

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

Michael M. Gibson, Chair
G. Paul Bollwerk, III
Dr. Sue H. Abreu

In the Matter of:

HOMESTAKE MINING COMPANY OF
CALIFORNIA

(Denial of License Amendment Request)

Docket No. 40-8903-LA

ASLBP No. 23-980-03-LA-BD01

March 26, 2024

MEMORANDUM AND ORDER

(Approving Proposed Settlement Agreement and Terminating Proceeding)

This proceeding arose from the December 18, 2020 request of Homestake Mining Company of California (HMC) to amend its 10 C.F.R. Part 40 source materials license (License No. SUA-1471). HMC's license amendment request (LAR) sought to modify Condition 10 of the license to change the location of the background radon and gamma radiation monitoring stations at its Grants Reclamation Project (GRP).¹ The GRP is the site of a former uranium milling operation located 5.5 miles north of Milan, in Cibola County, New Mexico.²

¹ Letter from Brad R. Bingham, Closure Manager, GRP, to Ron Linton, Project Manager, Office of Nuclear Material Safety and Safeguards (NMSS), NRC at 1 (Dec. 18, 2020) (ADAMS Accession No. ML20356A288) [hereinafter LAR].

² Joint Motion to Approve Proposed Settlement Agreement and Terminate Proceeding (Feb. 29, 2024) at 1 [hereinafter Joint Motion].

On August 15, 2023, the Nuclear Regulatory Commission Staff (NRC Staff) denied HMC's LAR.³ On September 5, 2023, HMC filed a Hearing Demand challenging this denial.⁴

Pending before the Licensing Board is a February 29, 2024 joint motion from HMC and the NRC Staff asking the Board (1) to approve the proposed Settlement Agreement that the parties negotiated, which is discussed in detail below; and (2) to issue a consent order terminating this proceeding.⁵

For the reasons set forth below, and pursuant to 10 C.F.R. § 2.338(i), we grant the parties' joint motion; approve the February 29, 2024 proposed Settlement Agreement, a copy of which is attached to this issuance as Appendix A; and terminate this proceeding.

I. BACKGROUND

HMC's LAR sought to modify Condition 10 of its source materials license, which prescribes public dose and background monitoring locations for radon gas (radon-222) and direct gamma radiation at the GRP.⁶ HMC's current environmental monitoring program for radon gas and direct gamma radiation includes (1) public exposure monitoring locations near occupied residences (i.e., point of compliance stations) designated as stations HMC-4 and

³ See Letter from Jane Marshall, Division Director, NMSS, NRC, to Brad R. Bingham, Closure Manager, GRP (Aug. 15, 2023) (ADAMS Accession No. ML23186A150) [hereinafter Denial Letter].

⁴ See [HMC]'s Demand for Hearing on the NRC Staff's Denial of the License Amendment Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation for Source Materials License No. SUA-1471 (Sept. 5, 2023) [hereinafter Hearing Demand].

⁵ See Joint Motion at 1, 8; *id.*, attach. A (Proposed Settlement Agreement Between [NRC] And [HMC] (Feb. 29, 2024)) [hereinafter Proposed Settlement Agreement]; *id.*, attach. B (Proposed Consent Order (Feb. 29, 2024)) [hereinafter Consent Order].

⁶ See Joint Motion at 2; 10 C.F.R. § 20.1003 (“*Public dose* means the dose received by a member of the public from exposure to radiation or to radioactive material released by a licensee, or to any other source of radiation under the control of a licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under § 35.75, or from voluntary participation in medical research programs.”).

