

FOIA/PA REQUEST

Case No:

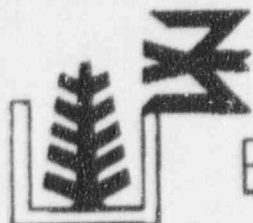
96-527

Date Rec'd:

12-20-96

Action Off:

Related Case:

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

December 17, 1996

Director

Division of Freedom of Information and Publication Services  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Freedom of Information Act Request

Dear Director:

The New Mexico Environmental Law Center ("NMELC"), a nonprofit law firm, submits this request on behalf of its clients Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), the Southwest Research and Information Center ("SRIC"), and Mineral Policy Center ("MPC") under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for copies of public records.

This request covers the public records in the possession of the U.S. Nuclear Regulatory Commission ("NRC") described on the attached list. All of the described records pertain to the application of Hydro Resources Inc. ("HRI") for source and byproducts materials licenses to construct and operate the Crownpoint Uranium Solution Mining Project at Crownpoint and Church Rock, New Mexico ("Project"), Docket No. 40-8968-ML. The dates referenced on the attached list are accurate to the best of our knowledge, but should be considered only approximate for the purpose of responding to this request. The "Company/Agency" column refers to the entity believed to have generated the record. For the convenience of the NRC, copies of the cover letters accompanying NRC's Requests for Additional Information addressed to HRI ("RAIs") #1 and #2 referenced on the attached list are also attached hereto. Requesters do not have a copy of NRC's RAI #3 to HRI, believed to be dated July 11, 1996.

We request that NRC waive fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NRC regulations implementing FOIA require that a requester shall be furnished documents without charge if disclosure of the information is "in the public interest" because such disclosure (1) is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. 10 C.F.R. § 9.41(c). Pursuant to 10 C.F.R. § 9.41(a)(1), we provide you with the following specific information in support of a fee waiver.

NRC regulations require eight pieces of information from requesters of fee waivers. 10 C.F.R. § 9.41(b). We respond to those questions in the order of appearance in the regulations as follows:

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PDR FOIA

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PDR

1405 Luisa St., Suite 5 Santa Fe, N.M. 87505

(1) The purpose for which the requesters intend to use the information is to educate the public, and especially the communities of Crownpoint, New Mexico and the Church Rock, New Mexico area, about the proposed Project and its impact on local health, safety, and environmental and cultural resources.

(2) The extent to which the requesters will extract and analyze the substantive content of the requested records is substantial. Most of the requested records are believed to be densely written documents that use many technical terms. To accomplish their public education purpose, the requesters will extensively analyze the records and extract the important information bearing on health, safety, and environmental and cultural resources.

(3) Each of the requesters will use the records in ongoing public education activities and research. Specifically, ENDAUM will use information extracted from the records in oral presentations to members of ENDAUM and the Crownpoint community in public meetings held in the community and by word of mouth, as is customary in their predominately Navajo community. ENDAUM's public meetings are advertised to the Crownpoint and Church Rock communities, and to the greater public as far away as Albuquerque, by radio announcements, press releases, and posted fliers.

SRIC will use information extracted from the records 1) in oral presentations, supplemented with visual aids, at public meetings held by ENDAUM, and 2) in articles written for its magazine, The Workbook, which has a national circulation of approximately 3,500.

MPC will write articles based on the extracted information for its quarterly newsletter, Southwest Nuggets, which has a circulation of approximately 1,500 in the four corners states, and its journal, Clementine, which has a national circulation of approximately 10,000. MPC's staff includes a Southwest Circuit Rider, who typically spends two weeks of every month traveling to mine host communities in the southwestern United States for meetings with local concerned citizens. These meetings are hosted by local community organizations and are frequently advertised to the community. The Southwest Circuit Rider will convey information extracted from the records to the Crownpoint community, and to other communities in the southwest faced with uranium mines, at these meetings.

