

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

Before Administrative Judges:

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

In the Matter of

Hydro Resources, Inc.  
PO Box 15910  
Rio Rancho, New Mexico 87174

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

May 25, 2001

ORDER

In CLI-01-4, 53 NRC 31, 44 (2001), the Commission remanded this proceeding and directed, inter alia, the Presiding Officer “to consult with the parties and . . . establish a precise schedule for further proceedings” once Hydro Resources, Inc. (HRI) indicated whether it wished to retain its full license and proceed to hearing. Pursuant to that directive, the Presiding Officer and Judge Murphy, one of the special assistants in this proceeding, held a telephone conference on May 10, 2001, with counsel for HRI, the NRC Staff, and the Intervenors, Eastern Navajo Diné Against Uranium Mining (ENDAUM), Southwest Research and Information Center (SRIC), Marilyn Morris, and Grace Sam. Not surprisingly, the parties’ proposed schedules filed in advance of the conference differed in various particulars, with HRI and the Intervenors in general agreement and the Staff taking a different position. At the conference, however, all parties generally agreed that the same basic groupings of the Intervenors’ areas of concern used in resolving the issues for the Church Rock Section 8 site should be employed in

addressing the Intervenors' same areas of concern for the Church Rock Section 17, Crownpoint Unit 1, and Crownpoint sites. Similarly, all parties generally agreed that the proceeding should be structured so that each group of issues should be addressed seriatim for all three remaining sites instead of addressing all the groups of issues for each site before addressing the second site and then the third site. Finally, in accordance with the Presiding Officers' request, the parties negotiated a joint proposed schedule which they filed on May 14, 2001. The parties' joint proposed schedule forms the basis for the schedule that will hereafter control the conduct of the remainder of the proceeding.

Pursuant to the authority granted in 10 C.F.R. §2.1209, the Presiding Officer sets forth the following directives and schedules for the conduct of this proceeding:

I. Administrative Matters

A. Service on Presiding Officer, Special Assistants, and Other Parties

1. Service on Administrative Judges

For each pleading or other submission filed before the Presiding Officer in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. §2.1203(c) and serving a copy on every other party, two conforming copies should be served on the Presiding Officer and one conforming copy should be served on Judge Murphy. Further, with respect to any party's pleadings or other submissions relating to groundwater restoration plans, surety estimates, groundwater protection, liquid waste disposal, and surface water protection, one additional conforming copy should be served on Judge Robin Brett, the second Special Assistant in this proceeding. All filings should be served in accordance with the following instructions:

a. Regular Mail. To complete service via United States Postal Service first-class mail, conforming copies should be sent to the Presiding Officer and the Special Assistants at the following addresses:

Thomas S. Moore, Presiding Officer  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Thomas D. Murphy  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Robin Brett  
2314 44<sup>th</sup> Street, NW  
Washington, DC 20007

For regular mail service, the NRC Staff may use the NRC internal mail system (Mail Stop T-3 F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the Presiding Officer and Judge Murphy via overnight (e.g., express mail) or hand delivery, a party should send conforming copies to each of them at the following address:

Atomic Safety and Licensing Board Panel  
Third Floor, Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852

It should be noted that use of the regular mail address of the Presiding Officer and Judge Murphy for overnight (such as Federal Express) or hand delivery may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the Presiding Officer and Judge Murphy by facsimile transmission, a party should (i) send copies addressed to the attention of the Presiding Officer and Judge Murphy at 301-415-5599 (verification 301-415-7409); and (ii) that same date, send conforming copies to each of them by regular mail. To complete service

on Judge Brett by facsimile transmission, a party should (i) send a copy addressed to the attention of Judge Brett at 703-648-4227; and (ii) that same date, send a conforming copy to him by regular mail.

d. E-Mail. To complete service on the Presiding Officer, Judge Murphy and Judge Brett by e-mail transmission, a party should (i) send the pleading or other submission (which should include the certificate of service) as a file attached to an e-mail message directed to the Presiding Officer, Judge Murphy, and Judge Brett (Internet IDs: tsm2@nrc.gov; tdm@nrc.gov; rbrett@usgs.gov. NRC Agency Upgrade of Technology for Office Systems (Autos) Wide Area Network (WAN) System IDs for the Presiding Officer and Judge Murphy: TSM2; TDM); (ii) send any attachments or exhibits to a pleading that cannot be transmitted by e-mail to the Presiding Officer, Judge Murphy, and Judge Brett by separate facsimile transmission or other means that will ensure receipt by the due date; and (iii) send paper conforming copies that same date to the Presiding Officer, Judge Murphy, and Judge Brett by regular mail.

e. Timely Service by Hand Delivery, Facsimile Transmission or E-Mail.

