

RAS 7450

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Hydro Resources, Inc.

Docket Number: 40-8968-ML

Location: (telephone conference)

Date: Thursday, March 4, 2004

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

\* \* \* \* \*

TELECONFERENCE

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IN THE MATTER OF:                    ||  
HYDRO RESOURCES, INC.           || Docket No. 40-8968-ML  
UNDER CONTRACT NO.               ||  
N62472-98-c-4150                 ||

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Thursday,  
March 4, 2004

The teleconference commenced at 2:00 p.m.

BEFORE:

THE HONORABLE THOMAS MOORE

**NEAL R. GROSS**  
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On Behalf of the U.S. Nuclear Regulatory

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## P R O C E E D I N G S

(2:02:55 p.m.)

JUDGE MOORE: This is Judge Moore. With me is Judge Kohl and panel's law clerk Jimmy Roma. Thank you all for this conference call. Because longevity of the HRI proceedings, the parties that have entered appearances and with -- over many months -- prudence dictates having counsel for each -- on the record identify themselves, and in addition to stating name and who they represent, would you also please provide your full address, your telephone number, your fax number, your email address, all the while speak very slowly so the Court Reporter can get this all down, so that we can compile a new service list, and the parties will also have this available for their service certificate. Start with HRI, please.

MR. JANTZ: Excuse me, Judge Moore.

JUDGE MOORE: Yes.

MR. JANTZ: This is Eric Jantz for Intervenors. I'm having trouble hearing you. Your voice keeps fading in and out.

MS. CURRAN: Same here, Judge Moore.  
Diane Curran.

JUDGE MOORE: I'll get closer to the phone. Does that help or no?

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1 MR. JANTZ: Yes.

2 JUDGE MOORE: Okay. One moment while I  
3 try to increase the volume. Is that better for all of  
4 you now?

5 MS. CURRAN: Judge Moore, this is Diane  
6 Curran. The problem for me was that every fourth or  
7 fifth word you said would simply not -- I wouldn't  
8 hear it. It wasn't that your voice was soft, suddenly  
9 there was no sound, so I'll let you know if that  
10 continues to be a problem.

11 JUDGE MOORE: Thank you. If so, we'll try  
12 to get a new line and start all over.

13 To repeat, because of the longevity of  
14 this proceeding, the number of attorneys who have  
15 entered appearances, the number of withdrawals of  
16 appearance, prudence dictates that we place on the  
17 record at this time so that the Board can compile a  
18 new service list and all the parties will have a  
19 service list, would each party - I'm sorry - would  
20 each counsel for each party please identify yourself  
21 on the record. And in addition state the party you  
22 represent, state your full address, your telephone  
23 number, your fax number, and your email address.  
24 Please speak slowly so the Court Reporter can get it  
25 all down, and we'll start with HRI.

1 MR. THOMPSON: Thank you, Your Honor.  
2 This is Anthony J. Thompson, and also Christopher S.  
3 Pugsley, P-U-G-S-L-E-Y. He is not on the phone call  
4 today, but he will be participating. We are at the  
5 law offices of Anthony J. Thompson, 1225 19<sup>th</sup> Street,  
6 N.W., Suite 200, Washington, D. C. 20036. Telephone  
7 number (202) 496-0780. Fax number (202) 496-0783.  
8 Email - AJThompson@AThompsonlaw.com. And let me see  
9 if I can get Chris Pugsley's email address. I don't  
10 have it right here. One second, Your Honor.  
11 Cpugsley@AThompsonlaw.com.

12 JUDGE MOORE: Thank you, Mr. Thompson.  
13 The NRC Staff.

14 MR. HULL: Yes, Your Honor. This is John  
15 Hull, H-U-L-L representing the NRC Staff. My phone  
16 number is (301) 415-1573. My email address is  
17 JTH@NRC.gov. The fax number is (301) 415-3725. And  
18 the mailing address is U.S. Nuclear Regulatory  
19 Commission, 1 White Flint North, 15D21, Washington,  
20 D.C. 20555. And Mauri Lemoncelli will give her  
21 personal information, as well.