HMC-5; and (2) a background radon and direct gamma radiation monitoring location designated as station HMC-16.⁷ Because the radiation dose to the public from the GRP site excludes background radiation, Condition 10 obligated HMC to collect data from both HMC-4 and HMC-5, then to subtract from the highest of these two readings the background data obtained at HMC-16. Under Condition 10, this net value was used to show the maximum radiation dose to the public from operations at the GRP site and to demonstrate compliance with 10 C.F.R. § 20.1301(a), as required by 10 C.F.R. § 20.1302.⁸ HMC's LAR sought to change Condition 10 by eliminating HMC-16 as a background monitoring station and replacing it with two new background monitoring stations that HMC designated as HMC-1OFF and HMC-6OFF.⁹

HMC requested that the background monitoring location be moved because it was convinced that "conditions at HMC-16 are not representative of background radon conditions at the [GRP] Site."¹⁰ According to HMC, HMC-16 had been placed in an upland area "where geomorphic/geological characteristics differ significantly from the floor of the San Mateo Creek (SMC) valley in which the [GRP] site is situated."¹¹ HMC thus proposed to terminate background monitoring at HMC-16 and to replace it with background monitoring at HMC-1OFF and HMC-6OFF. HMC's LAR asserted that HMC-1OFF and HMC-6OFF would yield more accurate background data because they "are located near the middle of the northern portions of the SMC basin, distant enough to preclude measurable impacts from the Site, yet close enough to be representative of the geologic/geomorphic setting in which the Site is situated."¹²

⁷ See Joint Motion at 2.

⁸ See id.

⁹ See id.

¹⁰ Id. at 3–4 (quoting LAR at 2).

¹¹ Id. at 4 (quoting LAR, attach. 1, at 2 (Technical Report, Revised Assessment of Background Radon Monitoring Locations (rev. 1 Dec. 18, 2020) [hereinafter Technical Report])).

¹² Id. (quoting Technical Report at 28).

The NRC Staff found that HMC’s proposed change in background monitoring locations would not result in accurate calculations of the radiation dose to the public at the GRP site as determined from the radiation measurements at HMC-4 and HMC-5.¹³ Because these two point of compliance stations “are adjacent to and impacted by an area where remediation work performed by the licensee has lowered the background [radiation] levels . . . below the [levels] for non-remediated areas,” HMC’s background monitoring locations must account for this lowered level.¹⁴ The NRC Staff explained that the “[s]election of a background monitoring location that is in an area [such as the sites HMC proposed] where remediation had not taken place (a preoperational location), will result in a calculation of an annual public dose that is lower than what . . . the maximum exposed individual is receiving.”¹⁵

The NRC Staff thus denied HMC’s LAR on the ground that changing HMC’s background monitoring station from HMC-16 to the non-remediated areas at the proposed locations of HMC-10OFF and HMC-6OFF would fail to satisfy the applicable regulations in 10 C.F.R. Part 20, “Standards for Protection Against Radiation.” Specifically, the NRC Staff’s denial of HMC’s LAR maintained that monitoring for background radiation at HMC-10OFF and HMC-6OFF “would not make an appropriate survey pursuant to 10 [C.F.R. §] 20.1302(a) and (b), and would not make [a] reasonable survey pursuant to 10 [C.F.R. §] 20.1501(a) to demonstrate compliance with the

¹³ See Denial Letter, encl. at iv, 12–19 (NRC, Safety Evaluation Report, [HMC, GRP], Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation (Aug. 2023)) (ADAMS Accession No. ML23186A151) [hereinafter SER].

¹⁴ Denial Letter at 2.

¹⁵ Id. The GRP site public radiation dose is found by subtracting the background station data from the point of compliance station data. See supra note 8 and accompanying text. According to the NRC Staff, using background data collected in non-remediated areas (with its higher radiation amount) to calculate the radiation dose to the public from past milling operations undervalues the public’s radiation exposure. See Denial Letter at 2; see also SER at 17–18.

radiation dose limits for individual members of the public in 10 CFR [§] 20.1301 when reviewed in accordance with the NRC guidance.”¹⁶

This Licensing Board was established after HMC filed its Hearing Demand challenging the NRC Staff’s denial of HMC’s LAR.¹⁷ At the Board’s initial status conference, the parties indicated they were discussing a possible settlement.¹⁸ Accordingly, in addition to granting HMC’s Hearing Demand, the Board deferred setting a date for a conference to establish schedules for mandatory disclosures and for an evidentiary hearing in this proceeding.¹⁹ The Board also instructed the parties to submit a report to the Board on the status of their settlement negotiations no later than November 6, 2023.²⁰

