



Mr. David Mayerson
New Mexico Environment Department
Ground Water Quality Bureau
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico 87502-5469

August 17, 2015

Dear Mr. Mayerson:

On behalf of Eastern Navajo Diné Against Uranium Mining ("ENDAUM") please accept the following comments on Uranium Resources, Inc.'s ("URI's") application for renewal of discharge permit DP-558 and the New Mexico Environment Department's ("NMED") draft DP-558.

ENDAUM is an association of concerned residents in Churchrock and Crownpoint, Navajo Nation, New Mexico. URI's proposed operations will impact ENDAUM members. In particular, ENDAUM member Larry King resides on URI's proposed mine site at Township 16 North, Range 16 West, Section 17, and directly adjacent to Township 16 North, Range 16 West, Section 8 ("Section 8), which is the land subject to the proposed discharge permit renewal. Mr. King is a member of the Navajo Nation and uses and enjoys land and resources adjacent to and near Section 8.

ENDAUM opposes renewal of DP-558 for two reasons. First, Hydro Resources, Inc. ("HRI"), URI's wholly owned subsidiary and predecessor in interest in DP-558, failed to timely renew DP-558 after its initial renewal application in 1996 and URI therefore does not have a valid existing permit. Second, URI is prohibited from accessing the proposed minesite at Section 8 for any reason other than administratively maintaining its licenses and permits pursuant to an agreement with the Navajo Nation, and therefore granting renewal of DP-558 would result in a conflict with URI's existing legal obligation under Navajo Nation law.

I. URI Does Not Possess a Valid Existing Discharge Permit Under New Mexico Law.

Ordinarily, a discharge permit is issued for a period of not more than five years. 20.6.2.3109.H.4 NMAC. During this period, the permittee may conduct discharges in conformity with the terms of the discharge permit. 20.6.2.1220 NMAC. In the case of new discharges, the term of the permit commences on the date the discharge begins. 20.6.2.3109.H.4 NMAC. In “no event”, however, may a discharge permit term be longer than seven years from the date of issuance. *Id.*

A permittee may renew its discharge permit in order to continue to conduct discharging activities. 20.6.2.3106.F NMAC. A discharge permit renewal is timely if the permit holder submits a renewal application within 120 days of its permit expiring. *Id.* Thus, when a permittee is conducting discharges, it may submit a renewal for a discharge permit 120 days before its five year permit term expires, and continue discharging activities for up to two years beyond the five year permit term while NMED evaluates its renewal. However, “in no event” may the permittee discharge fluids into groundwater beyond a term of seven years from the date the permit was issued. 20.6.2.3109.H.4 NMAC.

If a permittee has not conducted any discharges during its permit term, it may still renew its permit under § 3106.F. However, as with permittees who are actively discharging pursuant to a discharge permit, under no circumstances can the term of a discharge permit be extended beyond seven years after the date the permit was issued. 20.6.2.3109.H.4 NMAC.

More important, the Water Quality Act itself unequivocally states that “in no event” shall a discharge permit term exceed seven years from the date it was issued. NMSA 1978, § 74-6-5-(I). Section 3109.H.4 and § 74-6-5-(I) clearly apply to **all** discharge permits irrespective of whether they are initial permits or permit renewals. Thus, the plain language of § 3109.H.4 and § 74-6-5-(I) clearly prohibit the Secretary from approving - under any circumstances - a discharge permit application, modification or renewal for a period of more than seven years from the date the permit was issued.

Under the current circumstances, URI's predecessor corporation, HRI, initially applied for and received DP-558 in 1989. HRI submitted a renewal application for DP-558 in 1996, which NMED deemed timely. However, NMED failed to take any action on the 1996 DP-558 renewal application. *See*, Draft DP-558 renewal at I, ¶ 2. By the Water Quality Act's and its implementing regulations' plain language, DP-558 expired

in 1996, seven years after it was issued. URI does not have a valid discharge permit under New Mexico law and renewal is therefore inappropriate. NMED should not approve the draft DP-558, but should instead require URI to submit an application for a new discharge permit and go through the appropriate notice and hearing process.