The specific qualifications of ENDAUM to utilize the information for the intended use in a way that it will contribute to public understanding include ENDAUM's hands-on experience in educating the community of Crownpoint about the Project during the past two years. Also, the knowledge of the local cultural and environmental resources possessed by ENDAUM's members as Diné (i.e., Navajo people) and as residents of Crownpoint enhances their

ability to relate information extracted from the records to resources of concern to local people. In addition, several ENDAUM members are completely bilingual in Navajo and English, enabling them to effectively translate extracted information to the Navajo-speaking residents of Crownpoint.

The specific qualifications of SRIC include 25 years of institutional experience researching and educating the public about the environmental impacts of mines. In particular, SRIC has a staff scientist who is a recognized expert in mine planning and reclamation in the Southwest and has recently served as a consultant on uranium mine reclamation in Russia. SRIC staff includes an environmental health scientist who specializes in radiation toxicity effects. SRIC also has a Navajo community liaison with 11 years experience educating Navajos and non-Indians about mining and polluting industries. SRIC's staff scientist, environmental health specialist, and Navajo community liaison have reviewed thousands of pages of NRC documents concerning the Project, and therefore are particularly qualified to extract the most salient information from the requested records.

MPC was established in 1988 to educate the public about the environmental impacts of hardrock mining. Its two staff circuit riders based at western offices directly assist with community education, mine plan review, media and political outreach. MPC's Southwest Circuit Rider holds a college degree in environmental studies, and has six years of experience reviewing technical documents associated with mining plans, extracting information from them, and explaining that information to mine host communities.

(4) The likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure is substantial. Because most of the requested records were created in response to NRC's request for additional information from HRI, they do not exist in the Draft Environmental Impact Statement ("DEIS") for the Project or in other NRC documents that may have been previously disclosed to the public. For example, because analysis of traditional cultural resources was deferred in the DEIS, and a portion of the requested records contain HRI's response to NRC's request for additional information on traditional cultural resources in the Project area, the release of those records would provide Diné in Crownpoint with previously undisclosed information vital to their understanding of the Project's impact on their traditional culture.

(5) The size and nature of the public to whose understanding a contribution will be made weigh in favor of a fee waiver here. More than 2,500 people live in Crownpoint and about 1,700 live in the Navajo Church Rock Chapter; more than 90% of these residents are Navajos. One in every two Navajo families reservationwide has

income below the federal poverty level.<sup>1</sup> Many also have limited fluency in English. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," was intended to correct the lack of access to information by minority and low income communities, which compounds their exclusion from participation in the decisionmaking processes for projects such as HRI's. It specifically requires:

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities, because of their race, color, or national origin.

E.O. 12898, § 2-2 (emphasis added).

Accordingly, the demographics of the local population to whose understanding a contribution would be made provides an especially compelling basis for a fee waiver in this case.

(6) The intended means of dissemination to the general public is described in paragraph (3) above.

(7) Public access to information will be provided free at community meetings and for a nominal publication fee or no fee. The subscription price of SRIC's publication, The Workbook, is \$12 per year. MPC's Clementine is provided free to its members who pay annual dues of \$25, and free to the public upon request, and Southwest Nuggets is free.

(8) The requesters have no commercial or private interest in the agency records sought. The requesters are not aware of the commercial or private interests any other party has in the records sought. All of the requesters are nonprofit organizations, and none intends to re-sell the requested records. The nominal prices of the requesters' publications -- when charged -- are comparable to prices for news magazines. The requesters are not motivated by any commercial interest in uranium mining or gaining a competitive commercial advantage against HRI. Moreover, the interests of SRIC and ENDAUM in requesting a hearing on the licensing of the Project<sup>2</sup> are not private in nature. Even if intervenor status in such a

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<sup>1</sup> Division of Community Development, Navajo Nation, "Chapter Images: 1992 Edition," Fall 1993 at 3, 9 (citing the 1990 Census).

