

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 2061

DOCKETED 8/10/00

BEFORE THE COMMISSION

In the Matter of

HYDRO RESOURCES, INC.
P.O. Box 15910
Rio Rancho, New Mexico 87174

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Docket No. 40-8968-ML

NRC STAFF'S ANSWERS
TO QUESTIONS REGARDING RELEVANCE OF TENTH CIRCUIT DECISION

John T. Hull
Counsel for NRC Staff

August 9, 2000

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NUCLEAR REGULATORY COMMISSION

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INTRODUCTION

On July 10, 2000, the Commission issued "CLI-00-12, Memorandum and Order," 52 NRC ___, slip op. (July 10 Order) regarding a 10 C.F.R. Part 40 materials license held by Hydro Resources, Inc. (HRI), which would authorize HRI to conduct *in situ* leach (ISL) uranium mining on sites in New Mexico if several license conditions are met. In ruling on petitions for review filed by Intervenor Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC),¹ the Commission determined it needed more information to decide whether a federal court decision -- *Hydro Resources, Inc. v. EPA*, 198 F.3d 1224 (10th Cir. 2000), *rehearing en banc denied*, No. 97-9566 (Mar. 30, 2000) -- is relevant to this NRC licensing proceeding. See July 10 Order, at 8-9.

¹ The Commission declined to review earlier partial initial decisions made by the Presiding Officer in the above-captioned proceeding regarding the technical qualifications of HRI personnel, radioactive air emissions, and groundwater contamination. See July 10 Order, at 1-5. The Commission also denied the Intervenor's request to reopen the evidentiary record to consider an affidavit of Dr. John Fogarty, regarding the 0.44 mg/l concentration level for uranium used as a secondary groundwater restoration goal. See July 10 Order, at 5-7.

BACKGROUND

HRI v. EPA concerns a jurisdictional dispute over whether New Mexico's underground injection control (UIC) program, or the federal UIC program administered by the Environmental Protection Agency (EPA), applies to HRI's Section 8 and 17 sites, adjoining land parcels located about five miles north of Church Rock, New Mexico. *See HRI v. EPA*, 198 F.3d at 1230-31. With respect to the Section 8 site, the court focused on the question of whether this HRI property has "Indian country" status. If it does, Section 8 would be subject to the EPA-administered UIC program applicable to Indian lands in New Mexico (*see* 40 C.F.R. Part 147, Subpart HHH, §§ 147.3000 *et seq.*); if not, the State of New Mexico's UIC program governs there. The court found that this key "Indian country" issue was not yet ripe for judicial review, and, leaving the matter unresolved, remanded it to the EPA for final agency action. *See HRI v. EPA*, 198 F.3d at 1236-37, 1248, and 1254.²

In its recent Order, the Commission noted that the Presiding Officer in an earlier partial initial decision on groundwater issues (LBP-99-30, 50 NRC 77 (1999)) had made three references to a 1989 aquifer exemption issued by the EPA -- the validity of which is called into question by the *HRI v. EPA* decision. *See* July 10 Order, at 8-9. To help determine the relevancy of *HRI v. EPA* to the groundwater issues in this NRC licensing proceeding, the Commission requested the parties here to respond to the following four questions:

(1) Did the Presiding Officer rely upon a current valid aquifer exemption or UIC permit for any of his technical groundwater findings? (2) If so, would any of these findings be undermined if Section 8 ultimately were found

² In speaking to counsel for the EPA, the undersigned learned that HRI's time to seek review of *HRI v. EPA* in the United States Supreme Court expired in late July, and that EPA thus had not yet begun to address the "Indian country" issue.

conclusively to fall within “Indian country” and thus within the jurisdiction of the federal UIC program? (3) Was it even necessary for the Presiding Officer to address whether the HRI project would comply with the Safe Drinking Water Act? (4) What practical effect does the Tenth Circuit’s decision have upon HRI’s schedule or plans for mining Section 8?

July 10 Order, at 9.

As discussed *infra* at 7-15, while the Presiding Officer partially relied upon the exemption’s validity, the findings on groundwater in LBP-99-30 would be the same regardless of whether or not HRI’s Section 8 is covered by a current valid aquifer exemption. Additionally, because Congress in the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* (SDWA), did not delegate any authority to the NRC, it was not necessary for the Presiding Officer to address whether the HRI project would be in compliance with the SDWA. Accordingly, *HRI v. EPA* has no bearing on the groundwater issues in this NRC licensing proceeding. However, before answering the Commission’s questions in greater detail, the Staff first provides necessary background information below.