The NRC Staff and HMC submitted a timely update regarding the status of their settlement discussions, and they jointly proposed they be allowed to continue discussions,²¹ a request that the Board granted.²² On December 14, 2023, the parties submitted their second status update that again jointly proposed they be allowed to continue settlement discussions.²³ Although the Board granted this request, it did so with the proviso that the Board intended to hold a status conference with the parties in February 2024 unless, no later than January 29, 2024, the parties submitted either (1) a proposed settlement agreement in accord with the

¹⁶ Joint Motion at 5 (quoting Denial Letter at 2). In doing so, however, the NRC Staff also agreed with HMC that the “current background location at HMC-16 is located in a different geological setting which is not representative of the [point of compliance] monitoring stations.” *Id.* at 6 (quoting SER at 34).

¹⁷ See Hearing Demand; Establishment of Atomic Safety and Licensing Board, 88 Fed. Reg. 62,829 (Sept. 13, 2023).

¹⁸ See Tr. at 10–12.

¹⁹ See Licensing Board Order (Granting Hearing Demand; Deferring Scheduling Conference) (Sept. 25, 2023) at 1–2 (unpublished).

²⁰ See id. at 2.

²¹ See Joint Settlement Status Update (Nov. 2, 2023) at 1.

²² See Licensing Board Order (Second Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Nov. 3, 2023) at 2 (unpublished).

²³ See Second Joint Settlement Status Update (Dec. 14, 2023) at 1.

provisions of 10 C.F.R. § 2.339(g)–(h) or (2) a joint notice of a tentative settlement that provided a date by which the parties’ proposed settlement agreement would be filed.²⁴

Subsequently, on January 26, 2024, the NRC Staff and HMC filed a joint notice of settlement in which the parties declared that they had “reached an agreement in principle and are preparing the proposed settlement agreement in accord with the provisions of 10 C.F.R. § 2.338(g)–(h) for submission to the Board.”²⁵ In this joint notice, the parties also requested that they be allowed to file their proposed settlement agreement on or before February 29, 2024.²⁶ The Board granted this request on January 31, 2024, but indicated that if the parties were unable to meet their self-imposed deadline of February 29, 2024, they were to advise the Board, no later than February 26, 2024, in a filing that explained the reason for the delay and provided a date certain by which they would be submitting their proposed settlement agreement.²⁷

As noted earlier, on February 29, 2024, HMC and the NRC Staff submitted a joint motion asking the Board to approve their proposed Settlement Agreement and to issue a consent order terminating this proceeding.²⁸ More specifically, HMC and the NRC Staff have agreed to a modification of License Condition 10 that will obligate HMC to determine background radon and gamma radiation data by averaging the radiation measurements obtained from three monitoring stations: HMC-1OFF, HMC-1A, and HMC-6.²⁹ In their joint motion, the parties recognize that different factors must be considered when siting representative background radon and gamma radiation monitors, “including geology, topography, meteorology, and the duration of the dose

²⁴ See Licensing Board Order (Third Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Dec. 15, 2023) at 3 (unpublished).

²⁵ Joint Notice of Settlement (Jan. 26, 2024) at 1.

²⁶ See id.

²⁷ See Licensing Board Order (Setting Date for Filing Joint Proposed Settlement Agreement) (Jan. 31, 2024) at 3 (unpublished).

²⁸ See supra note 5 and accompanying text.