22 MS. LEMONCELLI: Your Honor, this is Mauri  
23 Lemoncelli. My first name is M-A-U-R-I, last name  
24 Lemoncelli, L-E-M-O-N-C-E-L-L-I. My information is  
25 the same as Mr. Hull's except for my telephone number,

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1 which is (301) 415-1778, and my email address  
2 mtl1@nrc.gov.

3 JUDGE MOORE: Intervenors.

4 MR. JANTZ: Your Honor, which intervenors,  
5 Eric & Endaum or Marilyn Morris and Grace Sam?

6 JUDGE MOORE: Whoever is on the line,  
7 start with you.

8 MR. JANTZ: Okay. This is Eric Jantz, E-  
9 R-I-C J-A-N-T-Z, representing Eastern Navajo Dine  
10 Against Uranium Mining.

11 JUDGE MOORE: Slow down and repeat that  
12 for the Court Reporter, please.

13 MR. JANTZ: Sure. I represent Eastern  
14 Navajo Dine Against Uranium Mining, and Dine is  
15 spelled D-I-N-E. And Southwest Research and  
16 Information Center. My address is 1405 Luisa Street,  
17 and that's spelled L-U-I-S-A, Suite 5, Santa Fe, New  
18 Mexico 87505. My phone number is (505) 989-9022. My  
19 fax number is (505) 989-3769, and my email address is  
20 Ejantz@NMELC.org.

21 JUDGE MOORE: Thank you.

22 UNIDENTIFIED SPEAKER: Diane, you should  
23 go next.

24 MS. CURRAN: This is Diane Curran, C-U-R-  
25 R-A-N. Diane is spelled with one N. The address is

1 Harmon Curran, et al. Harmon is H-A-R-M-O-N, 1726 M  
2 as in Mary Street, N.W., Suite 600, Washington, D.C.  
3 20036. The phone number is (202) 328-3500, and the  
4 fax number is (202) 328-6918. The email address is  
5 Dcurran@HarmonCurran.com.

6 MR. FETTUS: Can everybody hear me?

7 JUDGE MOORE: Yes.

8 MR. FETTUS: Okay. This is Geoffrey  
9 Fettus. That's G-E-O-F-F-R-E-Y, last name is Fettus,  
10 F as in Frank, E-T-T-U-S, and I'm with the Natural  
11 Resources Defense Council, and I'm representing Endaum  
12 & Sric. Endaum, E-N-D-A-U-M and S-R-I-C. My address  
13 is NRDC, 1200 New York Avenue, N.W., Suite 400,  
14 Washington, D.C. 20005. My phone number is (202)  
15 289-2371. My fax number is (202) 289-1060, and my  
16 email address is Gfettus@NRDC.org.

17 JUDGE MOORE: Thank you. Next.

18 MS. BERGLAN: This is Laura Berglan, B-E-  
19 R-G-L-A-N with BNA Peoples' Legal Services. I  
20 represent the Intervenors Marilyn Morris and Grace  
21 Sam, S-A-M. My address is P.O. Box 765 Tuba City,  
22 Arizona 86045. My phone number is (928) 283-3211.  
23 Fax is (928) 283-5460. And my email is  
24 Lberglan@BNALegalServices.org. And I'll also give the  
25 information for William Vukosky who is not on the phone.

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1 His name is William Vukosky, last name V-  
2 U-K-O-S-K-Y. His address is 201 East Birch Avenue,  
3 Suite 5, Flagstaff, Arizona 86001. Phone (928) 774-  
4 0653. Fax (928) 774-9452. Email  
5 Wvukosky@BNALegalServices.org.

6 JUDGE MOORE: Thank you. Is that  
7 everyone?

8 MR. SCHUEY: Your Honor, this is Chris  
9 Schuey at Southwest Research and Information Center.  
10 Our names have been on the service list since the  
11 inception of the case. Should I pipe in or -- I'm not  
12 an attorney.

13 JUDGE MOORE: Are you represent -- well,  
14 did you represent yourself in this proceeding as a  
15 party?

16 MR. SCHUEY: No, sir.

17 MR. JANTZ: Your Honor, this is Eric Jantz  
18 from the New Mexico Environmental Law Center. Chris  
19 is actually one of my clients, one of the Law Center's  
20 clients.