The EPA’s UIC permitting regulations were established in the early 1980s pursuant to the SDWA. To protect present and future drinking water supplies, these EPA regulations were made broadly applicable to groundwater which either now serves as a public water supply, or which, because of its quantity and quality, has the potential to serve as a public water supply. See 40 C.F.R. § 144.3(a) (defining the term “Underground Source of Drinking Water” (USDW)). Because certain aquifers within larger underground systems contain water which is not suitable for drinking, but which would otherwise be considered USDWs, the EPA’s UIC regulations contain aquifer exemption provisions. See 40 C.F.R. § 144.3(b); see also *HRI v. EPA*, *supra*, 198 F.3d at 1233.

In 1983, the EPA approved New Mexico's UIC program as applied to injection wells used for ISL uranium mining, except for such wells located on "Indian lands." *HRI v. EPA*, *supra*, 198 F.3d at 1232. The EPA found that New Mexico's UIC program requirements were compatible with the EPA's UIC regulations. *See* 48 Fed. Reg. 31640 (July 11, 1983). Under both EPA's UIC program and New Mexico's, if a portion of an aquifer does not presently serve as a source of drinking water, and cannot now or in the future serve as a source of drinking water because the subject portion contains commercially producible minerals, that portion may be exempted from UIC requirements, since it is not considered to be an USDW. *See, e.g.*, 40 C.F.R. §§ 146.4(a) and (b)(1). If, following EPA approval of a State's UIC program, additional aquifer exemptions thereunder are sought, the State must obtain the EPA's approval of these exemptions, pursuant to 40 C.F.R. § 144.7(b)(3). As part of this exemption process, proof must be submitted that the aquifer in question is expected to be mineral producing. *See* 40 C.F.R. § 144.7(c)(1).

In 1988, the EPA-administered UIC program applicable to Indian lands in New Mexico became effective. *See* 53 Fed. Reg. 43089 (October 25, 1988). While certain UIC requirements applicable to ISL wells on Indian lands in New Mexico are in addition to those imposed under EPA's general UIC program (*see, e.g.*, 40 C.F.R. §§ 147.3014 and 147.3015), the general EPA aquifer exemption provisions discussed above remain applicable. *Cf.* 40 C.F.R. § 147.3003(b) to 40 C.F.R. §§ 146.4(a) and (b)(1).

In 1989, the State of New Mexico approved HRI's plans for underground injection at Section 8. *See HRI v. EPA*, *supra*, 198 F.3d at 1234. New Mexico then applied to the EPA for an aquifer exemption, which would authorize HRI (had it been ready and otherwise licensed to do so) to inject lixiviant into the aquifer within the Westwater Canyon Member

of the Jurassic Morrison Formation underlying HRI's Church Rock site, for purposes of ISL uranium mining. See Attachment 22 to the "Affidavit of Mark S. Pelizza Pertaining to Water Quality Issues" (a copy of the EPA's June 21, 1989 aquifer exemption, submitted by HRI as part of its February 19, 1999 groundwater presentation). In issuing the requested exemption, the EPA stated that a portion of the Westwater aquifer was being exempted because

(a) it is not currently used as a drinking water supply, and (b) it cannot be used as a drinking water source in the future because it is mineral producing or can be shown by a permit applicant to contain minerals that are expected to be commercially producible.

Attachment 22, at 1.

In 1996, as part of its application for an NRC materials license, HRI submitted water quality data for the Westwater aquifer at its Church Rock site, showing that the mean baseline level of uranium in the groundwater there is at an elevated 1.8 milligrams per liter (serving to further confirm the presence of commercially producible quantities of uranium). This HRI data is reproduced in Table 3.19, col. 2, at p. 3-36 of NUREG-1508, the Staff's February 1997 final environmental impact statement (FEIS) evaluating HRI's ISL mining project.³

As reflected in Section 1.7 of the FEIS, at p. 1-5, the Staff was aware of the ongoing controversies regarding UIC permitting authority, which involved the EPA, New Mexico, and the Navajo Nation during 1992-97. These controversies are summarized in *HRI v. EPA*,

³ FEIS Table 3.19's reference in a footnote to "HRI 1996b" refers to HRI's August 15, 1996 "Response to Request for Further Clarification and Additional Information of Responses; Safety Analysis Review and Environmental Review for the [HRI] Uranium Solution Mining License Application." See FEIS, at 7-6. The referenced HRI filing carries NRC accession number 9608230202, and a copy of this filing is contained in HRI Hearing File Notebook 9.9.

supra, 198 F.3d at 1234-35. The *HRI v. EPA* litigation began as the result of EPA's determination, documented in its letter dated July 14, 1997, that HRI's Section 8 site was the subject of a jurisdictional dispute. This 1997 EPA letter constituted what the Tenth Circuit Court of Appeals later described as a "tentative revocation of the Section 8 aquifer exemption" issued in 1989. *Id.*, at 1243.