²⁹ See Joint Motion at 7; Proposed Settlement Agreement at 2.

limit being an annual average value.”³⁰ To ensure representative monitoring, HMC and the NRC Staff agreed that HMC could average data from the three newly designated background monitoring locations, i.e., HMC-1OFF, HMC-1A, and HMC-6.³¹ In addition, HMC and the NRC Staff agreed that HMC will average the data obtained from point of compliance stations HMC-4 and HMC-5 when calculating the public radiation dose, and both parties agree this approach “will provide reliable and stable data in the public dose calculations.”³²

Additionally, under the terms of the proposed Settlement Agreement, HMC agreed that, within 30 days of Board approval of the proposed Settlement Agreement, it will provide a letter to the NRC Staff including a topographical site map with radon monitoring locations and generalized hydrologic drainage flow patterns.³³ For its part, the NRC Staff agreed that within 30 days of receiving HMC’s letter it will issue the license amendment to HMC. This license amendment will specify that all regulatory requirements and conditions therein shall apply to HMC as a licensee under 10 C.F.R. Part 40, just as they would have applied to HMC had the NRC Staff initially approved the LAR through the traditional licensing process.³⁴ HMC also stated that it will withdraw its Hearing Demand, effective upon Board approval of the proposed Settlement Agreement and termination of this proceeding.³⁵

Finally, HMC and the NRC Staff agreed “the public interest does not require the adjudication of the issues,” as “the settlement is a reasonable compromise between parties that

³⁰ See Joint Motion at 7.

³¹ See id.; Proposed Settlement Agreement at 2.

³² Joint Motion at 7–8; see Proposed Settlement Agreement at 3.

³³ See Proposed Settlement Agreement at 3.

³⁴ See id.

³⁵ See id.

are represented by counsel” and is consistent with public health and safety as well as with Commission policy of encouraging the fair and reasonable settlement and resolution of issues.³⁶

II. ANALYSIS

A. Standards Governing the Approval of Proposed Settlement Agreements

NRC regulations encourage “[t]he fair and reasonable settlement and resolution of issues proposed for litigation” in NRC adjudicatory proceedings.³⁷ Section 2.338(g) outlines the form for such settlements:

A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.³⁸

In addition, section 2.338(h) states that a proposed settlement agreement must contain the following items:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;
- (3) A statement that the order has the same force and effect as an order made after full hearing; and
- (4) A statement that matters identified in the agreement[] required to be adjudicated have been resolved by the proposed settlement agreement and consent order.³⁹

Finally, and particularly pertinent to the Board’s consideration of the parties’ pending joint motion, section 2.338(i) describes the settlement agreement approval process:

Following issuance of a notice of hearing, a settlement must be approved by the presiding officer . . . to be binding in the proceeding. The presiding officer . . . may order the adjudication

³⁶ Joint Motion at 8

³⁷ 10 C.F.R. § 2.338; see Rockwell Int’l Corp. (Rocketdyne Division), CLI-90-5, 31 NRC 337, 340 (1990) (“Commission policy strongly favors settlement of adjudicatory proceedings.”).

³⁸ 10 C.F.R. § 2.338(g).

³⁹ Id. § 2.338(h).

of the issues that the presiding officer . . . finds is required in the public interest to dispose of the proceeding. . . . If approved, the terms of the settlement . . . must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.⁴⁰

The Commission noted in its decision in Sequoyah Fuels that “[i]n any pending proceeding [in which presiding officer approval of a settlement agreement is required], the presiding officer . . . must give due consideration to the public interest.”⁴¹ The Commission then went on to explain that this “public interest” inquiry requires the presiding officer to consider:

(1) whether, in view of the agency's original order and the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation.⁴²

With these standards in mind, we undertake our section 2.338(g), (h), and (i) review of the proposed Settlement Agreement between the NRC Staff and HMC.

B. Licensing Board Determination

1. 10 C.F.R. § 2.338(g) and (h): The Form and Content of the Proposed Settlement Agreement

We first turn to section 2.338(g), which governs the form a settlement agreement is to follow. Here, the parties' filing contains each of the 2.338(g) elements: (1) a proposed

⁴⁰ Id. § 2.338(i). Because a notice of hearing was issued in this proceeding, see Order: (Providing Notice of Hearing), 88 Fed. Reg. 67,828 (Oct. 2, 2023), section 2.338(i) provides the Board with the authority to approve the parties' proposed Settlement Agreement.