To be timely, any pleading or other submission served on the Presiding Officer, Judge Murphy, and Judge Brett by hand delivery, facsimile transmission, or e-mail must be received by them no later than 11:59 p.m. Eastern Standard Time or, as applicable, Eastern Daylight Time, on the date due.

## 2. Service on Other Parties

Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Presiding Officer, Judge Murphy, and Judge Brett, the party serving the pleading or other submission should make service on all other parties and the Office of the Secretary by the same or a comparable method.

The facsimile number of the Office of the Secretary is 301-415-1101 and the e-mail address is hearingdocket@nrc.gov.

### 3. Service of All Filings

Absent some other directive from the Presiding Officer, all filings in this case directed to the Presiding Officer shall be served on the Presiding Officer, Judge Murphy, and, as appropriate, Judge Brett and the other parties so as to ensure receipt on the day of filing. Although the Presiding Officer favors the use of e-mail by all parties whenever feasible and, absent some other directive from the Presiding Officer, the parties may use any of the methods outlined above so long as the filing is timely received by the Presiding Officer, Judge Murphy, Judge Brett, and the other parties.

## B. Motions, Responses to Motions, and Reply Pleadings

### 1. Motions for Extensions of Time

A motion for an extension of time filed with the Presiding Officer shall be submitted in writing at least three business days before the due date for the pleading or other submission for which the extension is sought. A motion for extension of time shall (a) indicate whether the request is opposed or supported by the other parties; and (b) demonstrate “unavoidable and extreme circumstances” that warrant granting the extension. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

### 2. Reply Pleadings

The Commission’s Rules of Practice, 10 C.F.R. Part 2, Subpart L, do not provide for any right of reply to a responsive pleading. HRI and the NRC Staff indicated during the telephone conference, however, that they intend to challenge a number of the Intervenor’s presentations on various issues on the grounds that the issues are barred by the law of the case or issue preclusion doctrines. In such circumstances, the Intervenor’s obviously must be given an

opportunity to reply to such challenges to their presentations. Therefore, if HRI or the Staff wish to challenge in their responses any of the Intervenor's presentations on the various groups of issues on the grounds that one or more issues should be barred by the law of the case or issue preclusion doctrines, they must file a notice to that effect within 30 days of the filing of the Intervenor's presentation on the particular group of issues involved. In any instance in which a notice is filed, the Intervenor may file a reply limited to the preclusion issues. Any reply must be filed within 7 days of the filing of the last-in-time response for which a notice was filed.

A motion for leave to file a reply in all other circumstances must be filed within two business days of the filing of the response for which leave to reply is sought. Such motion shall (a) indicate whether the request is opposed or supported by the other parties; and (b) demonstrate good cause for permitting the reply to be filed.

### 3. Responses to Motions

Any opposition response to a motion for an extension of time, a motion for leave to file a reply, a motion to extend a page limit or similar motions shall be served on the Presiding Officer, Judge Murphy and, as appropriate, Judge Brett, the Office of the Secretary, and the other parties by e-mail, facsimile transmission or other means that will ensure receipt on the second business day after the filing of the motion.

### C. Hearing File

The Staff shall file an up-to-date index for the hearing file by June 29, 2001. Thereafter, any party may file a response to the index by July 27, 2001 noting any omissions or other errors so that the hearing file can be corrected, if appropriate, and brought up to date.

### D. Service List

In response to the Presiding Officer's May 2, 2001, order, HRI's counsel prepared and served upon all parties an updated service list that included the complete mailing address,

e-mail address and facsimile number of each party's counsel. All parties shall file any additions, deletions, or corrections to that service list by June 1, 2001.

