

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NUFUELS INC.,

(Crownpoint Uranium Project In-Situ
Recovery Facility)

Docket No. 40-8968-LR; NRC-2026-1882

August 21, 2026

**NRC STAFF ANSWER TO STATE OF NEW MEXICO
PETITION TO INTERVENE AND REQUEST FOR HEARING**

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INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) Staff hereby answers a petition to intervene in this proceeding, submitted on July 27, 2026, by the State of New Mexico. Pursuant to 10 C.F.R. § 2.309(h)(3)(i)(1), the Staff's answer is timely filed. New Mexico has demonstrated standing and submitted eight admissible contentions (if narrowed as described below) and five inadmissible ones. Therefore, the Board should grant the petition in part.

Petitioner's Contentions	Admissibility
EC-1: Failure to Demonstrate the Feasibility of Aquifer Restoration	Inadmissible
EC-2: Reliance on Outdated Hydrogeologic Data and Modeling	Admissible
EC-3: Failure to Analyze Climate Change and Drought	Inadmissible
EC-4: Inadequate Environmental Justice Analysis	Inadmissible
EC-5: Failure to Address the Navajo Nation's Legal Prohibitions as Changed Circumstances	Admissible if narrowed
EC-6: Outdated and Incomplete Cultural Resources Analysis	Admissible
EC-7: Inadequate Analysis of Impacts to the Crownpoint Community Water Supply	Admissible if narrowed
EC-8: Failure to Disclose and Analyze the Mandatory Pre-Operational Remediation of the Church Rock Section 17 Project Area	Admissible if narrowed
EC-9: Material Misstatement of Site Access and Failure to Disclose and Analyze the Absence of a Lawful Right-of-Way to Church Rock Section 8	Admissible if narrowed
EC-10: Inadequate Consideration of Alternatives	Inadmissible
SC-1: Inadequate Characterization of, and Monitoring Design for, the Old Church Rock Mine Workings	Inadmissible
SC-2: Unverified Integrity of Legacy/Historic Exploration Boreholes	Admissible
SC-3: Inadequate Financial Assurance	Admissible

BACKGROUND

I. Licensing History

This license renewal application (LRA) concerns NuFuels, Inc.'s plan to conduct uranium in situ recovery (ISR) operations in McKinley County, New Mexico.¹ The Crownpoint Uranium Project (Crownpoint) is planned to consist of a central processing plant in the Crownpoint section and three satellite facilities, at Church Rock Section 8, Crownpoint, and Unit 1, west of Crownpoint.

Crownpoint was initially licensed by the NRC in 1998 (NRC Source Material License SUA-1580).² Since that time, Crownpoint has been the subject of extensive litigation before the Atomic Safety and Licensing Board, the Commission, and the United States Court of Appeals for the Tenth Circuit. Much of this litigation was conducted under the licensee's former name of Hydro Resources, Inc., or HRI. The Crownpoint license was transferred from HRI to NuFuels, Inc. (NuFuels) on July 16, 2018.³ NuFuels is the current holder of NRC License SUA-1580 and the applicant for the present license renewal application.

The licensee (HRI at the time) first requested license renewal for Crownpoint in August 2002, and the NRC Staff recognized the license's timely renewal status by letter in December 2002.⁴ (Timely renewal, in this context, means that the Crownpoint license will not expire until

¹ See Crownpoint Uranium Project NRC License SUA-1580 Renewal McKinley County, New Mexico Consolidated Operations Plan, (Jan. 2025) (ADAMS Accession No. ML25022A293) (LRA), and Crownpoint Uranium Project NRC License SUA-1580 Renewal McKinley County, New Mexico Environmental Report, (Jan. 2025) (ML25022A292) (Environmental Report).

² Issuance of Source Material License SUA-[1580], for the In Situ Leach Uranium Mining Project at Crownpoint, New Mexico (Jan. 5, 1998) (ML19344D012).

³ Letter from Bill Von Till, NRC, to Marc Henderson, Laramide Resources, Ltd., "Laramide Resources, Ltd, NuFuels, Inc., ([formerly] Hydro Resources, Inc.), Crownpoint Uranium Project, Amendment No. 5, Licensee Name Change, (CAC/EPID 000092/04008968/L-2017-LLA-0108)" (July 16, 2018) (ML17216A033) (Laramide Resources, Ltd. is the parent company of NuFuels).

⁴ Letter from Mark S. Pelizza, Hydro Resources, Inc. to Daniel Gillen, NRC (Aug. 22, 2002) (ML022460195); Letter from Daniel M. Gillen, NRC, to Mark S. Pelizza, Hydro Resources, Inc. (Dec. 30, 2002) (ML023640494).

final action has been taken by NRC.)⁵ Between 2002 and 2024, the license renewal was stalled because of ongoing litigation and because the licensee gave NRC notice that it intended to revise its LRA as a result of discussions between the licensee and the Navajo Nation (Navajo).⁶ In 2024, NRC asked NuFuels to provide a revised license renewal application or to explain why it believed it was unable to submit a revised license renewal application.⁷ In January 2025, NuFuels responded by submitting a license renewal application, including an environmental report (ER).⁸

Crownpoint has been licensed, therefore, for approximately 28 years, but without beginning construction or operation. The applicant has explained this status as the result of changes in the uranium market, litigation, and the need to reach an agreement with the Navajo Nation.⁹ More recently in July 2026, the NRC received a letter from the New Mexico Environment Department (NMED) stating that it had received an application from NuFuels for a groundwater discharge permit for the Church Rock Section 8 ISR project, and that NMED estimates it would be one to three years before a decision on the permit is possible.¹⁰ In addition to the NMED permit and any other required federal, tribal, state, or local permits and approvals, license conditions for the Crownpoint NRC license restrict NuFuels's ability to construct or operate the proposed facilities until the license conditions have been satisfied.¹¹

⁵ See 10 C.F.R. § 40.42(a).

⁶ Additional chronology and links to relevant documents are available on NRC's public website at <https://www.nrc.gov/materials/uranium-recovery/license-apps/crownpoint>.

⁷ Letter from Bill Von Till, NRC, to Marc Henderson, Laramide Resources Ltd., "NuFuels, Inc. ([formerly] Hydro Resources, Inc.) Crownpoint Uranium Project, Nuclear Regulatory Commission's Request for a Revised License Renewal application for Materials License SUA-1580" (Jan. 24, 2024) (ML23289A123).

⁸ Letter from Josh Leftwich, NuFuels, Inc., to Document Control Desk Director, Office of Nuclear Material Safety and Safeguards, NRC (Jan. 22, 2025) (ML25022A289) (package).

⁹ Letter from Josh Leftwich, NuFuels, to Kevin Haye, NRC (June 30, 2025) (ML25182A330).

¹⁰ Letter from Kelsey Rader, Water Protection Deputy Division Director, New Mexico Environment Department, to NRC Office of the Secretary, (July 21, 2026) (ML26208A281) (Exhibit 1).

¹¹ SUA-1580, License conditions 9.5, 9.12-14, 10.17-29 (ML18155A199).

Thus, in general terms, renewal of the Crownpoint NRC license is a necessary, but not sufficient, condition for construction or operation of the Crownpoint facility.