21 JUDGE MOORE: Let's today just reserve  
22 this for counsel. And is there anyone else on the  
23 line that should be identified? Mr. Hull, does Staff  
24 have anybody else there?

25 MR. HULL: No. I was expecting Bob

1 Nelson, but I just have Bill Bonfill.

2 JUDGE MOORE: Okay. Let's proceed then.  
3 So that we can double check all this information in  
4 case it's not absolutely correctly recorded in the  
5 transcript, I would appreciate each of you counsel to  
6 send me an email that contains the same information at  
7 your earliest convenience when we're done with this  
8 phone conference. And also, it probably makes sense  
9 for each of you to enter a new appearance statement  
10 containing the same information so eventually it'll  
11 get into the docket that way. Is that understood?

12 ALL COUNSEL: Yes, Your Honor.

13 JUDGE MOORE: The first order of business  
14 is, I guess, to be directed at the Staff. What is the  
15 current status of the hearing file, Mr. Hull?

16 MR. HULL: Yes. I was able to speak  
17 briefly with Ms. Young about that, and it seemed clear  
18 from what she said that we will need to update the  
19 hearing file.

20 JUDGE MOORE: Well, when will you be doing  
21 that, please?

22 MR. HULL: Well, by the end of March.  
23 Would that be sufficient?

24 JUDGE MOORE: This is the beginning of  
25 March. Before we can set a schedule and have the new

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1 filings, the hearing file has to be up-to-date. Can  
2 that be speeded up, Mr. Hull?

3 MR. HULL: Well, how about the beginning  
4 of the last week of March, around March 24 or 25?

5 JUDGE MOORE: All right. We'll expect the  
6 hearing file to be updated by March 26<sup>th</sup>, and you will  
7 serve on all parties all the new material.

8 MR. HULL: Understood.

9 JUDGE MOORE: And I would appreciate it,  
10 Mr. Hull, if you would serve them by the fastest  
11 available method. Do not use ordinary mail which will  
12 mean they might not get it for weeks.

13 MR. HULL: Okay.

14 JUDGE MOORE: We need to establish a  
15 schedule for filing for the remaining ten issues. The  
16 parties may well recall that they previously set the  
17 order in which they wish to address those ten  
18 remaining issues. Are all parties agreed that that is  
19 the order in which we should proceed?

20 MR. THOMPSON: Your Honor, this is Anthony  
21 Thompson for HRI.

22 JUDGE MOORE: Mr. Thompson.

23 MR. THOMPSON: I don't have any reason to  
24 say otherwise, but to be honest with you, sir, I  
25 really haven't had a chance. Mr. Pelizza has been

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1 traveling. I haven't had a chance to discuss any of  
2 this in depth with my client. I don't know of any  
3 reason off the top of my head why it should be any  
4 different, but I would like to at least discuss it  
5 with him.

6 JUDGE MOORE: That's fine, Mr. Thompson.  
7 What we'll do then is you will use as your reference  
8 point the September 28<sup>th</sup>, 2001 joint notice that the  
9 parties filed in the case for that grouping, and if  
10 you would, after consulting with your clients, if you  
11 wish any changes from that September 28<sup>th</sup>, 2001 joint  
12 notice, would you please undertake the negotiations  
13 with all parties and reach a new agreement, and file  
14 it with me by the same date the hearing file will be  
15 updated, March 26<sup>th</sup>.

16 MR. HULL: Yes, Your Honor, I'll do that.

17 JUDGE MOORE: Assuming for the moment and  
18 for discussion purposes we can use that grouping there  
19 will be seven filings. Obviously, if when you come  
20 back on the 26<sup>th</sup> with something different, that could  
21 change, either a lesser or a greater number, but we're  
22 dealing with ten issues.

23 My question at this point is addressed to  
24 the Intervenors. Is it your intention to pursue in  
25 the three remaining sites each -- ten issues for each

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1 site, the same ten issues that you pursued with  
2 Section 8?

3 MR. JANTZ: This is Eric Jantz for  
4 Intervenors Endaum & Sric. At this point, it is our  
5 intention to pursue all those.