#### E. Settlement

At the telephone conference, counsel for ENDAUM and SRIC indicated that he needed to consult at length with his clients and co-counsel before he would be able to respond to the Presiding Officer's inquiry whether it was likely that any of the numerous issues involved in this proceeding could be further narrowed or settled. Intervenors' counsel should report in writing to the Presiding Officer by June 15, 2001, whether the Intervenors wish to pursue settlement negotiations. Should the Intervenors indicate that they wish to entertain settlement discussions, the Presiding Officer will consult further with the parties about establishing a schedule and framework for settlement discussions.

### II. Schedule

#### A. HRI's Restoration Action Plans (RAPs)

1. Church Rock Section 17 RAP. As agreed by the parties, HRI shall submit to the NRC Staff its RAP, including surety estimates, for the Church Rock Section 17 site by July 24, 2001. The Staff then will endeavor to approve, reject, or send HRI a request for additional information (RAI) within 30 days of HRI's submittal of the RAP. In the event the Staff requests additional information from HRI, HRI will endeavor to respond within 15 days and the Staff will endeavor to approve or reject the Section 17 RAP within 15 days of HRI's response to the Staff's RAI. After the submittal of HRI's Section 17 RAP, any slippage in any of these time periods should be reported immediately to the Presiding Officer by the party responsible for the slippage, along with the new date for completing the activity. HRI and the Staff should serve all their respective documents on all parties.

2. Crownpoint Unit 1 RAP. As agreed by the parties, HRI shall submit to the Staff its RAP, including surety estimates, for the Crownpoint Unit 1 site by September 17, 2001. Thereafter, the same time periods and provisions set forth above for the Section 17 RAP should be followed.

3. Crownpoint RAP. As agreed by the parties, HRI shall submit to the Staff its RAP, including surety estimates, for the Crownpoint site by November 21, 2001. Thereafter, the same time periods and provisions set forth above for the Section 17 RAP should be followed.

B. Written Presentations Pursuant to 10 C.F.R. §2.1233

All parties agree that there are 10 areas of concern to be addressed for each of HRI's remaining three sites: 1) adequacy of groundwater restoration plans; 2) surety estimates; 3) groundwater protection; 4) liquid waste disposal; 5) surface water protection; 6) compliance with NMPA, NGPRA, and related cultural resource issues; 7) adequacy of FEIS under NEPA (consideration of action alternatives, cumulative impacts of project, consideration of mitigation actions, failure to supplement FEIS, environmental justice); 8) air emission controls; 9) technical qualifications; and 10) consideration of health impacts.

In general accord with the parties' proposed schedule, there shall be separate written presentations for each area of concern and each such presentation shall address the Church Rock 17, Crownpoint Unit 1, and Crownpoint sites. Accordingly, there will be ten separate groups of filings (i.e., one for each area of concern addressing all three sites).

The Intervenor's first written presentations shall be filed 45 days after the Staff approves or rejects HRI's Crownpoint RAP. HRI's first response shall be filed 45 days after the Intervenor's filings and the Staff's first response shall be filed 10 days after the filing of HRI's response.



The Intervenors' second written presentations shall be filed 45 days after the Intervenors' first presentation. HRI's second response shall be filed 45 days after Intervenors' second filing and the Staff's second response shall be filed 10 days after the filing of HRI's second response.

The same schedule applicable to the parties' second set of filings will be followed for each of the remaining areas of concern. In the event the Presiding Officer has written questions for the parties or finds that oral presentations or questioning is necessary, the schedule will be adjusted to accommodate those activities.

The Presiding Officer directs that the parties address all the groundwater issues in their presentations before addressing the remaining areas of concern. With that caveat, the parties shall file by October 1, 2001, an agreement on the order in which they will address the areas of concern. Once the parties file an agreement on the order in which the areas of concern will be addressed, the Presiding Officer will hold a second telephone conference with the parties. Finally, because of the large number of issues involved in the proceeding for each of HRI's three remaining sites and the likely large volume of material to be filed by the parties, the Presiding Officer will issue an order in due course directing the form and format for the parties' written presentations filed pursuant to 10 C.F.R. § 2.1233.

It is so ORDERED.

By the Presiding Officer

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Thomas S. Moore  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 25, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

HYDRO RESOURCES, INC.

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Docket No. 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED MAY 25, 2001 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Washington, DC 20555-0001

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Administrative Judge  
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Docket No. 40-8968-ML  
LB ORDER DATED MAY 25, 2001

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 25<sup>th</sup> day of May 2001