<sup>2</sup> Atomic Safety and Licensing Board Panel No. 950706-1-ML.



proceeding were a "private interest," that consideration has no relevance here because SRIC and ENDAUM have not been granted intervenor status and MPC has not applied.

NRC Regulations set forth six factors to be weighed in determining whether to grant a fee waiver. 10 C.F.R. § 9.41(d). The fifth and sixth factors do not apply here because the disclosure of the records sought is not in the commercial interest of the requesters. The remaining four factors, and the reasons that they should be weighed in favor of a waiver in this case, are as follows:

First, the agency must examine "how the subject of the requested agency records concern the operations or activities of the Government." In this case, the request relates directly to the NRC's licensing activities for the Project, as well as the agency's compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., and the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 et seq. The requested records consist of information pertinent to these activities requested by NRC of HRI, such as cost-benefit analyses, assessment of the Project's environmental impacts, identification of traditional cultural properties under NHPA, NRC's review of HRI's record operating similar projects in Texas, and financial assurance necessary to restore drinking water as well as environmental and cultural resources. As such, they reveal how NRC is carrying out its licensing authority as well as its mandates under NEPA and NHPA. Accordingly, the subject of the requested records intimately concerns the operations or activities of NRC.

Second, the agency must consider "how disclosure of the information is likely to contribute to an understanding of Government operations or activities." The nexus between the content of the records sought here and the NRC's licensing of the Project is strong, as described in the previous paragraph. In general, the disclosure will be likely to contribute to public understanding because the information disclosed will be analyzed and disseminated through the publications of the requesters and at community meetings described above. Disclosure would enable the public to understand and critique, for example, the basis for NRC Staff's recommendations on the license application.

Third, the agency must determine "if disclosure is likely to contribute to public understanding." This factor is related to the fourth factor, whether "the disclosure is likely to contribute significantly to public understanding of Government operations or activities." This request meets the third and fourth tests because the records are not otherwise readily available to the public and contain essential information. For example, many of the documents are believed to contain information not included in the DEIS for the Project. Moreover, because virtually all of the documents are technical in nature, they are inaccessible to the general public

who have difficulty deciphering their technical language. The disclosure will allow ENDAUM, SRIC, and MPC to summarize information in the documents in language accessible to the public, and to disseminate that information through their publications and meetings. In addition, these records are believed to contain information essential to the public's understanding of the NRC's activities in licensing the Project, including information deemed important by the NRC to its own assessment of the Project's health, environmental and cultural impacts and HRI's ability to responsibly operate and clean up the site.

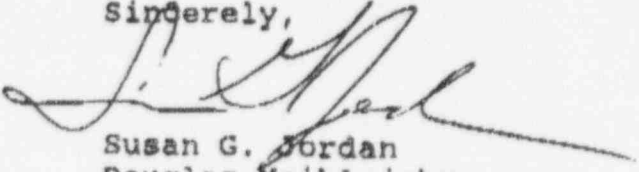
Finally, even if copies of some or all of these records are in the NRC docket room in Washington, D.C., the disclosure to the requesters will nonetheless contribute significantly to the public's understanding. SRIC, ENDAUM, and MPC do not have the financial resources to review the documents in Washington, D.C. Therefore, they will only be able to review the records, extract information, and disseminate it in a useful form if they are provided a copy. The requestors will share a single copy, and will make their own additional copies to the extent needed to expedite their review.

Accordingly, a fee waiver should be granted because the disclosure of the information in the requested records "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); 10 C.F.R. § 9.41(c).

If this request for a fee waiver is denied, please inform us of the basis for denial, as well as the estimated charge and the total number of pages before incurring costs. We are mindful that in the absence of a fee waiver, the requesters should be treated as educational institutions for purposes of determining fees, and therefore must not be charged search costs. 5 U.S.C. § 552(a)(4)(A)(ii) (fees shall be limited to document duplication when request is made by educational institution and records are not sought for commercial use). Moreover, we have provided very specific descriptions of the requested records to reduce the search burden on the agency.