6 JUDGE MOORE: Okay. And as in the earlier  
7 May 25<sup>th</sup>, 2001 order in which I set the schedule, I  
8 indicated that we would entertain the filings in a  
9 horizontal manner across all three sites. For  
10 example, if one -- the first area of concern is  
11 adequacy of groundwater restoration, the parties  
12 should address first the Intervenors, and then the  
13 responses of the Staff and HRI should address the  
14 adequacy of groundwater restoration plans first for  
15 Section 17, then Unit 1, and Crown Point. So it will  
16 be a horizontal cut. We will not do all issues on one  
17 site, and then go to the second site, and then the  
18 third site. Rather, we will deal with all three sites  
19 with each group of issues.

20 In that regard, because we're talking in  
21 all probability about an enormous volume of paper and  
22 filings, I think we need to set some ground rules  
23 which we will subsequently set forth in an order after  
24 we receive the March 26<sup>th</sup> joint notice of the parties  
25 on how they wish to group the issues. But to let you

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1 know the presiding officer's thinking on this, I think  
2 it's necessary that for each area of concern, you, Mr.  
3 Jantz, as lead counsel for the Intervenors, each area  
4 of concern should be identified with a red cover and  
5 a table of contents. And what you'll do in that is  
6 you'll set out numbered consecutively each of the --  
7 and use a Roman Numeral so that your first area of  
8 concern will be Roman Numeral number I, and then  
9 following each Roman Numeral you'll set forth the area  
10 of concern, and all the sub issues. And for each  
11 site, you'll use a consistent designation that will be  
12 followed by all parties.

13 I would suggest, for example, Section 17,  
14 you use the capital letter A or spell out seventeen  
15 every time, but it has to be clearly identified.  
16 Nothing can be left to chance or assumed that either  
17 the presiding officer, or the special assistants, or  
18 the other parties will figure it out. And then the  
19 Crown Point Unit could be a capital letter B, or Unit  
20 1 could be the capital letter B, Crown Point could be  
21 the capital letter C.

22 Throughout this proceeding, the remainder  
23 of the proceeding that will be the designation. And  
24 what I would like to avoid is that we have ships  
25 passing in the night. I want these issues joined, so

1 when the Intervenors set forth their first area of  
2 concern and the first issue, they clearly set out in  
3 their filing. And I'm assuming, Mr. Jantz, you're  
4 going to -- in fact, I direct you follow the same  
5 format you followed on the RAP filings.

6 Now for every affidavit, it shall be  
7 numbered, each page will be numbered, and you'll  
8 separate in your filing all the affidavits and  
9 exhibits, and any attachments to either exhibits or  
10 affidavits. Every document must have a page number,  
11 consecutively numbered, so that if you have the first  
12 affidavit and three attachments, you'll have  
13 attachment A, B, and C, or attachment 1, 2, and 3.  
14 Then those page numbers of the attachments must be  
15 numbered starting in each case with number 1, as is  
16 the first page of every affidavit is number 1. That  
17 way we have some glimmer of hope to keep all of this  
18 paper straight. I will spell this out in an order so  
19 that there can be no misunderstanding.

20 Do the parties have any matters they wish  
21 to raise with me at this point?

22 MR. JANTZ: Your Honor, this is Eric  
23 Jantz.

24 JUDGE MOORE: Mr. Jantz.

25 MR. JANTZ: Yes. Intervenors actually

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1 have several issues that we'd like to raise at this  
2 time that affects scheduling.

3 JUDGE MOORE: Okay.

4 MR. JANTZ: The first being that  
5 Intervenors intend to appeal the latest order from the  
6 Licensing Board, LDP-04-03 on a fairly narrow issue.  
7 But we would -- well, we're kind of wondering how that  
8 might affect the scheduling, whether it would be  
9 possible to have the Phase II hearing held in abeyance  
10 until that issue is settled.