II. NRC's License Renewal Review

The NRC accepted NuFuels's LRA for technical review on February 26, 2026.¹² As with other ISR license renewal applications, the Staff will conduct a detailed technical review of NuFuels's application, including both a safety review and an environmental review. The Staff will conduct its safety review to determine whether the LRA meets all applicable NRC requirements, and, in particular, the Staff will assess whether the application meets the requirements in Appendix A of Part 40 to 10 C.F.R., "Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content."

The Staff will conduct its environmental review in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the NRC's NEPA implementing regulations at 10 C.F.R. Part 51. The key Part 51 regulations for this proceeding are 10 C.F.R. § 51.60, which requires an applicant such as NuFuels to submit an ER, and 10 C.F.R. § 51.45, which describes what the ER must contain. 10 C.F.R. § 51.60 further describes what must be submitted for a license renewal ER:

If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities.¹³

¹² Email from Jim Smith, NRC, to Josh Leftwich, NuFuels, re: Acceptance of Crownpoint (NuFuels) License Renewal Application for Technical Review (ML26058A001).

¹³ 10 C.F.R. § 51.60(a).

In other words, a license renewal ER (for a license for which the applicant has previously submitted an ER) may build upon previously submitted information. In this case, NuFuels's predecessor, HRI, submitted an ER associated with its initial license application, and the Staff prepared a Final Environmental Impact Statement (FEIS) in 1997.¹⁴ The staff plans to prepare an environmental assessment (EA) of the Crownpoint LRA, as it has for other ISR license renewal applications, and the staff will refer to the 1997 FEIS as appropriate in the EA.

The NRC regulations in 10 C.F.R. Part 51 are written at a high level, without detailing every environmental effect which should be included in the applicant's ER. The NRC has provided more detailed discussion of which environmental effects should be included in an ER in a public guidance document titled NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."¹⁵ NUREG-1748 is guidance and does not create binding legal requirements, but its provisions can help applicants seeking to complete their ERs and are used by Staff who review such ERs.¹⁶ In addition, the Staff uses NUREG-1910, the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, as the starting point for NRC's NEPA analyses on license renewals for existing ISR licenses.¹⁷

As part of its review of NuFuels's application, the Staff has issued (and may continue to issue) Requests for Additional Information (RAIs) and Requests for Supplemental Information. An RAI is a mechanism that the Staff utilizes for obtaining additional information needed to make a regulatory decision as to whether a license should be granted, renewed, modified, or

¹⁴ "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico" (Feb. 1997) (ML082170248) (NUREG-1508) (1997 FEIS).

¹⁵ "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (Final Report) (Aug. 2003) (ML15128A762) (NUREG-1748).

¹⁶ *Id.* at 1-1.

¹⁷ "Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities" (Final Report) NUREG-1910, vol. 1, (June 2009), at 1-26, (ML15093A359) (ISR GEIS).

denied.¹⁸ An RAI is not a regulatory decision and does not impose, suspend, or modify regulatory requirements.¹⁹ Thus, the issuance of RAIs during the Crownpoint review means that the Staff has determined that additional information on the LRA is needed, but should not be interpreted to mean that the NRC will or will not ultimately approve the Crownpoint LRA. As stated in Commission caselaw, “[t]he NRC’s issuance of RAIs does not alone establish deficiencies in the application, or that the Staff will go on to find any of the applicant’s clarifications, justifications, or other responses to be unsatisfactory.”²⁰ NuFuels is currently subject to license conditions set out in SUA-1580, and, as appropriate, the staff will propose new or revised license conditions to ensure that NuFuels’s operations adequately protect health and safety and the environment.

III. Procedural History of New Mexico’s Petition

On May 27, 2026, the Staff issued a notice of opportunity to request a hearing and to petition for leave to intervene in this proceeding in the *Federal Register*.²¹ On June 29, 2026, New Mexico requested an extension of this deadline, which was denied by the Secretary of the Commission on July 9, 2026.²² On July 27, 2026, New Mexico timely filed the petition to intervene to which this answer responds.²³ The petition is supported by three exhibits: a letter from the New Mexico Environment Department (NMED) to NRC (Exhibit 1);²⁴ a declaration by

¹⁸ See 10 C.F.R. § 2.102(a).

¹⁹ *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999).

²⁰ *Oconee*, CLI-99-11, 49 NRC at 336.

²¹ Notice of Opportunity for Hearing, Crownpoint Inc., 91 Fed. Reg. 31,476 (May 27, 2026).

²² Order of the Secretary, (July 9, 2026) (denying New Mexico’s request for a filing deadline extension) (ML26190A010).

²³ State of New Mexico Petition to Intervene and Request for Hearing (July 27, 2026) (ML26208A281) (Petition).

²⁴ Petitioner’s Exhibit 1, “Letter from Kelsey Rader, Water Protection Deputy Division Director, New Mexico Environment Department, to NRC Office of the Secretary” (July 21, 2026) (ML26208A282) (Exhibit 1).

Dr. Richard J. Abitz, PhD (Exhibit 2);²⁵ and a copy of a Temporary Access Agreement between Hydro Resources, Inc. and the Navajo Nation (Exhibit 3).²⁶ On August 3, 2026, a Licensing Board was established to rule on standing and admissibility of the petitioner's contentions and, if necessary, to preside at any hearing on New Mexico's hearing request.²⁷

DISCUSSION

IV. Standing to Intervene

A. Applicable Legal Requirements

In accordance with the Atomic Energy Act of 1954, as amended, (AEA), "the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding."²⁸ Under the regulations at 10 C.F.R. § 2.309(a), the Board designated to rule on a petition for leave to intervene "will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section [10 C.F.R. § 2.309(f)]."²⁹ Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

²⁵ Petitioner's Exhibit 2, "Declaration of Dr. Richard J. Abitz, PhD" (July 27, 2026) (ML26208A283) (Exhibit 2).

²⁶ Petitioner's Exhibit 3 "Navajo Nation – Hydro Resources, Inc., Temporary Access Agreement," (July 19, 2012) (ML26208A281) (Exhibit 3).

²⁷ Establishment of Atomic Safety and Licensing Board (Aug. 3, 2026).

²⁸ Atomic Energy Act of 1954, as amended, § 189a(1)(A), 42 U.S.C. § 2239(a)(1)(A).

²⁹ 10 C.F.R. § 2.309(a).

- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Commission applies contemporaneous judicial concepts of standing to evaluate whether the petitioner has demonstrated the requisite interest in the proceeding.¹⁷ To this end, “a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision.”¹⁸ The injury claimed by the petitioner must be actual or threatened and both concrete and particularized.³⁰ Further, the injury alleged must be “to an interest arguably within the zone of interests protected by the governing statute”—here, the AEA, the National Environmental Policy Act (NEPA), or the National Historic Preservation Act (NHPA).³¹ The petitioner has the burden to demonstrate it meets standing requirements,³² but a Board will construe the petition in favor of the petitioner when assessing standing.³³ When a State seeks to participate as a party in a proceeding, it must “submit a request for hearing or a petition to intervene containing at least one admissible contention, and must designate a single representative for the hearing.”³⁴

B. New Mexico Has Standing

New Mexico has demonstrated standing under 10 C.F.R. § 2.309(d)(1). Specifically, New Mexico asserts that it has an interest in, and sovereign responsibility for, “the health, safety, and environmental welfare of its citizens, including the approximately 2,900 residents of the town of

³⁰ *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 250 (2001); see also *Sequoyah Fuels Corp.* (Gore, OK site), CLI-94-12, 40 NRC 64, 72 (1994) (stating “standing has been denied when the threat of injury is too speculative”).