We look forward to your response within ten days, as required by the Act, 5 U.S.C. § 552(a)(6)(A)(i). In the interim, if you have any questions, please do not hesitate to call us at the telephone number above. Your assistance is greatly appreciated.

Sincerely,



Susan G. Jordan  
Douglas Meiklejohn

Attachments

cc: Mitchell Capitan, ENDAUM  
Chris Shuey, SRIC  
Aimee Boulanger, MPC

## FREEDOM OF INFORMATION ACTION REQUEST

## DOCUMENTS RELATED TO NRC DOCKET NO. 40-8968-ML

## Abbreviations Used in this List:

EPA	(United States) Environmental Protection Agency
HRI	Hydro Resources Inc.
NRC	(United States) Nuclear Regulatory Commission
PDR	Public Documents Room
RAI	Request for Additional Information
URI	Uranium Resources Inc.

List of Documents Having Specific Descriptions  
and/or Identification Numbers

<u>Company/ Agency</u>	<u>Date of Document</u>	<u>Document Description</u>
✓ URI	Dec. 2, 1988	Church Rock Project Hydrological Testing Report, 12-01-88, from Mark Pelizza, HRI, to Tom Olson, NRC (referenced in NRC RAI #2, February 9, 1995, Item No. 9, p. 29)
✓ HRI	Oct. 16, 1992	Unit 1 Project, UIC Application and Technical Report (referenced in NRC RAI #2, February 9, 1995, Item No. 8, p. 29)
✓ HRI	March 12, 1993	Section 9 Pilot Summary Report (referenced in NRC RAI #2, February 9, 1995, Item No. 6, p. 29)
✓ HRI	11/29 Nov. 20, 1993	Letter to Joel Grimm, U.S. NRC, from Mark Pelizza, HRI (referenced in NRC RAI #2, February 9, 1995, Item No. 7, p. 29)
✓ HRI	Jan. 6, 1995	Environmental Assessment Allotted Lease Program Unit 1 (referenced in NRC RAI #2, February 9, 1995, Item No. 11, p. 29)
— HRI	170 Oct. 9, 1995	Unit 1 Project, UIC Application and Technical Report (referenced in NRC RAI #2, February 9, 1995, Item No. 10, p. 29)
✓ HRI	Feb. 20, 1996	NRC PDR Ascension No. 9602220389; responses to Questions 1-21, 25-31, 33-48 of NRC RAI #1; 297 pages w/ 5 maps
1 HRI	March 4, 1996	NRC PDR Ascension No. 9603110358;



✓ HRI March 4, 1996 NRC PDR Ascension No. 9603110358;  
responses to Questions 23, 32 of NRC RAI  
#1; 127 pages

100 HRI April 1, 1996 NRC PDR Ascension No. 960403020;  
responses to Questions 49-91 of NRC RAI  
#2 (described as "4-inch binder")

HRI\ April 5, 1996 NRC PDR Ascension No. 9604090313;  
responses to NRC RAI #2, omitted from  
April 1 submittal; 37 pages + 1 oversized  
drawing

HRI\ April 10, 1996 NRC PDR Ascension No. 9604150068;  
supplemental responses to Questions 10,  
14, 16, 17, 20, 26, 32, 36 of NRC RAI #1;  
48 pages + 1 oversized drawing

✓ HRI April 24, 1996 Response to Question No. 92 of NRC RAI  
#2, concerning cost-benefit analysis  
(described as 3 5-inch binders)

✓ HRI May 1, 1996 Responses to Questions 22, 24 of NRC  
RAI #1 (author, title, length unknown)

**Documents Having Narrative Descriptions Only  
and/or Having Been Cited  
Orally or in Writing by NRC Staff**

✓ NRC July 11, 1996 NRC RAI #3 (referenced in NRC Staff's  
"Status Report" to Presiding Officer of  
the Atomic Safety and Licensing Board,  
August 30, 1996)