The Staff issued HRI its ISL license in January 1998. The license states as one of its conditions that before any ISL mining may occur, "the licensee shall obtain all necessary permits and licenses from the appropriate regulatory authorities." HRI License Condition 9.14. This condition would clearly apply to any UIC permit applications which may become necessary depending on the EPA's "Indian country" decision.

In September 1998, the Commission, *sua sponte*, ruled that the Presiding Officer in this licensing proceeding was not to adjudicate questions outside of NRC's regulatory authority, including questions concerning jurisdictional disputes between a state and the EPA regarding UIC permitting authority. See CLI-98-16, 48 NRC 119, 121 and n. 2 (1998). While cautioning that CLI-98-16 ought not to be understood to mean that environmental or other non-NRC permits "have no bearing on NRC licensing decisions," the Commission held there that an NRC adjudicatory tribunal "is not the proper forum for litigation and resolution of controversies about other agencies' permitting authority." *Id.*, at 122 n.3. Thus, when ENDAUM and SRIC in their January 1999 written presentation on groundwater concerns (at 4-5, and 59-65) discussed SDWA requirements and UIC permitting issues, the Staff in its March 1999 response (at 4-5, and n.7) did not address these arguments in great detail.

In August 1999, the Presiding Officer issued his decision on technical groundwater issues (see LBP-99-30, 50 NRC 77, 81-109 (1999)), which are discussed below in responding to the Commission's first two questions.

DISCUSSION

The Presiding Officer's technical groundwater findings are based on a careful and thorough review of the parties' groundwater presentations, the supporting expert testimony, the conditions in HRI's license, the 1997 FEIS, and the extensive literature describing geologic conditions in the Church Rock region. See LBP-99-30, *supra*, 50 NRC at 85-88. The Commission declined to review the Presiding Officer's technical groundwater findings, or any of the more general technical groundwater issues. See July 10 Order, at 2 and 5. These health and safety determinations thus represent final NRC agency action. See *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-782, 20 NRC 838, 841 (1984). As will be shown below, the Presiding Officer's technical groundwater findings would not be undermined should the 1989 aquifer exemption prove not to be valid.

Questions 1 and 2:

(1) Did the Presiding Officer rely upon a current valid aquifer exemption or UIC permit for any of his technical groundwater findings? (2) If so, would any of these findings be undermined if Section 8 ultimately were found conclusively to fall within "Indian country" and thus within the jurisdiction of the federal UIC program?

In assuming the validity of the EPA's 1989 aquifer exemption, and by making three references to it in discussing his technical groundwater findings (see LBP-99-30, *supra*,

50 NRC at 102, 108, and 109⁴), it appears that the Presiding Officer partially relied upon the exemption's validity. But as discussed below, such reliance does not undermine any of the Presiding Officer's technical groundwater findings or conclusions. Thus, even if Section 8 ultimately were found to fall within "Indian country," and within the jurisdiction of the federal UIC program, this would not undermine the technical merits of LBP-99-30's groundwater findings, which would be the same regardless of whether or not HRI's Section 8 is covered by a current valid aquifer exemption. Accordingly, the Tenth Circuit's decision in *HRI v. EPA* has no relevance to the groundwater issues in this NRC licensing proceeding.

On groundwater issues, the Presiding Officer's key technical conclusion was that the geologic model presented by ENDAUM and SRIC is not consistent with the Church Rock region's geology. See LBP-99-30, *supra*, 50 NRC at 81. This technical conclusion is directly tied to the Presiding Officer's legal conclusion that NRC's licensing requirements for ISL mining were met⁵:

⁴ In addressing all of the Intervenor's groundwater concerns, the Presiding Officer grouped his technical groundwater findings under eleven major sub-headings (designated as Sections A-K) of Part II of his decision. See LBP-99-30, 50 NRC at 84-109. The concerns are addressed (and phrased) as set forth in the Intervenor's January 1999 presentation. See LBP-99-30, 50 NRC at 84 and n.7. The three references to the EPA's 1989 aquifer exemption occur under sub-headings II.F.5 ("The Track Record of the ISL Industry Demonstrates That Restoration to the Good Water Quality of Westwater Is Not Technologically Feasible"); II.J ("Licensing of the Crownpoint Project Is Inimical to Public Health and Safety Because HRI's Operation Poses an Undue Threat to the Quality and Safety of the Public Water Supply"); and II.K ("The SDWA Applies To Protect the Westwater at Church Rock and Crownpoint").