³¹ *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (internal quotations omitted)).

³² *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010).

³³ *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

³⁴ 10 C.F.R. § 2.309(h)(1).

Crownpoint (ER § 3.1.2 at 60), the residents of the Church Rock and Pinedale communities, and the population of McKinley County.”³⁵ New Mexico states that its interests could be adversely affected if the Commission renews Crownpoint’s license and the licensee begins operations, stating that:

[t]he proposed action would inject oxygen- and bicarbonate-fortified groundwater into, and extract uranium from, the Westwater Canyon aquifer — the same aquifer from which the Crownpoint community water system draws its supply [...] over a license term of twenty years. The reasonably foreseeable risks the application itself identifies and attempts to mitigate (excursions, drawdown of up to 24 m [80 ft] at municipal well NTUA-1, spills, transport accidents, and the acknowledged possibility that restoration will not achieve baseline standards, and the risk of uranium contamination of the water supply wells during restoration activities [...]) are threats to interests at the core of the State’s sovereign responsibilities and fall squarely within the zone of interests of both the Atomic Energy Act and NEPA.³⁶

New Mexico has adequately articulated how the proposed action could cause harm to its interests, which are within the zone of interests in this proceeding, and has thereby satisfied the requirements of 10 C.F.R. § 2.309(d). Accordingly, New Mexico has standing to intervene in this proceeding.³⁷ New Mexico has also designated a single representative in accordance with 10 C.F.R. § 2.309(h)(1).³⁸

Because New Mexico has demonstrated standing under 10 C.F.R. § 2.309(d), the Staff does not address New Mexico’s alternative requests for intervention under 10 C.F.R. § 2.309(e) and 10 C.F.R. § 2.315(c).

³⁵ Petition at 8.

³⁶ *Id.*

³⁷ See *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, 47 NRC 142, 169 (1998), *aff’d* on other grounds, CLI-98-13, 48 NRC 26 (1998) (finding that the State of Utah had standing based on its asserted health, safety, and environmental interests); see also *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, NE), CLI-09-9, 69 NRC 331, 336-41 (2009).

³⁸ Petition at 6.

V. Admissibility of Contentions

A. Legal Requirements for Contentions

The Commission's standards for contention admissibility in a proceeding such as this, set forth in 10 C.F.R. § 2.309(f)(1), go beyond "[m]ere notice pleading"³⁹ and are "strict by design."⁴⁰ Strict contention admissibility standards are intended to "focus litigation on concrete issues and result in a clearer and more focused record for decision."⁴¹ The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing" as indicated by a proffered contention that satisfies all of the 10 C.F.R. § 2.309(f)(1) requirements.⁴² A contention that does not satisfy these requirements will be rejected.⁴³ Specifically, an admissible contention must:

- (i) provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the

³⁹ *AmerGen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (quoting *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005)).

⁴⁰ *Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), petition for reconsideration denied, CLI-02-01, 55 NRC 1 (2002).

⁴¹ Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

⁴² *Id.*

⁴³ See *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 436-37 (2006).

petitioner's position and upon which the petitioner intends to rely at hearing; and

- (vi) provide information sufficient to show that a genuine dispute with the applicant/licensee exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case of an application that is asserted to be deficient, the identification of such deficiencies and supporting reasons for this belief.⁴⁴

The failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for the dismissal of a contention.⁴⁵ Contentions are sometimes categorized as contentions of omission or contentions of adequacy. A contention of omission “may be summarily rejected as inadmissible if (1) there is no requirement to address the topic allegedly omitted from the application, or (2) the topic that allegedly is omitted is, in fact, included in the application.”⁴⁶

B. New Mexico’s Contentions

The Petitioner presents ten environmental contentions and three safety contentions, labeled “EC” and “SC” and numbered. The Board should admit Contentions EC-2, EC-5, EC-6, EC-7, EC-8, EC-9, SC-2, and SC-3, with certain modifications as described below, and reject EC-1, EC-3, EC-4, EC-10, and SC-1 as inadmissible.

Many legal and technical issues associated with the Crownpoint project have been previously litigated before the Atomic Safety and Licensing Board and the Commission.⁴⁷

⁴⁴ 10 C.F.R. § 2.309(f)(1).

⁴⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

⁴⁶ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 & 7), LBP-11-6, 73 NRC 149, 234 (2011) (citing *USEC, Inc.* CLI-06-10, 63 NRC at 456).

⁴⁷ See, e.g., *Hydro Resources, Inc.*, (Rio Rancho, NM), CLI-04-33, 60 NRC 581 (2004); CLI-04-39, 60 NRC 657 (2004); CLI-06-29, 64 NRC 417 (2006). See also *Hydro Resources, Inc. v. EPA*, 198 F.3d 1224 (10th Cir. 2000).

Already in 2001, the Commission was describing the proceeding as complex, with a large number of technical issues, an unusual procedural history, and a voluminous case record.⁴⁸

In several rulings in the proceeding associated with the initial licensing of Crownpoint, the Commission or the Board rejected claims made by parties on the grounds that the law of the case doctrine militated in favor of adhering to the factual and legal conclusions arrived at by the Commission in prior decisions in that proceeding.⁴⁹ The law of the case doctrine (briefly, the doctrine that legal determinations made on appeal control later decisions in the same case) does not apply here because this proceeding concerns Crownpoint's license renewal and not the initial licensing.⁵⁰

For independent reasons, however, this Board can and should take account of the determinations made by the Commission and past Boards in the Crownpoint initial licensing proceeding. First, on the environmental contentions, environmental reviews for license renewal need not begin *de novo*. When a license has been previously issued after a full NRC licensing review, much of the environmental and technical information, analyses, and determinations made as part of the initial licensing review will also be relevant to the license renewal review. Therefore, NRC regulations and guidance allow applicants to incorporate information, analyses, and determinations made as part of the initial license review.⁵¹ In particular, the regulation at 10 C.F.R. § 51.60(a) limits the scope of the environmental information that must be submitted for a

⁴⁸ *Hydro Resources, Inc.* (Rio Rancho, NM), CLI-01-04, 53 NRC 31, 34, 39 (2001).

⁴⁹ See, e.g., *Hydro Resources, Inc.* (Crownpoint, NM), LBP-05-7, 62 NRC 77, 87 (2005); *Hydro Resources, Inc.* (Crownpoint, NM), LBP-05-26, 62 NRC 442, 457 (2005); *Hydro Resources, Inc.* (Crownpoint, NM), CLI-06-11, 63 NRC 483, 488–89 (2006).

⁵⁰ See *Ohio Edison Corp.* (Perry Nuclear Power Plant, Unit 1), LBP-92-32, 36 NRC 269, 284 (finding that law of the case doctrine did not apply to preclude litigation in a license amendment proceeding of issues raised in initial licensing, even with identical docket numbers).

⁵¹ 10 C.F.R. § 51.60(a); NUREG-1748 at 1-11 (ML15128A762); "Standard Review Plan for In Situ Leach Uranium Extraction License Applications" (Final Report), NUREG-1569 (June 2003) at A-1 (ML032250177) (NUREG-1569).

license renewal. For a license renewal for a license for which the applicant has previously submitted an ER, “the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities.”⁵²

Because this regulation permits a license-renewal ER to incorporate environmental information the applicant previously submitted, that information is properly part of the current LRA. Where that incorporated information was previously tested in an adjudicatory proceeding and found adequate, a contention challenging environmental information must show what has changed since the prior adjudication in order to show a genuine dispute with the applicant under 10 C.F.R. § 2.309(f)(1)(vi).⁵³ The incorporation by reference mechanism in 10 C.F.R. § 51.60(a) would lack meaning if petitioners could compel reanalysis of previously adjudicated environmental issues in subsequent proceedings related to the same license, without identifying a significant environmental change or distinguishing the prior adjudication.