⁴¹ Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997) (quoting Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted).

⁴² Id. at 209 (footnote omitted). Although adopted by the Commission in an enforcement context, these factors are appropriately applied here in assessing whether the public interest would be served by approving the parties' proposed Settlement Agreement in that “the Commission derived these factors from an array of federal court settlement approval decisions that dealt with settlements ranging from public school desegregation class actions to antitrust enforcement suits.” Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-18, 63 NRC 830, 837 (2006) (footnote omitted).

settlement agreement; (2) a consent order; and (3) a motion for its entry including the reasons why it should be accepted.⁴³ The proposed Settlement Agreement is also signed by counsel for the parties as their duly authorized representatives for this purpose.⁴⁴ We thus conclude that this proposed Settlement Agreement fulfills the form requirements of section 2.338(g).

We next consider section 2.338(h), which outlines the specific content of a settlement agreement. As required by section 2.338(h)(1)–(4), the proposed settlement agreement includes (1) the “admission of all jurisdictional facts”;⁴⁵ (2) the “express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise contest the validity of the consent order”;⁴⁶ (3) the statement that the “order has the same force and effect as an order made after full hearing”;⁴⁷ and (4) the statement that “matters identified in the agreement that were required to be adjudicated have been resolved by the proposed settlement agreement and consent order.”⁴⁸ We therefore conclude that the above referenced provisions of the parties’ proposed Settlement Agreement fulfill the requirements of section 2.338(h).

2. 10 C.F.R. § 2.338(i): The Proposed Settlement Agreement and the Public Interest

In deciding whether to approve a proposed settlement agreement, the Board must give “due consideration to the public interest.”⁴⁹ As noted above, the public interest inquiry outlined

⁴³ See Joint Motion; Proposed Settlement Agreement; Consent Order.

⁴⁴ See Proposed Settlement Agreement at 4.

⁴⁵ Id. at 3.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 4.

⁴⁹ Sequoyah Fuels, CLI-97-13, 46 NRC at 207 (quoting Sequoyah Fuels, CLI-94-12, 40 NRC at 71).

in Sequoyah Fuels contains four distinct factors.⁵⁰ In analyzing these factors below, the Board concludes that the public interest does not require any issues to be adjudicated before terminating this proceeding, thereby allowing us to approve this proposed Settlement Agreement.

a. Risks and Benefits

In reviewing a proposed settlement agreement, the first “public interest” factor the Board examines “is the risks and benefits of settling as compared to litigating the proceeding.”⁵¹ More specifically, as is appropriate here, the Board considers “(1) the likelihood (or uncertainty) of success at trial, (2) the range of possible recovery . . . , and (3) the complexity, length, and expense of continued litigation.”⁵² Importantly, we first observe that we need not reject a proposed settlement agreement merely because one of the parties might have received a more favorable result had the case been fully litigated or because the settlement is not the best that could be obtained.⁵³ Instead, it is the Board’s obligation to determine whether the particular proposed settlement agreement before it “is within the reaches of the public interest.”⁵⁴ Here, considering the risks of future litigation posed by the NRC Staff’s denial of HMC’s LAR, this proposed Settlement Agreement appears to be a reasonable compromise between parties that are each ably represented by counsel.

In the context of this proposed Settlement Agreement, HMC provided the NRC Staff with sufficient information to make the requisite regulatory findings and to approve a modification of License Condition 10 reflecting that (1) “the new background radon and gamma monitoring

⁵⁰ See id. at 209.

⁵¹ Id.

⁵² Id.

⁵³ See id. at 215.