II. URI Cannot Legally Access Section 8 for any Reason Related to DP-558.

URI not only lacks a valid existing discharge permit, it is also prohibited by virtue of a binding legal agreement with the Navajo Nation from entering onto Section 8 for any purpose enumerated in DP-558. Temporary Access Agreement between Navajo Nation and HRI at ¶ 4 (July 19, 2012) ("Access Agreement"), attached as Exhibit 1.

The draft of DP-558 authorizes URI to conduct two activities. First, URI may conduct discharges in order to establish baseline groundwater quality "within the Westwater Canyon member occurring within the proposed mine area." DP-558 Draft, Section IV, ¶ 1.¹ Second, the draft of DP-558 authorizes URI to conduct a project to demonstrate that it can restore groundwater quality to standards in 20.6.2.3103 NMAC. DP-558 Draft, Section IV, ¶ 2.²

¹ Notwithstanding that URI is prohibited from entering Section 8 for this purpose, the extent of the area for which URI is authorized to establish "baseline" groundwater quality, i.e., the Westwater member within an undefined "mine area", is so limited to be meaningless. Meaningful baseline groundwater quality would include groundwater samples from the **entirety** of Section 8 (not just the "mine area") and overlying and underlying aquifers. Further, ore zone and non-ore zone groundwater quality would not be averaged. See, Declaration of Richard J. Abitz, *In the Matter of Hydro Resources, Inc.*, Nuclear Regulatory Commission Docket No. 40-8968-ML at ¶¶ 23-39 (March 3, 2005), attached as Exhibit 2.

² ENDAUM has two technical concerns with this provision. First, no *in situ* leach ("ISL") uranium mining operation in the United States, including any of URI's ISL operations, has ever restored groundwater to pre-mining conditions. See, e.g., Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*, U.S. Geological Survey Open-File Report 2009-1143 (2009); NUREG 1910, Supp. 1, *Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County Wyoming* at B-36 (Aug. 2010). Thus, alternative abatement standards for groundwater restoration have become the rule for ISL projects, rather than the exception. Second, URI's management has repeatedly stated that establishing baseline groundwater quality conditions and conducting a "restoration project" at Section 8 can only be accomplished by beginning commercial scale operations. See, Affidavit of Mark S. Pelizza, *In the Matter of Hydro Resources, Inc.*, Nuclear Regulatory Commission Docket No. 40-8968-ML at ¶¶ 197-202 (April 21, 2005), attached as Exhibit 3. NMED should not abet the subterfuge that URI will be establishing baseline conditions and conducting a "demonstration project", when in fact it will be initiating production operations.

However, URI is not authorized to enter Section 8 across Navajo Nation land to conduct either of these activities, pursuant to the Access Agreement. *See, id.*, ¶ 4. Pursuant to that agreement, URI is only authorized access to Section 8 to satisfy "administrative" permit requirements. Access Agreement, ¶ 6. URI is specifically prohibited access to Section 8 for the purpose of conducting any construction or earth disturbing activities. *Id.*

The Access Agreement provisions unequivocally prohibit URI from entering Section 8 to conduct any of the activities authorized in the DP-558 draft. As a matter of comity, NMED should not issue a permit that directly conflicts with the law of another sovereign. *See, e.g., Garcia v. Gutierrez*, 2009-NMSC-044, ¶¶ 64-65, 147 N.M. 105, 121-122 (2009) (New Mexico Supreme Court has always encouraged comity between state and tribal courts in order to avoid conflicting judgments and promote efficiency and justice); *NLRB v. Pueblo of San Juan*, 276 F.3d 1186,1195 (10th Cir. 2002) (Indian tribes have the right to make their own laws and be governed by them, free from state law infringement, and like states, are entitled to comity). Moreover, because DP-558 would conflict with Navajo Nation law, its legal effect is questionable.

For the foregoing reasons, ENDAUM respectfully requests that NMED deny URI's request to renew DP-558. Further, ENDAUM requests that it be notified, through its legal counsel, of NMED's decision on this matter.

Sincerely,



Eric Jantz
Staff Attorney

cc: David A. Taylor
Navajo Nation Dept. of Justice

Larry King

David Gillespie
U.S. EPA, Region 6