For safety contentions, there is no regulatory provision under 10 C.F.R. Part 40 limiting the scope of license renewal review to matters not previously resolved during initial licensing.⁵⁴ However, prior adjudicated findings on the same Part 40 license carry strong persuasive weight in a Part 40 license renewal proceeding for two reasons. First, where the Commission has, on a

⁵² 10 C.F.R. § 51.60(a). Although NuFuels terms its ER an “environmental report” rather than “supplement to environmental report,” the NRC Staff does not view the title of the document as legally significant.

⁵³ *Hydro Resources, Inc.* (Crownpoint, NM), CLI-06-29, 64 NRC 417, 419 (2006) (stating that “not all new information that might emerge following issuance of an environmental impact statement requires a supplement to the impacts analysis. The new information must present a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.”) (internal quotation marks omitted).

⁵⁴ By contrast, 10 C.F.R. Part 54 and specifically the regulation at 10 C.F.R. § 54.30 creates distinct standards for nuclear power plant operating license renewals.

full evidentiary record developed in an adversarial proceeding, reached a determination on a specific issue, that considered technical and factual determination bears directly on whether a later contention on the same issue for the same license and same facility raises a genuine dispute in accordance with 10 C.F.R. § 2.309(f)(1)(vi). Second, where a federal agency, including an agency adjudicatory board, departs from a considered and documented prior position, that agency should have a reasoned basis for the departure.⁵⁵ A contention that reasserts a theory the Commission has already tested and rejected, without identifying any change in the relevant law, design, operations, or environment since that finding was made, does not supply the basis for such a departure and does not, without more, demonstrate the "genuine dispute" that 10 C.F.R. § 2.309(f)(1)(vi) requires. Taking note of the licensing history, New Mexico states that "[t]he State does not seek to relitigate any issue the prior adjudication resolved," and claims that its "contentions rest on information no prior decisionmaker possessed."⁵⁶ However, the existence of new information by itself is insufficient to support an admissible contention.⁵⁷ It is a petitioner's burden to supply "some reasonably specific factual or legal basis" for its contention.⁵⁸ If that basis is new information, the petitioner must explain, for each contention, why the new information matters and why it shows a genuine dispute with the applicant on a material issue of law or fact.⁵⁹ It is necessary, therefore, to examine the basis for each of New Mexico's contentions and to determine what issues have been previously resolved;

⁵⁵ See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (agency "changing its course" in an adjudicatory license proceeding "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored"), cert. denied, 403 U.S. 923 (1971).

⁵⁶ Petition at 4.

⁵⁷ *Blue Ridge Environmental Defense League v. Nuclear Regulatory Commission*, 716 F.3d 183, 196 (D.C. Cir. 2013).

⁵⁸ *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504-06 (2015) (quoting *Dominion Nuclear Connecticut* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003)).

⁵⁹ 10 C.F.R. § 2.309(f)(1)(vi).

what new information may support each contention; and whether the petitioner has sufficiently explained the relevance of the new information or distinguished the prior adjudication.

EC-1 Failure to Demonstrate the Feasibility of Aquifer Restoration

Summary

Contention EC-1 is inadmissible because it fails to demonstrate a genuine dispute with the applicant, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Discussion

Contention EC-1 states that the ER fails to demonstrate that groundwater in the Westwater Canyon aquifer production zones can be restored to the primary restoration standards of 10 C.F.R. Part 40, Appendix A, Criterion 5B(5), fails to analyze the environmental impacts that will result if restoration achieves only the ER's fallback secondary standards, and rests its groundwater impact conclusions on a 2009 NRC Staff data compilation that does not reflect seventeen years of subsequent commercial ISR restoration experience.⁶⁰

This contention essentially makes a dual claim: that the ER assumes that restoration of groundwater to primary restoration standards is feasible, and that the ER fails to analyze the impact of restoration to secondary standards and fails to account for post-2009 ISR restoration experience.⁶¹ However, contrary to the contention's first premise, the ER does not assume that primary restoration is feasible. Indeed, the uncertainty acknowledged in the ER about whether groundwater can be restored to primary restoration standards is not a new uncertainty, nor is it in dispute. The regulations at 10 C.F.R Part 40, Appendix A, Criteria 5B(5) and 5B(6) explicitly contemplate the use of alternate concentration limits. And various license conditions in the existing Crownpoint license address the need for data to establish restoration goals and steps

⁶⁰ Petition at 12.

⁶¹ See Petition at 12.

to demonstrate compliance with these regulations.⁶² The issue of possible primary restoration failure and use of secondary restoration standards was previously litigated in LBP-99-30.⁶³

In the current ER and consistent with the initial Crownpoint licensing proceeding, the applicant explicitly acknowledges the possibility that it may use a secondary groundwater restoration goal.

Groundwater will be restored consistent with the groundwater protection standards contained in Criterion 5(B)(5) on a constituent-by-constituent basis using BPT. If the restoration activities are unable to achieve the background or MCL, whichever is greater, the secondary goal will be to return water quality to the maximum concentration limits as specified in Section 20.6.2.3103 NMAC or 40 CFR § 141.62 or 143.3.⁶⁴

Thus, contrary to the first premise of EC-1, the application's conclusion about environmental impacts does not rest on a guarantee that restoration of groundwater to primary standards will be possible.

Contention EC-1's second premise, that the ER does not analyze the impacts of restoration to secondary standards, likewise rests on a misreading of the application. The applicant explicitly acknowledges the possibility of invoking secondary restoration standards and determines the impact to groundwater quality to be small.⁶⁵

The contention states that the applicant's impact conclusion does not reflect post-2009 commercial ISR experience and that the post-2009 "restoration record" of the commercial ISR

⁶² Specifically, License condition 10.21 requires groundwater quality data before lixiviant injection to establish groundwater restoration goals. License condition 10.22 requires pre-injection data to establish upper control limits for monitored aquifers and license condition 10.28 requires a groundwater restoration demonstration at Church Rock Section 8, at a scale acceptable to NRC, before lixiviant injection at Church Rock Section 17, Unit 1, or Crownpoint. License condition 10.29 then requires an NRC-approved project-wide groundwater restoration plan before uranium extraction beyond the first Church Rock wellfield. SUA-1580 at 7, 9 (ML18155A199).

⁶³ *Hydro Resources, Inc.* (Albuquerque, NM), LBP-99-30, 50 NRC 77, 99-106, *aff'd*, CLI-00-12; *see also* LBP-05-7, 62 NRC at 95-96. The issue of ore-zone sampling was also discussed in LBP-05-7, 62 NRC at 95-7.

⁶⁴ ER at 2.1.3.5.1.