⁵⁴ Id. (quoting United States v. Microsoft, 56 F.3d 1498, 1462 (D.C. Cir. 1995)) (emphasis omitted).

station locations are HMC-1OFF, HMC-1A, and HMC-6”; (2) “data derived from these stations will be averaged”; and (3) “going forward HMC will average the data obtained from point of compliance stations HMC-4 and HMC-5 when calculating public dose.”⁵⁵ Additionally, HMC agreed to withdraw its Hearing Demand.⁵⁶ The parties therefore agreed that, as a result of settling HMC’s Hearing Demand challenging the NRC Staff’s denial of HMC’s LAR, “there are no disputed issues to litigate.”⁵⁷

While the parties’ proposed Settlement Agreement contains provisions that approve HMC’s LAR, it also incorporates some clarifying strictures, i.e., (1) the selection of background radon and gamma radiation monitoring stations different from what was originally sought in HMC’s LAR; (2) the averaging of data collected from the new background radon and gamma radiation monitoring station locations; and (3) the averaging of data collected from the point of compliance stations.⁵⁸ Relative to the Commission’s concern in Sequoyah Fuels with the “range of possible recovery,” these additional requirements suggest that this proposed Settlement Agreement involved negotiation by both sides to reach a mutually agreeable result that provides a reasonable outcome for both parties.

Under these circumstances, we see no basis for questioning the “risk and benefits” judgments made by the NRC Staff and HMC and conclude that their proposed Settlement Agreement achieves a reasonable result on this score.

b. Implementation and Enforcement

The second “public interest” factor looks to “whether the terms of the settlement appear incapable of effective implementation and enforcement.”⁵⁹ Here, the proposed Settlement

⁵⁵ Proposed Settlement Agreement at 2–3.

⁵⁶ See id. at 3.

⁵⁷ Id. at 2.

⁵⁸ See id. at 2–3.

⁵⁹ Sequoyah Fuels, CLI-97-13, 46 NRC at 209.

Agreement contemplates a series of well-defined events, i.e., HMC will provide a letter to the NRC Staff that includes a topographical map reflecting the agreed upon monitoring locations within 30 days of Board approval of this proposed Settlement Agreement, the NRC Staff will issue the license amendment within 30 days of receiving HMC's letter, and HMC will withdraw its Hearing Demand upon the Board's approval of the parties' proposed Settlement Agreement and the termination of this proceeding.⁶⁰ Taken together, these steps appear capable of being effectively implemented and enforced. Certainly, nothing presented by the parties suggests otherwise.

These considerations likewise support approval of the proposed Settlement Agreement between the NRC Staff and HMC.

c. Public Health and Safety

The third "public interest" factor looks to "whether the settlement jeopardizes the public health and safety."⁶¹ The NRC Staff has concluded that, as embodied in the parties' proposed Settlement Agreement, the modifications to HMC's monitoring program for radon gas and direct gamma radiation meet the NRC's regulatory requirements that address protection of the public from radiation exposure, which are set out in 10 C.F.R. §§ 20.1301(a)(1), 20.1302(b)(1), and 20.1501(a)⁶². Further, the NRC Staff concluded that the proposed Settlement Agreement is consistent with the public health and safety because its provisions afford the NRC Staff with "reasonable assurance that the public dose calculation required under 10 C.F.R. § 20.1301(a) is reasonably accurate."⁶³

Our review of the terms of the proposed Settlement Agreement thus leads us to conclude that it is consistent with the agency's mission of protecting the public health and safety

⁶⁰ See Proposed Settlement Agreement at 2–3.

⁶¹ Sequoyah Fuels, CLI-97-13, 46 NRC at 209.

⁶² See Proposed Settlement Agreement at 2.

⁶³ Id.

and so supports the Board's approval of the proposed Settlement Agreement between the NRC Staff and HMC.

d. Meaningful Participation

Last, we look to "whether the settlement approval process deprives interested parties of meaningful participation."⁶⁴ In the instant case, no intervenors or other interested participants have come forward to assert that they might be adversely impacted by the terms of the proposed Settlement Agreement.⁶⁵ Instead, this proceeding has involved only the NRC Staff and HMC, and both participants fully support the Board's approval of their proposed Settlement Agreement.

