

**RAS 7529**

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

**DOCKETED 03/31/04**

**SERVED 04/01/04**

Before Administrative Judge:

Thomas S. Moore, Presiding Officer  
Dr. Richard F. Cole, Special Assistant  
Dr. Robin Brett, Special Assistant

In the Matter of  
HYDRO RESOURCES, INC.  
PO Box 15910  
Rio Rancho, New Mexico 87174

Docket No. 40-8968-ML

ASLBP No. 03-809-01-ML

March 31, 2004

ORDER

The Presiding Officer will hold a telephone conference with the parties in this proceeding on Wednesday, April 14, 2004, at 2 p.m. eastern daylight saving time. Counsel for all parties shall participate. To participate, counsel for each of the parties shall call 1-800-638-8081 (301-231-5539 for local callers) and enter passcode 4020# at a few minutes before 2 p.m. on the date of the telephone conference.

In the event any party's counsel cannot participate in the April 14, 2004 telephone conference, counsel should inform the Presiding Officer by close of official NRC business hours Wednesday April 7, 2004, either by e-mail (tsm@nrc.gov, acr2@nrc.gov and ksv@nrc.gov) or facsimile notice (301-415-5599) and provide the Presiding Officer an alternative date and time during the days of April 20, April 21, and April 22, acceptable to all other counsel for holding the conference. In any event, the parties should inform the Presiding Officer as to whom will be participating by close of official NRC business hours Wednesday April 7, 2004, either by e-mail (tsm@nrc.gov, acr2@nrc.gov and ksv@nrc.gov) or facsimile notice (301-415-5599).

In the parties' March 26, 2004, Joint Status Report, Hydro Resources, Inc. (HRI) indicates its willingness to commence discussions with Eastern Navajo Diné Against Uranium Mining and Southwest Research and Information Center (Intervenors) in an attempt to resolve the Intervenors' request for materials referenced by HRI and/or the NRC Staff. HRI and the Intervenors should immediately commence discussions to resolve this matter. Although the Presiding Officer sees no obstacles to HRI and the Intervenors satisfactorily resolving this matter quickly, in the unlikely and unfortunate event they cannot reach a mutually acceptable solution, HRI and the Intervenors should be prepared to discuss any outstanding dispute in this regard during the April 14, 2004 telephone conference.

Further, with respect to the requested materials that the Staff, in the Joint Status Report, states are already in the Hearing File but which the Intervenors state are not, the Staff should be prepared at the telephone conference to provide the Hearing File numbers. Additionally, with respect to those requested materials that the Intervenors state the Staff has referred to in Staff documents such as the FEIS, the Intervenors should be prepared to address whether those materials are available through the NRC Public Document Room (PDR). Finally, with respect to any requested materials that are referred to by the Staff in Staff prepared documents but which are not publicly available in the PDR or already in the Hearing File, the Staff should be prepared to account for the absence of those materials from the Hearing File.

The parties should also be prepared to discuss the Intervenors' request that the Staff needs to supplement the FEIS. Initially, because all matters concerning Section 8 are concluded and either have already been appealed or appeals are pending with the Commission, the parties should be prepared to address the question of whether the Presiding Officer has any jurisdiction to entertain a motion with respect to any matters concerning Section 8. Further, the parties should be prepared to address the order for filing the written

presentations for the Intervenor's areas of concern should it be determined that the Staff needs to supplement the FEIS. Specifically, the parties should be prepared to address whether the area of concern regarding the adequacy of the FEIS should be litigated first because it might impact the other areas of concern. Finally, the parties should be prepared to address whether the question of the need for any supplementation of the FEIS pursuant to 10 C.F.R. § 51.92 is strictly a legal question, a mixed question of law and fact, or a matter that requires initial factual development of the record.

With the possible exception noted above, the Presiding Officer currently intends to adhere to the September 28, 2001, Joint Notice Regarding Agreed Order of Issues, where the parties agreed to litigate the issues in the following sequence: (1) groundwater protection, groundwater restoration, and related surety estimates; (2) liquid waste disposal and surface water protection; (3) historic preservation; (4) financial and technical qualifications; (5) air emission controls; (6) adequacy of FEIS (cumulative impacts, mitigation actions); and (7) environmental justice. Should any party object to this schedule, it should be prepared to discuss this matter during the telephone conference.

It is so ORDERED.

By the Presiding Officer<sup>1</sup>

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Thomas S. Moore  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 31, 2004

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<sup>1</sup> Copies of this memorandum and order were sent this date by e-mail or facsimile transmission to counsel for each of the parties.

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NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED MARCH 31, 2004 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 40-8968-ML  
LB ORDER DATED MARCH 31, 2004

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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 1<sup>st</sup> day of April 2004