⁶⁵ ER at 4.4.2.1.1.2.1.

industry is "new and significant information bearing directly on the feasibility the ER assumes."⁶⁶

However, to be admissible, Contention EC-1 must not merely state that post-2009 information on ISR exists, it must explain the significance of that information and why it creates a genuine dispute with the analysis and conclusions in the ER. Likewise, the issuance of NRC RAIs related to this topic does not, by itself, establish a material deficiency in the ER or substitute for the Petitioner's obligation to identify a specific and material dispute with the applicant.⁶⁷

Furthermore, while New Mexico relies on discussion in the Abitz declaration (Exhibit 2) as support for EC-1, the contents of the declaration similarly fail to demonstrate why post-2009 ISR information creates a genuine dispute with the applicant. The Abitz declaration discusses contention EC-1 at paragraphs 7-24, but only paragraphs 13-18 and 22 contain references to post-2009 data. These paragraphs make the following claims.

- Hall 2009: Discusses U.S. Geological Survey data on Texas uranium ISR sites. Concludes that "in Texas, [a]fter mining and restoration, for those well fields that reported "final values" in TCEQ [Texas Commission on Environmental Quality] records, more than half of the PAAs [production authorization areas] had lowered levels of many elements, including some that dropped below MCL [maximum contaminant level]. Of those elements for which MCL is established, the majority of PAAs showed increases in uranium and selenium after mining and restoration and decreases in arsenic, cadmium, fluoride, lead, mercury, nitrate, and radium to below baseline for the majority of well fields."⁶⁸
- Smith Ranch-Highland Uranium project: Operator requested alternate groundwater restoration schedule and applied for alternate concentration limits.⁶⁹
- Willow Creek Christensen Ranch mine units: NRC denied restoration completeness.⁷⁰
- The uranium plume at the Department of Energy Fernald site has required monitoring and treatment for over 30 years.⁷¹

⁶⁶ Petition at 13, 12.

⁶⁷ See *Oconee*, CLI-99-11, 49 NRC at 335 (discussing an intervenor's responsibility to describe contentions with reasonable specificity or identify a genuine material dispute).

⁶⁸ Exhibit 2 at 6-7.

⁶⁹ *Id.* at 7.

⁷⁰ *Id.*

⁷¹ *Id.* at 10.

- In 2023, NuFuels entered a joint agreement with Los Alamos National Laboratory to perform lixiviant leaching tests, with unclear results.⁷²

The Abitz declaration states that “The record for these sites after 2009...demonstrates that the restoration difficulties the NRC documented in 2009 were not subsequently overcome, and that the ER’s reliance on the 2009 compilation understates rather than overstates the restoration record as it now stands.”⁷³

However, New Mexico does not articulate how this post-2009 data pertains to the Crownpoint site or why these examples would show that production zones at Crownpoint would behave in the same manner. While this data could be viewed as support for the general claim that restoring groundwater to primary restoration standards can be difficult, the ER already acknowledges that restoring to primary restoration standards may not succeed and describes possible secondary restoration goals. Absent either a specific challenge to the current sampling and methodology described in the ER and (in part) required by license conditions or an explanation of why adding this post-2009 data to the ER would make a material difference, Contention EC-1 is inadmissible because it fails to show a material dispute with the applicant in accordance with 10 C.F.R. § 2.309(f)(1)(vi).

EC-2 Reliance on Outdated Hydrogeologic Data and Modeling

Summary

The Staff does not oppose admission of Contention EC-2.

EC-3 Failure to Analyze Climate Change and Drought

Summary

⁷² *Id.* at 8; *see also* Petition at 14.

⁷³ Exhibit 2 at 8.

Contention EC-3 claims that the ER violates 10 C.F.R. § 51.45(b) and (c) and § 51.60(a) because it contains no analysis of climate change or drought.⁷⁴ This contention is inadmissible under 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

Discussion

The contention states that the ER “contains no occurrence of the terms ‘climate change’ or ‘drought,’” that the meteorology and climatology discussion in the ER “characterizes the regional climate using station records ending in 2010-11 and contains no discussion of observed or projected change,” and that the water resources impact analysis does not consider climate-driven changes.⁷⁵

These statements are only partially correct and do not articulate a genuine dispute with the ER on a material issue. The ER does not use the specific terms “climate change” or “drought,” and does not specifically discuss how temperature might change in the future. However, the claim that the ER’s characterization of the regional climate uses records ending in 2010-11 is inaccurate. Although the ER cites the 1997 FEIS, it also presents more recent data related to the regional climate, such as regional annual and monthly temperature statistics from 1981 to 2024 (ER Table 3.6-1),⁷⁶ regional annual and monthly average precipitation until 2024 (ER Table 3.6-2)⁷⁷ and wind and tornado data until 2024 (ER at 3.6.1.3, and Table 3.6-1).⁷⁸ Of particular note, the ER states that “meteorology and climatology in the region of the CUP [Crownpoint Uranium Project] *have not changed* since the publication of the CUP FEIS in 1997.”⁷⁹ New Mexico also cites no requirement that an ER must contain an analysis presented

⁷⁴ Petition at 18.

⁷⁵ *Id.*

⁷⁶ ER at 152.

⁷⁷ *Id.* at 153.

⁷⁸ *Id.* at 149, 152.

⁷⁹ *Id.* at 3.6.1. (emphasis added).

explicitly in terms of climate change.⁸⁰ Thus, while New Mexico asserts an omission based on the absence of specific words in the application, it fails to directly controvert the ER's overarching assertion on climate and the associated regional climate data, and it thus does not articulate a genuine dispute with the application, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

For similar reasons, New Mexico's asserted dispute in Contention EC-3 is not supported by facts or expert opinion, as required by 10 C.F.R. § 2.309(f)(1)(v). The Abitz declaration's only apparent reference to climate change is the statement that "[e]xtreme drought and aridification conditions remain in the southwest (Overpeck and Udall, 2020) and aquifer data presented in the CUP FEIS, and referenced in the ER, do not reflect present conditions in the aquifer."⁸¹ Even assuming this statement to be an accurate critique of a portion of the earlier 1997 FEIS data, New Mexico does not explain how this reference to hydrogeologic data relates to climate change, nor how it contradicts the temperature and precipitation data presented in the ER extending through 2024. Likewise, while New Mexico refers to the Fifth National Climate Assessment (published in 2023), it does not explain in what way that assessment would contradict the current region-specific data and conclusions in the ER.⁸² Therefore, the Board should dismiss Contention EC-3 because it lacks support and materiality.

EC-4 Inadequate Environmental Justice Analysis

Summary

⁸⁰ NRC guidance in NUREG-1748, Section 6.3.6, states in part that an ER should describe the general climate of the region, discuss severe weather phenomena experienced in the region, and provide monthly and annual air temperature and dewpoint temperature summaries and monthly and annual summaries of precipitation (NUREG-1748 at 6-12 to 6-13.) However, the NUREG does not state that an ER should present an explicit climate change analysis and, as noted above, Section 3.6.1 of the ER includes a discussion of meteorology and climatology.

⁸¹ Exhibit 2 at 27.

⁸² Petition at 18.

Contention EC-4 claims that the ER's environmental justice analysis is inadequate. This contention is inadmissible because it fails to demonstrate a genuine dispute with the applicant on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).

Discussion

This contention fails to demonstrate a genuine dispute with the applicant because it does not explain why the environmental justice data and analysis presented in the ER is inadequate and because it fails to consider NRC's current NEPA policy.