Accordingly, we conclude that our approval of the proposed Settlement Agreement does not deprive any interested party of meaningful participation in this proceeding.

III. CONCLUSION

Finding both that the proposed Settlement Agreement's form and content complies with the requirements of section 2.338(g)–(h) and that, pursuant to section 2.338(i), the public interest does not require any issues to be adjudicated for an appropriate disposition of this proceeding, the Board determines that the proposed Settlement Agreement between the NRC Staff and HMC should be approved and that this proceeding should be terminated.

For the foregoing reasons, it is ORDERED that:

⁶⁴ Sequoyah Fuels, CLI-97-13, 46 NRC at 209.

⁶⁵ See id. at 222–23. While the NRC Staff did not issue a notice affording other interested persons an opportunity to request a hearing in this proceeding, this does not impede our ability to approve the parties' proposed Settlement Agreement. Given the agency's regulations in 10 C.F.R. § 2.309(b)(4)(ii), participation by interested persons was not foreclosed. See Cammenga and Associates, LLC (Denial of License Amendment Requests), LBP-23-3, 97 NRC 59, 75 n.26 (2023).

1. The February 29, 2024 joint motion of HMC and the NRC Staff is granted, and we approve the parties' February 29, 2024 proposed Settlement Agreement and terminate this proceeding.

2. In accordance with 10 C.F.R. §§ 2.338(i) and 2.341(a)(2), this issuance will constitute a final decision of the Commission 120 days from the date of issuance, i.e., on Wednesday, July 24, 2024, unless the Commission directs otherwise.⁶⁶

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chair
ADMINISTRATIVE JUDGE

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 26, 2024

⁶⁶ "Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341." 10 C.F.R. § 2.338(i). By its terms, paragraph (a)(1) of section 2.341 generally affords the parties the opportunity to proffer any challenges to a licensing board ruling resolving a proceeding by submitting a petition seeking Commission review of that decision. Id. § 2.341(a)(1). Nonetheless, because we have approved the parties' proposed Settlement Agreement without modification and they have waived any right to challenge the validity of this order, see Proposed Settlement Agreement at 3, absent an unanticipated development, Commission consideration of our settlement approval determination will occur under its section 2.341(a)(2) sua sponte review authority. See Cammenga, LBP-23-3, 97 NRC at 76 n.27.

APPENDIX A
Proposed Settlement Agreement Between
U.S. Nuclear Regulatory Commission
And
Homestake Mining Company of California

This agreement is made by and between the Staff of the U.S. Nuclear Regulatory Commission (“NRC Staff” or “Staff”) and Homestake Mining Company of California (“Homestake” or “HMC”), to wit:

Whereas, HMC is the holder of NRC source materials license No. SUA-1471 for the Grants Reclamation Project (“GRP”) located in Grants, New Mexico;

Whereas, HMC submitted an application requesting an amendment to License Condition 10 of its license to eliminate the specification of background monitoring station HMC-16 in Table 1 and replace it with stations HMC-1OFF and HMC-6OFF as new approved locations for routine monitoring of ambient background radon and direct gamma radiation at the GRP;

Whereas, the Staff reviewed HMC’s license amendment application, as supplemented, and issued an August 15, 2023, letter denying the application;

Whereas, on September 5, 2023, HMC filed a hearing demand challenging the denial of its application;

Whereas, on September 20, 2023, at a status conference held by the Atomic Safety and Licensing Board (Board), the Staff stated that it did not oppose HMC’s hearing demand, and the Staff and HMC jointly requested deferral of a hearing to engage in settlement discussions;

Whereas, on September 25, 2023, the Board granted HMC’s hearing demand and the parties’ request to defer scheduling a hearing during settlement negotiations;

Whereas, the parties held multiple settlement conferences and reached an agreement regarding new approved background radiation monitoring station locations and data reporting methods at the point of compliance monitoring stations;