HRI [post-July] Document(s) responding to NRC RAI #3  
(author[s], title[s], length, date  
unknown)

NRC [late 1995,  
early 1996] Reports, written summaries or any written  
materials documenting NRC staff review of  
State of Texas licensing records for URI  
operations in South Texas. At a meeting  
in Crownpoint, N.M., on October 11, 1995,  
ENDAUM and SRIC representatives heard NRC  
staffers report that they had been to  
Austin, Texas, to review such licensing  
records in the possession of agencies  
within the Texas Natural Resources  
Conservation Commission.

✓ Texas [1995, 1996] Response of state of Texas to NRC's  
NRCC(?) "summary of allegations" made by Mr.

Mervyn Tilden about URI's Texas operating history. Such a summary was described in a letter to Mr. Tilden from Robert L. O'Connell, Allegation Coordinator, NRC Office of Nuclear Material Safety and Safeguards, dated April 27, 1995.

EPA

April 18, 1995 Letter from Steven A. Herman, assistant administrator, EPA Office of Enforcement and Compliance Assurance, to James Taylor, NRC executive director for operators, concerning financial assurance for HRI Crownpoint Project. This letter was referenced in a letter from John T. Greeves, director, Division of Waste Management, NRC Office of Nuclear Material Safety and Safeguards, to Steven A. Hermann, EPA, dated May 11, 1995 (Ascension No. 9505300004).

UNITED STATES  
NUCLEAR REGULATORY COMMISSIONWASHINGTON, D.C. 20540-0001  
January 11, 1996

FBI 100-100000-1

Hydro Resources, Inc.  
12750 Merit Drive  
Suite 1020, LB 12  
Dallas, Texas 75251

Attention: Mr. Mark Pelizza, Environmental Manager

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION; SAFETY ANALYSIS REVIEW AND  
ENVIRONMENTAL REVIEW FOR THE HYDRO RESOURCES, INC. URANIUM SOLUTION  
MINING LICENSE APPLICATION, CROWNPOINT, NEW MEXICO

Dear Mr. Pelizza:

The U.S. Nuclear Regulatory Commission staff, with the assistance of Oak Ridge National Laboratory (ORNL), has completed the initial safety analysis review and the detailed environmental review of the Hydro Resources, Inc. (HRI) supporting documentation for the above referenced source material license application. The detailed environmental review was initiated to address the majority of the public comments received on the draft Environmental Impact Statement (EIS) issued for comment in October, 1994.

Enclosure 1 to this letter contains requests for additional information needed to proceed with the licensing review and to complete the final EIS. These requests encompass both safety and environmental issues, excluding water resource protection and cost/benefit analysis issues. The water resource and cost/benefit information requests will be transmitted to HRI under separate cover within 30 days of date of this letter. In addition, some additional information may be needed from HRI at a later date to adequately address a few of the public comments as the EIS is finalized.

Enclosure 2 is a copy of the NRC Staff Technical Position WM-8201 "Hydrologic Design Criteria for Tailings Retention Systems," provided for your information to address information request 32 listed in Enclosure 1.

In order to support the review schedule, please provide your response to the issues identified in Enclosure 1 within 60 days of this letter. If you are unable to meet this date, please provide your schedule for responding within 10 days of receipt of this letter.

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M. Pelizza

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If you have any questions concerning this letter, please contact the NRC Project Manager, Mr. Michael Layton, at (301) 415-6676.

Sincerely,

(Original signed by)

Daniel M. Gillen, Section Leader  
Uranium Recovery Projects Section  
High-Level Waste and Uranium  
Recovery Projects Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Enclosures: As stated (2)  
Docket No.: 40-8968  
Casework Nos.: X60529, X60576

cc: James Saulsbury, ORNL

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