⁵ As previously stated by the Commission in this proceeding, the NRC licensing criteria applicable to ISL mining are set forth in 10 C.F.R. § 40.32 (a-d), and portions of Appendix A to 10 C.F.R. Part 40. See CLI-99-22, 50 NRC 3, 9 (1999).

The groundwater portion of this decision examines the geological model presented by Intervenor and concludes that it is not appropriate for the geology of this region and that HRI's analyses demonstrate that the Church Rock Section 8 portion of the Crownpoint Uranium Project meets NRC regulatory criteria for licensing.

Id. (emphasis added). *See also id.*, at 109 (concluding there is only a minimal risk that ISL mining would harm the quality of groundwater beneath HRI's Church Rock Section 8 site).

The most important supporting bases for these conclusions are the Presiding Officer's technical groundwater findings set forth in Section II.A of LBP-99-30, which analyzed and rejected ENDAUM's and SRIC's geologic model. *See id.*, at 84-88.⁶ There, the Presiding Officer found that this model incorrectly posited the presence of natural channels or pipelines within the Westwater aquifer (*id.*, at 84), and erroneously assumed that toxic elements such as uranium (which would be present in any lixiviant excursions escaping from the underground mining areas) would not precipitate out of solution while being rapidly carried in these channels or pipelines. *Id.*, at 86-87. The Presiding Officer found there was no technical basis supporting the presence of such channels or pipelines. *Id.*, at 88.

These Section II.A technical findings are incorporated by reference in Section II.K of LBP-99-30, which rejected the Intervenor's SDWA concern that contaminated lixiviant will escape undetected from the Section 8 mining area by flowing swiftly through

⁶ Section II.A of LBP-99-30 contains no references to the SDWA or to the UIC regulations. The same holds true for most of the other groundwater sub-sections in LBP-99-30. *See, e.g., id.*, at 89-93 (Section II.B discussion rejecting concern regarding alleged connections between the Westwater aquifer and those aquifers above and below it); at 93-95 (Section II.C discussion rejecting concern regarding allegedly inappropriate aquifer tests performed by HRI); at 95-97 (Section II.D discussion rejecting concern regarding allegedly inadequate plans to monitor groundwater quality); and at 97-99 (Section II.E discussion rejecting concern regarding allegedly inadequate plans to protect against lixiviant excursions during ISL mining).

underground channels, thereby picking up toxins in its path. *Id.*, at 108-09. Describing this concern as “a dramatic repetition” of the concerns addressed in Section II.A, the Presiding Officer found no reason to believe that ISL mining at Section 8 “will contaminate sources of drinking water,” or otherwise violate the SDWA, based on (1) his Section II.A analyses rejecting the geologic model’s pipeline hypothesis, and finding that toxic elements would precipitate out of solution; (2) his finding that at “reasonable flow velocities” it would take more than 1600 years for excursions to reach the nearest down-gradient well; and (3) his findings regarding the “underground geology” of the Church Rock region and HRI’s planned excursion monitoring program. *Id.*, at 108-09. As another basis supporting his rejection of this SDWA concern, the Presiding Officer then referenced (*id.*, at 109) the EPA’s 1989 aquifer exemption -- one of three such references noted by the Commission. See July 10 Order, at 9.

Even if this partial reliance on the validity of EPA’s 1989 aquifer exemption is proven by future events to have been mistaken, and Section 8 is ultimately found to be within “Indian country” (and thus within the jurisdiction of the federal UIC program), this would not undermine the validity of the technical groundwater findings summarized above in (1) - (3). Each of these Section II.K findings independently and adequately supports the Presiding Officer’s decision rejecting this SDWA concern. Regardless of what governmental body ends up having UIC jurisdiction over Section 8, the physical parameters and characteristics of the Westwater aquifer, and the regional geology in which it is situated, are inherent and permanent features which the Presiding Officer has determined will allow ISL mining to be conducted without any lasting damage to groundwater quality. Similarly, the ISL technology and the protective conditions contained in HRI’s NRC license would not be affected by

whether the EPA, the State of New Mexico, or the Navajo Nation is ultimately determined to have UIC jurisdiction over Section 8. The court's decision in *HRI v. EPA* thus does not materially affect the Section II.K analysis.