Contention EC-4 claims that the ER "performs no environmental justice impact analysis at all, instead repeating verbatim the mitigation recommendations from the 1997 FEIS."⁸³ The contention further claims that the ER concedes that communities near the Crownpoint project areas are disproportionately low-income people of color, but does not conduct an adequate environmental justice analysis,⁸⁴ and suggests that the applicant should have "integrate[d] the community's dependence on the Westwater Canyon aquifer for drinking water, the legacy uranium contamination burden [...] or the current demographic data" and do a "current-conditions impact analysis."⁸⁵ New Mexico states that further analysis is required by 10 C.F.R. §§ 51.45(b), (c), and 51.60(a). New Mexico does not reference an expert opinion in support of this contention.

This contention fails to acknowledge the existing analysis of current environmental justice conditions in the applicant's ER or to articulate a direct dispute with it. Table 1.1-1 summarizes data on environmental and socioeconomic indicators dating from 2024, and the ER goes on to state that "[t]he overall socioeconomic environment of the area has not changed

⁸³ *Id.* at 19.

⁸⁴ *Id.* at 20.

⁸⁵ *Id.* at 19.

appreciably.”⁸⁶ The ER’s overall finding that “because the population near the CUP is made up almost entirely of Navajo, many of them living in poverty, any significant adverse impact resulting from the project will be an environmental justice impact”⁸⁷ has not changed since the 1997 FEIS. Because the incorporation by reference mechanism explicitly permitted by 10 C.F.R. § 51.60(a) allows applicants to incorporate information from a previous environmental analysis, New Mexico’s statement that the ER “performs no environmental justice analysis at all” is incorrect. The ER incorporated environmental justice information from the 1997 FEIS and stated that the current socioeconomic environment “has not changed appreciably.” The petition does not contradict this statement. If the current socioeconomic environment has not changed, then it is unclear (and New Mexico does not explain) why the applicant’s environmental justice analysis would reach a different conclusion. New Mexico also has not addressed or distinguished the Commission’s prior decision that addressed the issue of environmental justice analysis for this site, upholding a Board decision finding that the FEIS’s environmental justice analysis was adequate.⁸⁸

In addition, although the regulations at 10 C.F.R. §§ 51.45(b)-(c) and 51.60(a) require applicants to consider the environmental effects of the proposed action, there is no specific regulatory obligation to conduct an environmental justice analysis using that particular term. NRC’s past policy was to voluntarily consider environmental justice impacts as part of its environmental reviews and to recommend that applicants do so as well as part of their

⁸⁶ ER at 3.11.

⁸⁷ *Id.*

⁸⁸ See *Hydro Resources, Inc.* (Albuquerque, NM), LBP-99-30, 50 NRC 77, 121-24, aff’d CLI-01-04, 53 NRC at 64-71; *Hydro Resources, Inc.* (Rio Rancho, NM), CLI-04-39, 60 NRC 657, 660-61 (2004). Although this litigation concerned the 1997 FEIS and not the current ER, Contention EC-4 specifically challenges the current ER’s incorporation of the 1997 FEIS.

environmental reports.⁸⁹ The NRC created this policy in response to Exec. Order No. 12898, 59 Fed. Reg. 7629 (1994).⁹⁰ However, in January 2025, Exec. Order No. 14173, 90 Fed. Reg. 8339 (2025), rescinded Exec. Order No. 12898, and NRC accordingly withdrew its prior environmental justice policy statement.⁹¹ The NRC will continue to ensure that it fully meets its obligations under NEPA, but no specific analysis labeled “environmental justice” is required.

Because Contention EC-4 fails to account for NRC’s current NEPA policy and fails to demonstrate a genuine dispute with the data and conclusion contained in the ER, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(vi).

EC-5 Failure to Address the Navajo Nation’s Legal Prohibitions as Changed

Circumstances

Summary

The Staff does not oppose the admission of this contention. However, the Board should narrowly construe Contention EC-5 to be consistent with the scope of NRC’s regulatory authority.

Discussion

Contention EC-5 claims that the ER and Consolidated Operations Plan (COP) for Crownpoint omit reference to certain Navajo laws⁹² and fail to discuss the implications of those

⁸⁹ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,041 (Aug. 24, 2004).

⁹⁰ This executive order did not create new rights or remedies, but rather clarified existing NEPA provisions. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-5, 47 NRC 113, 115 fn. 2 (1998).

⁹¹ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions; Environmental Justice Strategy, 90 Fed. Reg. 17,887 (April 30, 2025).

⁹² Specifically, the contention lists the Diné Natural Resources Protection Act of 2005, 18 N.N.C. §§ 1301-1303; the Navajo Nation’s Radioactive and Related Substances, Equipment, Vehicles, Persons and Materials Transportation Act of 2012, CAU-37-24; and Navajo Nation Executive Order 04-2023.

laws for “transportation of loaded resin, yellowcake, and wastes; for land use and access assumptions involving tribal routes; for the socioeconomic and environmental justice analyses; and for the practical feasibility and schedule of the proposed action, in violation of 10 C.F.R. §§ 51.45(b) and (e), 51.60(a), and 40.9.”⁹³ Contention EC-5 further clarifies that it “does not ask the Commission to adjudicate the validity or preemptive effect of Navajo law [...] [r]ather, the contention asks that the ER disclose the existence of these enactments, analyze their consequences for the routes, schedules, and activities the ER assumes, and analyze feasible alternatives or mitigation.”⁹⁴

The Commission’s decision in CLI-98-16, which concerned the initial issuance of the Crownpoint license, is relevant here.⁹⁵ The Commission overruled a Board decision to admit a contention concerning “failure to obtain proper permits from the Navajo nation,” reasoning that “[w]hether non-NRC permits are required is the responsibility of bodies that issue such permits, such as the Federal Environmental Protection Agency, the Navajo nation, or state and local authorities. To find otherwise would result in duplicate regulation as both the NRC and the permitting authority would be resolving the same question. [...] Such a regulatory scheme runs the risk of Commission interference or oversight in areas outside its domain.”⁹⁶ Therefore, the Commission found, the Board should narrowly construe admitted contentions to avoid “the litigation of issues that are the primary responsibility of other agencies.”⁹⁷

While CLI-98-16 focused on required *permits*, and Contention EC-5 concerns potential legal *prohibitions*, the same reasoning supports a conclusion that the Board should narrowly construe Contention EC-5 to avoid litigation of legal issues that are the primary responsibility of

⁹³ Petition at 20-21.

⁹⁴ *Id.* at 21.

⁹⁵ *Hydro Resources, Inc.* (Albuquerque, NM), CLI-98-16, 48 NRC 119 (1998).

⁹⁶ *Id.* at 121.

⁹⁷ *Id.* at 122.

the Navajo. Questions of Tribal jurisdiction, the borders of Navajo Indian Country, and enforcement of Tribal law are outside the scope of this proceeding (and, in turn, of this contention).

These legal considerations also limit the permissible scope of the contention, because they preclude New Mexico from seeking to more generally dispute the “practical feasibility” of operations at Crownpoint. In the earlier Crownpoint litigation, in CLI-06-29, the Commission rejected a claim that the NRC was required to supplement the FEIS to address a change in Navajo law. In that case, the Commission noted that the intervenors had not specifically identified potential effects of the Tribal law on the FEIS and that “it is beyond the NRC’s authority or the scope of this proceeding to resolve jurisdictional questions that ultimately may determine whether HRI is able to proceed with the uranium mining project.”⁹⁸ An analysis of the effects of Navajo law on the *feasibility* of an NRC-licensed project, therefore, is beyond the scope of this proceeding. There are a variety of reasons why an NRC-licensed project may not immediately (or, potentially, ever) be able to operate, including technological limitations, economic considerations, non-NRC litigation, or the need for permits from other federal agencies, states, or tribes; such potential hurdles do not necessarily prevent NRC from issuing its license. License applicants are required under 10 C.F.R. § 51.45(d) to list the status of compliance with certain non-NRC requirements as an information-gathering mechanism and not because the existence of other requirements precludes the NRC from determining that an application otherwise complies with NRC’s safety, security, and environmental requirements.