Whereas, the Parties agree that the public interest does not require adjudication of the issues resolved by the settlement agreement because the provisions of the agreement provide the Staff with reasonable assurance that the public dose calculation required under 10 C.F.R. § 20.1301(a) is reasonably accurate and therefore is consistent with the public health and safety, and there are no disputed issues to litigate. The settlement agreement is also consistent with the Commission’s policy encouraging the “fair and reasonable settlement and resolution of issues;”¹ and

Whereas, the PARTIES AGREE TO THE FOLLOWING IN SETTLEMENT:

1. Based on information provided in the LAR application and during settlement discussions, the Staff has determined that amending Table 1, as referenced in License Condition 10 of HMC source materials license No. SUA-1471 for the GRP, as follows meets the regulatory requirements of 10 C.F.R. §§ 20.1301(a)(1), 20.1302(b)(1), and 20.1501(a). The Staff will amend License Condition 10 of source materials license No. SUA-1471 upon receipt of a letter from HMC enclosing a copy of changes to Table 1 reflecting that:
1) the new background radon and gamma monitoring station locations are HMC 1-OFF, HMC-1A, and HMC-6, 2) data derived from these stations will be averaged, and 3) going

¹ 10 C.F.R. § 2.338.

forward HMC will average the data obtained from point of compliance stations HMC-4 and HMC-5 when calculating public dose;


2. HMC agrees to provide by letter to the Staff a copy of the changes to Table 1, as referenced in License Condition 10, reflecting the license amendment described in paragraph (1) within 30 days of the Board approving this settlement agreement.
3. The Staff agrees to issue the license amendment described in paragraph (1) to HMC within 30 days of receiving HMC's letter enclosing Table 1 changes described in this settlement agreement.²
4. HMC agrees to withdraw its hearing request regarding the LAR at issue in this proceeding. The hearing request withdrawal shall be effective upon the Board approval of this settlement agreement and termination of this proceeding.
5. All regulatory requirements and conditions that apply to HMC as a licensee under 10 C.F.R. Part 40 shall apply to HMC just as they would if the approval described in Paragraph (3) had been issued through the traditional licensing process.
6. Consistent with 10 C.F.R. § 2.338(h), the Parties agree that:
 - a. This proposed settlement agreement admits all jurisdictional facts;
 - b. The Parties expressly waive further procedural steps before the presiding officer, any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement, and all rights to seek judicial review or otherwise contest the validity of the consent order;
 - c. The order implementing this proposed settlement agreement has the same force and effect as an order made after full hearing; and

² See 10 C.F.R. § 2.306 (providing procedures for counting of days).

d. The matters identified in this proposed settlement agreement that were required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

7. This Settlement Agreement shall be effective upon the Board's approval. Should the Board disapprove this Settlement Agreement, it shall be null and void.

WHEREOF, the Parties have executed this agreement as of the last date written below.



Jane Marshall, Director
Division of Decommissioning, Uranium Reclamation, and Waste
Office of Nuclear Material Safety and Safeguards
Mail Stop: OWFN 14 A44
U.S. NUCLEAR REGULATORY COMMISSION
Washington, DC 20555-0001
Telephone: (301) 415-2918
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2/26/24
Date



Michael McCarthy
Director
Homestake Mining Company of California
310 South Main Street, Suite 1150
Salt Lake City, Utah 84101
Telephone: (775) 401-4409
Email: mmccarthy@barrick.com

2/26/24
Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
HOMESTAKE MINING COMPANY) Docket No. 40-8903-LA
OF CALIFORNIA)
)
(Denial of License Amendment Request))
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Approving Proposed Settlement Agreement and Terminating Proceeding) (LBP-24-05)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission
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U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
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G. Paul Bollwerk, III, Administrative Judge
Dr. Sue H. Abreu, Administrative Judge
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HOMESTAKE MINING COMPANY OF CALIFORNIA – Docket No. 40-8903-LA
MEMORANDUM AND ORDER (Approving Proposed Settlement Agreement and Terminating Proceeding) (LBP-24-05)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 26th day of March 2024