11 JUDGE MOORE: No, I do not wish to hold it  
12 in abeyance, but I think the schedule we're setting  
13 effectively gives you a window to proceed with your  
14 appeal. If the hearing file is not to be finalized  
15 and served until March 26<sup>th</sup>, and on March 26<sup>th</sup> you are  
16 to present to me the joint agreement on the order in  
17 which the issues are to be addressed, I will then  
18 issue the final scheduling order, and that will give  
19 you at least a full month, plus the time for your  
20 first presentation. So that, I was planning as I  
21 mentioned in the order directing this status  
22 conference to use the same intervals that were set  
23 forth in the May 25<sup>th</sup>, 2001 order, so you'll be given  
24 45 days from the date of the scheduling order for your  
25 first filing. Does that appear reasonable in the

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1 circumstance?

2 MR. JANTZ: Perhaps with the appeal, but  
3 there are other -- I think there were three other  
4 things that -- three other issues the Intervenors have  
5 questions about.

6 JUDGE MOORE: Let's hear number 2.

7 MR. JANTZ: Number two would be that in  
8 Footnote 154 of LDP-04-03, the panel mentioned the  
9 docketing issue, and how it relates to the issuance of  
10 unpreferred exemptions and UIC permits. And the  
11 Intervenors are interested in the logic. I think the  
12 logic is meritorious, and intend to request the panel  
13 to certify the question to the Commission regarding  
14 that docketing issue so that we know how to allocate  
15 our resources.

16 In other words, we don't want to be in the  
17 position of being halfway through Phase II litigation  
18 and having the Commission re-evaluate its --

19 JUDGE MOORE: In that regard, Mr. Jantz,  
20 I will not certify such a question. I would suggest  
21 that if you're appealing any part of that decision,  
22 that you place it squarely in front of the Commission,  
23 as well.

24 MR. JANTZ: Okay.

25 JUDGE MOORE: Does that take care of

1 number 2?

2 MR. JANTZ: Yes, Your Honor, that does.  
3 Number 3, this summer it came to Intervenors'  
4 attention that there is a planned housing project, a  
5 substantial housing project for the Crown Point area  
6 very near Section 8 and 17 of the Church Rock  
7 Operation. We brought this fact to the attention of  
8 the Staff, and requested a determination about whether  
9 the EIS needed to be supplemented.

10 Such a determination hasn't been  
11 forthcoming. We believe that there are several issues  
12 that need to be analyzed with respect to this,  
13 including how this new development may affect  
14 hydrology and HRI's ability to control excursions in  
15 Section 8 and Section 17, among other things. But we  
16 don't want to be, again, in the position of being  
17 halfway through Phase II and then finding out that the  
18 NRC is deciding not to supplement the EIS, having to  
19 challenge that determination, and then going back and  
20 revisiting supplementation issues on Section 8. It  
21 seems to Intervenors that that question should be  
22 settled before we embark on Phase II.

23 JUDGE MOORE: Mr. Hull.

24 MR. HULL: Yes, Your Honor.

25 JUDGE MOORE: What is the Staff's position

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1 at this point on supplementation of the FEIS for this  
2 project, for the CUP?

3 MR. HULL: No determination has been made,  
4 Your Honor.

5 JUDGE MOORE: Can you give me a schedule  
6 for making that determination, please?

7 MR. HULL: I wouldn't even be able to  
8 hazard a guess on that at this point.

9 JUDGE MOORE: Can you hazard a guess, Mr.  
10 Hull, on how long it will take you to be able to  
11 hazard a guess on that schedule?

12 MR. HULL: I could try to have further  
13 input on that question by the time that we update the  
14 hearing file, March 26<sup>th</sup>.

15 JUDGE MOORE: Fine. Let's amend the point  
16 on the joint notice that you're going to give me, and  
17 let's have it a joint status report. And I would  
18 appreciate it if all the parties then would  
19 participate to the best of their ability in including  
20 all of the matters that we will discuss today that  
21 need further attention in that status report, and such  
22 things as -- please include them. So, for example, in  
23 addition to laying out what is agreed by all parties  
24 as to the order in which we will address the issues,  
25 and the parties will address them for their filings,

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1 the joint status report should inform deciding officer  
2 of the Staff's schedule of either supplementing the  
3 EIS or reaching a decision on when they will make the  
4 determination whether or not they will supplement the  
5 EIS.