The same holds true for the analysis in Section II.J of the groundwater decision -- which rejected another SDWA concern that HRI's Part 40 license harms public health by threatening the quality and safety of the public water supply. See LBP-99-30, *supra*, 50 NRC at 108. Although Section II.J's analysis discusses only the EPA's 1989 aquifer exemption as a supporting basis, Section II.J incorporates by reference the technical analysis contained and referenced in Section II.K, and summarized above. The Presiding Officer thus appears to have intended that Section II.K's technical findings summarized in (1) - (3) above would apply with equal weight to the Section II.J analysis. Considered together, these findings solidly support sections II.J and II.K of LBP-99-30, and do not rely on the 1989 aquifer exemption. These technical findings concerning (1) the absence of underground pipelines, and uranium's tendency to precipitate out of solution; (2) underground flow velocities of lixiviant; and (3) the adequacy of HRI's planned excursion monitoring program, bear no relationship to questions concerning what governmental body will ultimately be found to have jurisdiction to administer a UIC program.

Moreover, due to the established presence of commercially producible quantities of uranium at Section 8, this HRI property would seem to qualify for an aquifer exemption regardless of which governmental body is ultimately determined to have UIC permitting authority there. In any event, for all the reasons discussed above, the court's decision in *HRI v. EPA* does not materially affect the Section II.J analysis.

The Presiding Officer's other reference to the EPA's 1989 aquifer exemption (*see* LBP-99-30, *supra*, 50 NRC at 102) occurs as a minor part of Section II.F.5 of his decision, which rejected the concern that post-ISL mining restoration of groundwater is not technologically feasible. *Id.*, at 102-106. Similar to the references contained in Sections II.J and II.K as discussed above, this reference to the 1989 EPA exemption is but one of several bases supporting this part of the groundwater decision. In addition to referencing the exemption, the Presiding Officer stated the following as supporting bases for his Section II. F. 5 finding: (1) the natural mechanisms of precipitation and dilution which protect the entire aquifer by confining toxic elements to small pockets within the aquifer (*id.*, at 102); (2) HRI's post-ISL mining restoration plans, which the Presiding Officer found would adequately ensure the restoration of groundwater quality (*id.*, at 102-03); (3) the results of groundwater restoration efforts at the nearby Mobil pilot site (*id.*, at 103-04); (4) the lack of elevated uranium levels in groundwater outside the immediate Section 8 area (despite the presence of such levels now existing at the Church Rock site, *citing* FEIS Table 3.19), which the Presiding Officer found was "persuasive evidence that uranium does not travel readily through the aquifer, even over timescales [sic] of thousands of years" (*id.*, at 104- 05);⁷ and (5) his similar finding that radium contamination does not move rapidly in

⁷ Here, as he did in Section II.K, the Presiding Officer again incorporated by reference his key technical findings from Section II.A, and reiterated his rejection of ENDAUM's and SRIC's pipeline hypothesis as follows:

I have concluded, for reasons stated above at p. 84 *et seq.* and in the text immediately above, that the water in the channels does not course, that there are no channels, and ... also conclude that the rock does act as a significant precipitating agent for uranium and other elements.

LBP-99-30, *supra*, 50 NRC at 105.

the Westwater aquifer, as it is diluted and precipitated as it travels through the rock (*id.*, at 105).

Accordingly, even if the Presiding Officer's partial reliance on the validity of EPA's 1989 aquifer exemption is proven by future events to have been mistaken, and Section 8 is ultimately found to be within "Indian country," this would not undermine the validity of the five technical groundwater findings summarized above in (1) - (5). Considered together, these findings solidly support Section II.F.5 of LBP-99-30, in which the Presiding Officer rejected ENDAUM's and SRIC's concern that post-ISL mining restoration of groundwater is not technologically feasible. Such questions bearing on the technological feasibility of ISL mining have no relationship to questions concerning which governmental body will ultimately be found to have jurisdiction to administer a UIC program. The court's decision in *HRI v. EPA* thus does not materially affect the Section II.F.5 analysis.