Therefore, the Board should construe Contention EC-5 to exclude consideration of the Crownpoint project’s feasibility, Tribal jurisdiction, or the interpretation of Navajo law. The Board should narrowly construe Contention EC-5 as limited to the ER’s omission of discussion of how

⁹⁸ *Hydro Resources, Inc.* (Crownpoint, NM), CLI-06-29, 64 NRC 417, 419-20 (2006) (citations omitted).

reasonably foreseeable Navajo legal prohibitions might affect the proposed transportation, land use and access assumptions, and schedule of activities at Crownpoint.

EC-6 Outdated and Incomplete Cultural Resources Analysis

Summary

The Staff does not oppose admission of Contention EC-6.

Discussion

Contention EC-6 claims that the ER's "historical and cultural resources analysis rests on archaeological surveys conducted in 1996 and 1998 and a Traditional Cultural Places inventory approximately thirty years old that was limited to local Navajo traditionalists despite acknowledged cultural ties of the Zuni and Hopi" and that the applicant's responses to NRC requests for supplemental information did not cure this defect, in violation of 10 C.F.R.

§§ 51.45(b), 51.60(a) and 40.9.⁹⁹

This contention distinguishes between NEPA and NHPA claims related to cultural resources, an issue recently examined in LBP-25-3.¹⁰⁰ Contention EC-6 asserts a solely NEPA-based deficiency; it does not plead "a freestanding NHPA violation," because a contention that claims a violation of NHPA's Section 106 consultation requirement may be brought only after the Staff has issued its draft environmental review document.¹⁰¹ However, a contention claiming that a license renewal application violates NEPA because of an inadequate cultural resources discussion is not premature.¹⁰²

⁹⁹ Petition at 22.

¹⁰⁰ *Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility)*, LBP-25-3, 101 NRC 56 (2025), *aff'd* CLI-26-6, 102 NRC __ (June 15, 2026).

¹⁰¹ Petition at 23; *see Crow Butte Resources, Inc. (Marsland Expansion Area)*, CLI-14-2, 79 NRC 11, 20 n.49 (2014) (citing *Crow Butte Resources, Inc. (Marsland Expansion Area)*, LBP-13-6, 77 NRC 253, 287 (2013)).

¹⁰² *USEC, Inc. (Am. Centrifuge Plant)*, CLI-06-9, 63 NRC 433, 444 (2006); *see also* LBP-25-3, 101 NRC at 84-92 (2025), *aff'd* CLI-26-6, 102 NRC __ (June 15, 2026).

EC-7 Inadequate Analysis of Impacts to the Crownpoint Community Water Supply

Summary

The Staff does not oppose the admission of Contention EC-7 if appropriately narrowed as described below.

Discussion

Contention EC-7 states that the ER “fails to analyze the impacts of wellfield operations on the Crownpoint community water supply [...] against current demand, population, well configuration, and hydrologic conditions, relying instead on a 1993 drawdown model, 1996 baseline studies, and License Condition 10.27’s well-replacement requirement as a substitute for impact analysis, in violation of 10 C.F.R. §§ 51.45(b) and (c) and 51.60(a).”¹⁰³ The contention also cites to NRC RAIs 12, 13, and 15.¹⁰⁴ The Staff does not oppose the admission of this portion of Contention EC-7.

However, Contention EC-7 also states that the ER should analyze “what replacement entails--the source, quality, capacity, timing, and reliability of replacement supply for the community; the impacts of drilling and operating replacement wells; or the consequences for the community if restoration of the production zones ultimately achieves only the secondary standards the ER itself contemplates.”¹⁰⁵ This portion of Contention EC-7 should not be admitted because the issue of whether well replacement as a mitigation mechanism is inadequately analyzed or improperly substituted for analysis was previously litigated and resolved in CLI-06-29, and the Petitioner has not identified new information that should lead the

¹⁰³ Petition at 24.

¹⁰⁴ Petition at 25; see *also* Letter from Robert Sun, NRC, to Josh Leftwich, NuFuels, “Request for Additional Information to Support the Review of the NuFuels License Renewal Application for the Crownpoint Uranium Recovery Project, McKinley County, New Mexico (SUA-1580, Docket Number 040-08968) (July 9, 2026) (ML26191A309) (July 9, 2026 RAIs).

¹⁰⁵ Petition at 25.

Board to reexamine the issue.¹⁰⁶ Although that Commission decision concerned a FEIS and not the ER, the NEPA issue here is very similar. Therefore, Contention EC-7 should be narrowed to exclude relitigation of the issue of what level of analysis is needed for well replacement as a NEPA mitigation measure. Because the remaining issues in Contention EC-7 are similar to those raised in Contention EC-2, the Board should also consider consolidating EC-2 and EC-7 for litigative and judicial efficiency.

EC-8 Failure to Disclose and Analyze the Mandatory Pre-Operational Remediation of the Church Rock Section 17 Project Area

Summary

The Staff does not oppose the admission of Contention EC-8. However, for reasons discussed in more detail *supra* under Contention EC-5 and in accordance with CLI-98-16, the Board should construe this contention narrowly as a contention of omission regarding the ER's discussion of the impacts of foreseeable pre-operational remediation. As discussed above, project feasibility, Tribal jurisdiction, or administration of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act¹⁰⁷ or other Tribal laws is outside the scope of this proceeding.¹⁰⁸

¹⁰⁶ CLI-06-29, 64 NRC at 426-27 (finding that as long as the potential adverse impacts from a proposed action have been adequately disclosed, it is not improper for an EIS to describe mitigating measures in general terms) (citing *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 979 (9th Cir. 2006)).

¹⁰⁷ 4 N.N.C. §§ 2101-2805 (2009).

¹⁰⁸ See Petition at 27 (stating that "the contention does not ask the Commission to administer NNCERCLA or to adjudicate the Nation's regulatory jurisdiction [...] as these issues are wholly within the sovereign jurisdiction of the Navajo Nation.")