6 Mr. Thompson.

7 MR. THOMPSON: Yes, sir.

8 JUDGE MOORE: Does the Applicant have a  
9 position on the EIS issue?

10 MR. THOMPSON: Yes, Your Honor. The  
11 Applicant opposes supplementing the EIS.

12 JUDGE MOORE: You should state your  
13 position in the joint status report. What is the  
14 Applicant's position as to proceeding before a  
15 decision on the supplementation issue is made by the  
16 Staff?

17 MR. THOMPSON: This is Anthony Thompson,  
18 HRI. Your Honor, to be honest with you, I don't know.  
19 I'd have to think about it.

20 JUDGE MOORE: Let's get that all in the  
21 joint status report then.

22 MR. THOMPSON: Okay, that's fair. It will  
23 give us some time to noodle it a little bit. I guess  
24 my gut reaction is that I -- well, I don't know,  
25 whether that would just be another issue or whether we

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1 would want to address that issue first before moving  
2 on.

3 JUDGE MOORE: Well, now that you bring it  
4 up, let's turn to that issue. Before I do, however,  
5 I'm going to have to send the panel's law clerk to  
6 have this telephone conference extended 15 minutes.  
7 I was hoping to wrap this up within one hour, but to  
8 give us a margin, I'm going to have her extend it for  
9 30 minutes. Hopefully, we will need none of that, but  
10 that's a ministerial matter. Thank you, Amy.

11 It seems to me that if the Staff takes a  
12 position that the FEIS must be supplemented, it  
13 probably will require close consideration of whether  
14 it is an efficient way to proceed until that  
15 supplementation is done.

16 Secondly, if the Staff decides that it  
17 should not be supplemented, at that point that may  
18 bring into the case another issue of whether it should  
19 be supplemented. And we'll need to decide whether  
20 that should be given primacy and decided before we  
21 move forward with the other areas of concern. Or  
22 alternatively, at that point decide what issues, if  
23 any, can go forward without that determination being  
24 made. Does that strike all parties as a reasonable  
25 way to proceed?

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1 MR. THOMPSON: It does, Your Honor, for  
2 HRI.

3 MR. JANTZ: For Intervenors Endaum & Sric,  
4 it does, Your Honor.

5 MS. LEMONCELLI: Also Intervenors Morris  
6 and Sam, it does, Your Honor.

7 JUDGE MOORE: Mr. Hull.

8 MR. HULL: Yes, I think we can work with  
9 that.

10 JUDGE MOORE: And just as an aside, Mr.  
11 Thompson, if the Staff decides the supplementation is  
12 necessary, I'm assuming that the Applicant would then  
13 have to file an amendment to an environmental report  
14 or something along those lines. Would that be your  
15 understanding, Mr. Thompson?

16 MR. THOMPSON: Yes, it would, Your Honor.

17 JUDGE MOORE: Okay. Item number 3, Mr.  
18 Jantz, that you were raising.

19 MR. JANTZ: Yes. This regards renewal of  
20 a previous request made in 1998 with respect to  
21 Section 8. We'd now like to make it with respect to  
22 the remaining mine sites regarding supplementation of  
23 the record with certain information that was referred  
24 to in the COP, the FEIS, other documents in the  
25 record, but that was never produced in its entirety.

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JUDGE MOORE: I'm sorry, Mr. Jantz. I am at a total loss. You will recall, I was not good enough to be in this proceeding at that time. Would you please set the background so that I might have some way of getting my arms around the issue you're talking about.

MR. JANTZ: Certainly, Your Honor. There was a December 10<sup>th</sup>, 1998 filing entitled "Endaum & Sric's Motion for Issuance of Subpoena for the Production of Documents, or alternatively, to supplement the hearing record and to postpone the deadline for filing written presentations on groundwater issues and NEPA issues. Expedited consideration requested."

And the gist of that filing was that there are certain pieces of information that the COP referred to, the FEIS referred to, and that were clearly looked at in making their determination on the granting of HRI's materials license, but that never appeared in the record in their entirety.

JUDGE MOORE: By record, are you talking the record of this proceeding before the presiding officer or the hearing file?

MR. JANTZ: Both. It's our understanding

1 that the entirety of this information was never in the  
2 hearing file, or at least not that we could ascertain.  
3 And they are certainly never in the record of this  
4 hearing.

