

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Thomas S. Moore, Presiding Officer
Thomas D. Murphy, Special Assistant

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

_____)	
In the Matter of:)	Docket No. 40-8968-ML
)	
HYDRO RESOURCES, INC.)	ASLBP No. 95-706-01-ML
)	May 8, 2001
_____)	

HRI'S RESPONSE TO PRESIDING OFFICER'S ORDER

I. INTRODUCTION

By order dated May 2, 2001 (LBP-01-16) ("May 2 Order"), the Presiding Officer set a telephone scheduling conference on May 10, and requested that intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC"), and Grace Sam and Marilyn Morris, licensee Hydro Resources, Inc. ("HRI"), and the Nuclear Regulatory Commission staff ("Staff") (collectively, "the parties") submit, by May 8, proposed schedules for completing the above-captioned proceeding. See May 2 Order, at 1, and 3. The Presiding Officer also requested that each party state its views on whether Intervenor's concerns pertaining to HRI's proposed mining sites located at Section 17, Unit 1, and Crownpoint, "should be considered together, or separately and consecutively." Id. at 3. In response to this request, HRI provides below a proposed schedule for completing this proceeding, and its views on the manner in which Intervenor's concerns regarding Section 17, Unit 1, and Crownpoint should be considered.

II. DISCUSSION

A. Proposed Schedule for Remaining Section 8 Issues

HRI agrees with the Staff's proposed schedule for resolving the remaining financial issues concerning Section 8.

B. Proposed Schedule for non-Section 8 Issues

HRI does not oppose the Staff's proposed schedule for resolving non-Section 8 issues. Specifically, HRI does not oppose the Staff's position that Intervenors' concerns regarding issues pertaining to HRI's proposed mining sites at Section 17, Unit 1, and Crownpoint, be considered together, rather than separately and consecutively. HRI recognizes that this is different than the suggested approach contained in its letter to the Commission. *See* HRI's letter to Chairman Meserve, dated April 30, 2001, at 2 (describing proposed hearing phases II - IV). Further discussion among the parties regarding an acceptable manner to proceed with the hearing indicates that the other parties favor a consolidated approach.¹

While HRI generally agrees with the Staff's proposal, one change is required. The Staff's proposal does not take into account the fact that HRI must file financial surety information for the Restoration Action Plans (RAPs) for Section 17, Unit 1, and Crownpoint. In addition, HRI may need to file other information with the Staff as well. Accordingly, HRI proposes the following schedule, which is based almost wholly on the proposal of the Staff:

¹ HRI notes for the record, however, that there may be significant factual or technical differences between circumstances at each of the three sites perhaps making one consolidated hearing on multiple issues difficult to manage for the Presiding Officer and the parties. For example, there may be significant differences with respect to groundwater that impact the parties positions and arguments regarding to Section 17, Unit 1 and/or Crownpoint.

1. Within 180 days following the Presiding Officer's initial decision resolving the pending financial assurance issues pertaining to Section 8, HRI should be required to submit financial surety information for Section 17, Unit 1 and Crownpoint to the Staff. The Staff should be required to review the material, request additional information from HRI if necessary, and reach a decision approving or denying the Restoration Action Plans for each location within 90 days.²

2. Within 10 days of the Staff's decision resolving the financial assurance issues pertaining to Section 17, Unit 1 and Crownpoint, the Intervenor, who carry the burden of going forward, should be required to submit a list of the areas of concern that they wish to litigate pertaining to HRI's mining sites at Section 17, Unit 1, and Crownpoint.

3. HRI and the Staff should be given 30 days to file responses. HRI, like the Staff, anticipates that there will be a number of legal issues to resolve including whether the doctrine of collateral estoppel prevents the Intervenor from litigating various issues and/or areas of concern.

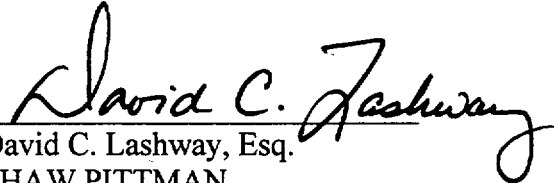
4. Following review of the HRI and Staff responses, the Presiding Officer should decide which areas of concern remain to be litigated. Assuming the Presiding Officer decides that one or more of Intervenor's areas of concern remain to be litigated, the Presiding Officer should establish an appropriate schedule for the filing of written presentations regarding each remaining area of concern, pursuant to 10 C.F.R. § 2.1233(a). The schedule should provide that each area of concern should be addressed separately and consecutively by topic to ensure a more efficient and effective hearing. HRI does not comment at this time on the specific schedule governing written presentations for each area of concern because it will depend, in part, on the nature and number, if any, of areas of concern that remain to be litigated.

² Intervenor agree with HRI that the schedule should provide for a 180 day period for HRI to file financial surety information regarding Section 17, Unit 1, and Crownpoint, and that the remainder of the hearing should not commence until after the Staff's decision regarding the adequacy of the RAPs for those mining locations. Telephone Conference with Geoffrey H. Fettus and Diane Curran, Counsel to Intervenor (May 7 and 8, 2001).

C. Other Matters to be Discussed at the May 10 Teleconference.

None.

Respectfully submitted,

A handwritten signature in black ink that reads "David C. Lashway". The signature is written in a cursive style with a large, looping "L" and "W".

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in the above-captioned proceeding has been served on the following by electronic mail (as indicated), by facsimile (as indicated), and by first class mail, postage pre-paid, on this 8th day of May, 2001.

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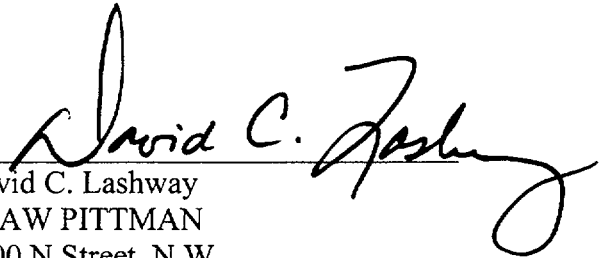
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