EC-9 Material Misstatement of Site Access and Failure to Disclose and Analyze the Absence of a Lawful Right-of-Way to Church Rock Section 8

Summary

The Staff does not oppose admission of Contention EC-9 insofar as it challenges the accuracy of the ER's description of access to the site, including an asserted failure to disclose a required right-of-way that would be needed under 25 U.S.C. §§ 323-28 and 25 C.F.R. Part 169 with Navajo consent. For reasons discussed in more detail *supra* under Contention EC-5 and in accordance with the decision at CLI-98-16, the Board should construe this contention narrowly to exclude matters concerning project feasibility, Tribal jurisdiction, or assessment of whether the Bureau of Indian Affairs should, may or must grant such a right of way, as those issues are outside the scope of this proceeding.¹⁰⁹

EC-10 Inadequate Consideration of Alternatives

Summary

Contention EC-10 claims that the ER fails to discuss any reasonable intermediate alternatives between the proposed action and the no-action alternative, in violation of 10 C.F.R. §§ 51.45(b)(3), (c), and (d) and 51.60(a). This contention is inadmissible because it misstates the contents of the ER and thus fails to demonstrate a genuine dispute with the applicant, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Discussion

Contention EC-10 claims that “the ER’s alternatives discussion begins and ends with the proposed 20-year renewal for all four project areas and the no-action alternative. [...] The ER

¹⁰⁹ See Petition at 30 (stating that “Whether, when, and on what terms to grant the consent and permissions the applicant seeks are decisions committed to the Navajo Nation alone, as a sovereign exercising authority over its own lands, and this contention takes no position on them.”).

does not identify or analyze any intermediate alternative, nor does it discuss any potential alternative's compliance with applicable environmental quality standards and requirements [...]."¹¹⁰ These statements are incorrect. The ER at 2.1 expressly discusses and incorporates by reference a range of alternatives presented in the 1997 FEIS.¹¹¹ In fact, several alternatives presented in the 1997 FEIS are similar or identical to potential alternatives raised by New Mexico, such as liquid waste disposal options not dependent on deep well injection, exclusion of the Church Rock site, and exclusion of the Crownpoint site.¹¹² New Mexico neither acknowledges nor disputes the applicant's description of those alternatives. A contention of omission such as this can be rejected at the contention admissibility stage by showing that the allegedly omitted information was not omitted, because a petitioner's imprecise reading cannot serve to demonstrate a genuine dispute with the applicant.¹¹³

In addition, even if the ER (and 1997 FEIS) do not discuss the precise set of alternatives identified by New Mexico, NEPA caselaw establishes that the purpose and need of the proposed action bound the range of alternatives that must be considered and that for an action proposed by a private applicant, the range of alternatives considered will often be narrower.¹¹⁴ In CLI-01-04, for example, the Commission found that a federal agency such as NRC "may appropriately accord substantial weight to the preferences of the applicant" and "take into

¹¹⁰ Petition at 32.

¹¹¹ ER at 2.1; see 10 C.F.R. § 51.60(a) (allowing license renewal applicants to incorporate prior environmental analyses by reference).

¹¹² 1997 FEIS at 2.1.2.4, 2.2.1, and 2.2.3.

¹¹³ See *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, GA), LBP-95-06, 41 NRC 281, 300 (1995); see also CLI-99-11, 49 NRC at 338 (describing a petitioner's ironclad obligation to examine documents with sufficient care).

¹¹⁴ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195-96, 199 (D.C. Cir. 1991); ("Congress did expect agencies to consider an applicant's wants when the agency formulates the goals of its own proposed action."); see also *Seven County Infrastructure Coalition v. Eagle Cnty., Colorado*, 605 U.S. 168, 169 145 S. Ct. 1497, 1504 (2025) (stating the courts will afford "substantial deference" to agency determinations of environmental effects and feasible alternatives in an EIS).

account the economic goals of the project's sponsor.”¹¹⁵ Particularly given the similarities between several of New Mexico's proposed alternatives and those already present in the ER and FEIS, New Mexico has not articulated why any of the alternatives it proposes that are not already in the ER would remain consistent with the applicant's goals, let alone be legally required.

Therefore, Contention EC-10 is inadmissible because it fails to demonstrate a genuine dispute with the applicant in accordance with 10 C.F.R. § 2.309(f)(1)(vi), because the information it claims is omitted is in fact present in the ER, and because the contention does not cite or distinguish CLI-01-04 or explain why the Board should reach a different conclusion in this proceeding.

SC-1 Inadequate Characterization of, and Monitoring Design for, the Old Church Rock Mine Workings

Summary

Contention SC-1 is inadmissible because it fails to raise a genuine dispute with the applicant on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Discussion

Contention SC-1 claims that “the application fails to demonstrate adequate confinement and excursion detection at the Church Rock project areas because it does not adequately characterize the flooded underground workings of the Old Church Rock Mine and because its monitoring design treats those workings as though they were discrete wells [...] contrary to the requirements of 10 C.F.R. Part 40, Appendix A, Criteria 5B(2) and 7, and without the reasonable

¹¹⁵ CLI-01-04, 53 NRC at 55-6 (citing *City of Grapevine v. Dept. of Transportation*, 17 F.3d 1502, 1506 (D.C. Cir.), cert. denied, 513 U.S. 1043 (1994)); see also *Busey*, 938 F.2d at 196 (internal quotation marks omitted).

assurance the Atomic Energy Act requires.”¹¹⁶ This contention concerns the same physical features and same technical issues that were previously litigated as part of the initial Crownpoint licensing proceeding. Specifically, the Commission found that “[t]he record amply supports the Presiding Officer’s finding that the FEIS ‘adequately considers the cumulative impact of HRI’s proposed mining operation on groundwater contamination *vis a vis* the old mine workings.’”¹¹⁷ The Petitioner does not cite or distinguish the findings at CLI-06-29.¹¹⁸

The Abitz declaration, Exhibit 2 at paragraphs 33-38, while describing Dr. Abitz’s reasons for believing that the LRA is inadequate, also does not distinguish CLI-06-29 and does not explain why any potential new information would lead the Board to reexamine the previous findings on the same technical issue concerning the same physical features at the same site.¹¹⁹ The Staff RAI to which the Petitioner refers, RAI-7,¹²⁰ asks NuFuels to confirm whether the LRA and incorporated documents identify all relevant “mine features, abandoned boreholes, wells, or other subsurface penetrations” and to explain whether any such features could affect preferential flow, vertical or lateral migration, hydraulic sinks or sources, subsidence, or restoration. This RAI is a confirmatory information request and does not represent a Staff finding of any deficiency in the LRA.¹²¹ Therefore, Contention SC-1 is inadmissible because it fails to raise a genuine dispute with the applicant in accordance with 10 C.F.R. § 2.309(f)(1)(vi).

SC-2 Unverified Integrity of Legacy/Historic Exploration Boreholes

Summary

¹¹⁶ Petition at 33-4.

¹¹⁷ CLI-06-29, 64 NRC at 424-5.

¹¹⁸ New Mexico’s citation to 10 C.F.R. Part 40, Appendix A, Criterion 5B(2) appears to be incorrect, because that criterion simply defines the applicability of another criterion.

¹¹⁹ Exhibit 2 at 14-16.

¹²⁰ July 9, 2026 RAIs at 5-6.

¹²¹ See *Oconee*, CLI-99-11, 49 NRC at 336 (discussing treatment of RAIs for contention admissibility).

The Staff does not oppose the admission of Contention SC-2.

SC-3 Inadequate Financial Assurance

Summary

The Staff does not oppose the admission of Contention SC-3.

CONCLUSION

For the reasons stated above, New Mexico has demonstrated standing to intervene in this proceeding and has submitted eight admissible contentions. Therefore, the Board should grant New Mexico's petition to intervene in part.

/Signed (electronically) by/

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Dated this 21st day of August 2026

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NUFUELS, INC.

(Crownpoint Uranium Project In-Situ
Recovery Facility)

Docket No. 40-8968-LR; NRC-2026-1882

August 21, 2026

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC Staff Answer to State of New Mexico Petition to Intervene and Request for Hearing” dated August 21, 2026, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 21st day of August 2026.

/Signed (electronically) by/

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