5 JUDGE MOORE: Mr. Jantz, what was the  
6 disposition by Judge Bloch of your motion?

7 MR. JANTZ: That motion was essentially,  
8 in effect, denied by Judge Bloch with respect to  
9 Section 8.

10 JUDGE MOORE: On what grounds?

11 MR. JANTZ: On the grounds that  
12 Intervenors could subsequently argue that the  
13 application was incomplete, and thus, the granting of  
14 the application should not have been made. And that  
15 that argument could be made in the Intervenor's main  
16 presentation on the various issues.

17 JUDGE MOORE: Section 8 was already  
18 essentially completed at that point, so how could you  
19 have done it for Section 8?

20 MR. JANTZ: Well, this was -- yes. I'm  
21 not sure that either the motion or the order at that  
22 point was restricted strictly to Section 8 because of  
23 the confusion over whether we were litigating just  
24 Section 8 or the entire license at that time.

25 JUDGE MOORE: All right. Now you stated,

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1 and correct me if I'm wrong, that the documents and  
2 other materials that you sought was referenced or  
3 cited in the FEIS and the COP. Is that correct?

4 MR. JANTZ: Yes, Your Honor.

5 JUDGE MOORE: First, Mr. Thompson.

6 MR. THOMPSON: Yes, Your Honor.

7 JUDGE MOORE: Do you have any objection to  
8 producing the materials that are cited in the COP that  
9 the Intervenors seek?

10 MR. THOMPSON: I have no idea what they're  
11 referring to.

12 JUDGE MOORE: Let's just talk in terms of  
13 the documents that are cited in the COP. Is there any  
14 reason, absent that they need to be proprietary and,  
15 of course, steps can be taken to deal with that, on  
16 why you would not be willing to release any  
17 information you cite in your COP?

18 MR. THOMPSON: I wouldn't think so off the  
19 top of my head. I'm just trying to recall. Was this  
20 Judge Bloch's ruling that they were not allowed to  
21 have discovery?

22 MR. JANTZ: Yes, Mr. Thompson. I believe  
23 it was something along those lines, but frankly, I  
24 can't remember the exact language of Judge Bloch's  
25 order.

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1 MR. THOMPSON: Well, I know there was an  
2 order wherein he said there are no discovery in  
3 Subpart L proceedings, and if it's not properly a part  
4 of the hearing file or the license application record,  
5 then you don't have access to it.

6 JUDGE MOORE: No, I understand that.  
7 Something that strikes me that I recognize that  
8 there's no discovery in a Subpart L proceeding, but if  
9 you're citing it in your COP and the COP is part of  
10 the hearing file, unless I'm missing something, there  
11 is a strange twist to the logic that that information  
12 can be kept away from the other participants.

13 MR. THOMPSON: Well, Your Honor, I mean,  
14 I don't disagree with your logic. I'm just saying, I  
15 don't know exactly what it's pertaining to. And I  
16 will certainly go back and dig it out and take a look  
17 and see.

18 JUDGE MOORE: Well, let's go to the Staff  
19 at this point. Mr. Hull, do you have any objection to  
20 placing in the hearing file the material that's cited  
21 in the FEIS that's relevant? I, frankly, am somewhat  
22 at a loss to know why it's not already in the hearing  
23 file.

24 MR. HULL: Well, without knowing exactly  
25 what's being referred to, my general notion, Your

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1 Honor, is that without knowing the volume of such  
2 documents and without any showing of the relevance of  
3 these specific documents, at this point I would object  
4 to making them part of the hearing file. And given  
5 the age of this issue with regards to renewal of a  
6 December 10, 1998 motion, it seems to me the  
7 Intervenors should file a new motion with respect to  
8 the other sections, and that can be dealt with in that  
9 venue.

10 JUDGE MOORE: Well, all well and good, Mr.  
11 Hull, but it seems to me the most efficient way to  
12 deal with this would be for the parties, as part of  
13 their negotiations over the joint status report,  
14 address this forthrightly, and if they can come to a  
15 conclusion, and so I so direct you to do that.