Moreover, it is not surprising that the Presiding Officer made only three comparatively brief references to the EPA's 1989 aquifer exemption -- as opposed to his lengthy technical analyses summarized above -- given the Commission's prior holding in this proceeding that an NRC adjudicatory tribunal is not the proper forum in which to consider UIC permitting controversies; and the Commission's specific instruction that the Presiding Officer was not to adjudicate such questions lying outside of NRC's regulatory authority. See CLI-98-16, *supra*, 48 NRC at 121-22, and nn. 2-3. These Commission rulings are not impacted by the court's decision in *HRI v. EPA*, which does not reference this NRC licensing proceeding. The unsettled nature of "Indian country" law applicable to Section 8 (*see HRI v. EPA, supra*, 198 F.3d at 1248-49) provides further reason for the Commission to continue refraining from entering into the UIC permitting controversy. HRI's

license adequately ensures that before any ISL mining occurs, the appropriate regulatory authority will have issued the necessary UIC permit (should such action be made necessary by an EPA decision regarding the “Indian country” status of Section 8). See HRI License Condition 9.14. Finally, as discussed *supra* at 3-4, the applicable aquifer exemption requirements would be the same regardless of what decision the EPA makes regarding the “Indian country” status of Section 8.

Based on the above discussion, the Commission should find that the court’s decision in *HRI v. EPA*, *supra*, is not relevant to, and does not undermine, any of the technical groundwater findings made in LBP-99-30. The Commission appropriately declined to review these findings, or any of the more general technical groundwater issues (see July 10 Order, at 2 and 5), and these health and safety determinations thus represent final agency action. See *Diablo Canyon*, *supra*, 20 NRC at 841. Whether HRI now has “a valid aquifer exemption or UIC permit” (July 10 Order, at 9) are questions for the EPA to decide under its SDWA authority, and are not relevant to this NRC licensing proceeding.

Question 3:

Was it even necessary for the Presiding Officer to address whether the HRI project would comply with the Safe Drinking Water Act ?

Congress delegated authority to the EPA, States, and Indian tribes to administer the SDWA, an environmental statute under which minimum drinking water standards for the nation are established. See *HRI v. EPA*, *supra*, 198 F.3d at 1232. Because the SDWA does not provide the NRC with any authority in this area, it was not necessary for the Presiding Officer to address whether the HRI project would be in compliance with the SDWA. The way in which the Presiding Officer addressed SDWA issues in LBP-99-30 reflects his decision to explicitly address each one of the Intervenor’s repetitive concerns,

in the same manner and order as those concerns are articulated in their January 1999 presentation. See LBP-99-30, *supra*, 50 NRC at 84 and n.7.

While it was not necessary for the Presiding Officer to address the Intervenor's SDWA concerns, he may also have concluded it was best to do so given the content of the National Environmental Policy Act (NEPA) concerns set forth by the Intervenor. Insofar as these NEPA concerns relate to the SDWA concerns, the Presiding Officer addressed them in Section IV of his decision by referencing his Section II analyses.⁸ See LBP-99-30, *supra*, 50 NRC at 113 (failure to address groundwater arguments in the FEIS was not error, due to the invalidity of those arguments); and 120 (groundwater will be properly restored, and FEIS adequately evaluates the impacts of potential leachant excursions).

Question 4:

What practical effect does the Tenth Circuit's decision have upon HRI's schedule or plans for mining Section 8?

The Staff has not conferred with HRI regarding its mining schedule or plans, and thus does not know what effect *HRI v. EPA* may have in this regard.

Respectfully submitted,

John T. Hull */RA/*
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of August 2000

⁸ Thus, although the Commission has not yet decided whether to grant the Intervenor's petition to review LBP-99-30 with respect to NEPA and the other issues discussed in Section IV therein (see July 10 Order, at 2 n.1), those portions of Section IV which incorporate by reference the Section II analyses would presumably not be subject to further Commission review.

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| Rio Rancho, New Mexico 87174 |) | |

CERTIFICATE OF SERVICE

I hereby certify that signed copies of "NRC STAFF'S ANSWERS TO QUESTIONS REGARDING RELEVANCE OF TENTH CIRCUIT DECISION" have been served on the external recipients listed below (marked by single asterisks) by U.S. Mail, first class, this 9th day of August 2000. Electronic copies have been transmitted this date to the Office of the Secretary, and to other internal recipients listed below and marked by double asterisks. Those external recipients marked by single asterisks and a plus sign (+) were also served by electronic mail on this date.

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