted.
8. Section 4.13.8, p. 4-125 -- "Although construction and operation of the project would have an adverse impact on land use"
- The impact on land use should not be described as *adverse*. Arguably, the land is being elevated to a superior land use or at a minimum, simply a different land use. The adjective "*adverse*" seems inappropriate. ISL mining will take a minor amount of land out of service for grazing. However, the mining land use is much more productive in terms of monetary value. The surface owners will be compensated at a much higher value than they would receive from livestock production. The land is also overgrazed, so removing the land from grazing may actually allow some grasses to recover.

A total of 17 sets of comments were received on NRC's announcement in the Federal Register (60 FR 18428), April 11, 1995, concerning NRC's intent to eliminate the IRMP. Of the total, 15 sets of comments came from State or local government agencies that were against reducing the program. The other sets of comments came from the nuclear power industry and supported NRC's proposed action.

Comments that opposed reducing the program focused on public perception of nuclear power and the environment. These commenters stated that the public demands that independent environmental monitoring be performed to ensure that nuclear power plants are not causing a long-term change in the environment. Also, some commenters indicated that the public does not trust NRC or the utilities to fully monitor the environment and disclose any problems.

Some States noted that a reduction in NRC funding would likely cause a reduction in personnel who work for State environmental monitoring laboratories. Certain States believe that a reduction in the environmental monitoring performed by the States will send a message to licensees that they can decrease their vigilance. This message, they believe, will cause a long-term degradation of the nuclear power plant Radioactive Effluent Discharge Programs. In the views of some States, the Environmental Monitoring Program ensures that operating monitoring equipment and supporting laboratory capability continue to be available in the State programs in the event of an accident at a nuclear facility.

The confidence that has been gained in licensee programs through the routine reactor inspection program was used as the basis for the Office of Nuclear Reactor Regulation to consider eliminating the environmental monitoring portion of the State contracts. The decision will be made following Commission guidance on the DSI.

C. Should NRC define its Indian trust responsibilities and relationships with Indian Nations by a statement of policy?

NRC's interactions with Indian Tribes are growing in number and nature. The issue for the Commission is whether a policy statement is necessary or desirable to ensure consistent interactions with Indian Tribes across all NRC activities. In assessing the need for developing such a policy, the Commission would need to consider to what extent these interactions should be guided by the framework of its interactions with Agreement States and other States. Likewise, development of a policy for NRC Indian trust responsibility could produce a need for revised liaison activities and increased resource expenditures.

The NRC staff has had interactions with national Native American Tribal organizations such as the National Congress of American Indians and the Council of Energy Resource Tribes and has dealt with certain Tribes on specific issues on a case-by-case basis. In addition, Commission regulations for the licensing of a high-level radioactive waste repository (Part 60), a low-level radioactive waste disposal facility (Part 61), and a monitored retrievable storage installation (Part 72) have provisions for Indian Tribe participation. Although the NRC has had these interactions and provisions for Indian Tribe participation, the NRC has no formal policy or guidance for staff interactions with Native American Tribal governments. NRC has, however, developed policy and programs for intergovernmental relations, particularly with State governments. These policies and programs could be used as a framework if the Commission decides that no NRC formal policy with Indian Tribes is warranted.

A related question is whether the NRC would be willing to extend the Commission's "Policy on Cooperation With States at Commercial Nuclear Power Plants and Other Utilization and Production Facilities" to Indian Tribes that request it for the purpose of observing NRC inspections or performing inspections for NRC. The policy on cooperation with the States was adopted in 1989 and amended in 1992 to include adjacent States (neighboring States located within the 10-mile emergency planning zone of the plant). The policy sets out the general framework for cooperating with States concerning NRC-licensed production and utilization facilities by routinely providing information, such as discussed above, to the Governor-appointed State Liaison Officers and responding to requests from States in a timely manner. In addition, this policy establishes the ground rules for State representatives to observe NRC inspections and lays out the general guidance for negotiating a memorandum of understanding, which would allow States to perform inspections for and on behalf of the NRC.

As currently written, the Commission policy does not extend to Indian Tribes. The language of the policy itself is limited to cooperation with States. There is no mention of other entities such as Indian Tribes or local governments in the policy. In addition, the background discussion published with the policy statement indicates that the statutory basis for the policy stems, in part, from Section 274i of the AEA, as amended. Section 274 of the AEA contains provisions regarding NRC interactions with State governments such as the Agreement States Program.

Section 274 does not contain any reference to NRC's activities with Indian Tribes. Accordingly, because of its plain language and its grounding in Section 274, the policy, as written, can only apply to activities with States. Despite the limited applicability of the current policy, NRC has legal authority pursuant to Section 161f of the AEA to enter into cooperative agreements with entities such as Indian Tribes. There is no requirement that

the Commission enter into such agreements, and the Commission may decline to create such agreements if warranted by policy considerations. However, extending the Commission policy to Indian Tribes would provide a framework to guide NRC/Indian Tribe interactions, which enumerates the rights and responsibilities of all parties.

VII. COMMISSION'S PRELIMINARY VIEWS

Staff actions regarding the various options should be held in abeyance pending the Commission's final decision on this issue paper. The Commission's preliminary views are:

The Commission preliminarily favors Option 3 (Continue the Current Agreement States Program, Including Adopting Current Initiatives). At the same time, the Commission is preliminarily in favor of encouraging more States to become Agreement States. However, the Commission believes this should be accomplished primarily through intangible incentives to States as opposed to tangible incentives. While tangible incentives (i.e., funding) would be an effective mechanism for encouraging more States to become Agreement States, the Commission is concerned that the funding constraints imposed by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) would have an inequitable impact on NRC licensees in States that decide not to become Agreement States. However, the Commission believes that the staff should explore the feasibility and desirability of providing "seed money" and/or financial grants, within the funding constraints of OBRA-90, to encourage States to apply for Agreement State status.

While the Commission has not made a final decision on this matter, a majority of the Commission is preliminarily in favor of a compromise position in which the NRC would provide training to Agreement States without charge on a "space available" basis. Funding for travel and technical assistance would be borne by the Agreement States.

The NRC particularly solicits comments on whether NRC should fund Agreement State training, travel, and technical assistance. Comments are especially sought from Agreement States, non-Agreement States, fee-paying NRC licensees and Agreement State licensees.