16 If you will look at 10 CFR 2.1231 that  
17 spells out what should be in the hearing file, it does  
18 not appear to be an outrageous interpretation of the  
19 regulations on a quick glance, that if something is  
20 cited in the FEIS, it's part of the FEIS.

21 MR. HULL: As far as I'm concerned, Your  
22 Honor, whatever order Judge Bloch issued denying their  
23 December 10, '98 request would be the law of this  
24 case. And I don't think we should be forced to do  
25 anything that's contrary to a previous order that was

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1 already entered in this proceeding. But again, I'm  
2 really in the dark as to what exactly is involved  
3 here.

4 JUDGE MOORE: Yes, I would agree that  
5 you're in the dark on this, Mr. Hull. In that regard,  
6 the parties will seek to negotiate their way through  
7 this and present to me in the status report to be  
8 filed on March 26<sup>th</sup>, and I don't expect you all to act  
9 unreasonably in working your way through this. That  
10 is not the way that we want to start off this  
11 proceeding. It's going to be long and arduous, and we  
12 should all seek to cooperate.

13 That said, it strikes me that if there is  
14 no agreement on this request, then we will have to  
15 deal with it in filings by the parties, and we'll deal  
16 with those procedural matters after you provide me a  
17 full report in the March 26<sup>th</sup> status report.

18 Mr. Jantz, are there any further matters  
19 you wish to raise?

20 MR. JANTZ: No, Your Honor. That does it  
21 for me.

22 JUDGE MOORE: Does any other party have  
23 any matters? Hearing none, I thank you all for  
24 participating today. I look forward to receiving your  
25 status report on March 26<sup>th</sup>. At this point, I would

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1 remind the parties that the other provisions of that  
2 May 25<sup>th</sup>, 2001 order remain in effect, or should be  
3 interpreted as remaining in effect for service and  
4 filing by email, et cetera, so we don't delay  
5 inordinately with things going in the mail. I would  
6 remind all parties that the NRC's mail is treated at  
7 apparently an off-site location, or perhaps on-site.  
8 It's x-rayed or put through some kind of a cobalt  
9 radiation process to ensure it doesn't contain  
10 something. And so it takes weeks literally for us to  
11 get mail, so everything should be filed by email, and  
12 the paper will catch up when it catches up.

13 If there are no other matters, then I look  
14 forward to getting your status report. The Staff will  
15 make every effort to update the hearing file by the  
16 26<sup>th</sup> of March and serve that on the parties by the  
17 most expeditious means it can. And after we get all  
18 that, the Board will deal with it either in a order  
19 that sets forth the schedule or another telephone  
20 conference if we have to hash anything out.

21 It's my current intention then on the  
22 schedule to follow the 45-day filing intervals that we  
23 talked of in the earlier, May 25<sup>th</sup>, 2001 order. That  
24 was an amendment of an agreement that the parties had  
25 all reached, and I see no reason why we should not

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1 file.

2 Just to recap what that is, that after the  
3 Board issues the scheduling order, that will be the  
4 starting point, and the Intervenors' first  
5 presentation would be filed within 45 days of that  
6 starting date, to be followed in 45 days by HRI's  
7 response, 10 days later by the Staff's response.

8 The Intervenors' second written  
9 presentation on the second grouping of areas of  
10 concern would then be filed 45 days after the  
11 Intervenors' first presentation, so that while they  
12 were waiting the responses of the HRI and the Staff,  
13 they would be already filing their second  
14 presentation, and continuing that schedule until we're  
15 finished.

16 Now that I've brought it up, I assumed you  
17 all went back and looked at the previous order. But  
18 if not, and that's not agreeable to you, would you  
19 please state it in the joint status report. And in  
20 that regard, if you have a new proposed schedule,  
21 please negotiate it and present it to me in that  
22 status report.

23 If no one has anything else, we'll  
24 conclude this call, and again I thank you. One last  
25 chance to speak. Thank you very much. Good day now.

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(Whereupon, the proceedings in the above-entitled matter went off the record at 2:51:10 p.m.)

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Hydro Resources, Inc.

Docket Number: 40-8968-ML

Location: telephone conference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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Pippy Kravchonok  
Official Reporter  
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