

RAS 8148

July 7, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
BEFORE THE PRESIDING OFFICER

DOCKETED
USNRC

July 15, 2004 (9:45AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

HYDRO RESOURCES, INC.
P.O. Box 777
Crownpoint, NM 87313

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)
) Docket No. 40-8968-ML
) ASLBP No. 95-706-01-ML
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)

**INTERVENORS' MOTION FOR LEAVE TO REPLY TO HYDRO RESOURCES
INC.'S AND NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSES
IN OPPOSITION TO MOTION TO SUPPLEMENT THE FINAL
ENVIRONMENTAL IMPACT STATEMENT FOR CHURCH ROCK SECTIONS
8 AND 17.**

Pursuant to 10 C.F.R. § 2.1237 and § 2.730 (c), Intervenor Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby request the Presiding Officer to allow leave to reply to Hydro Resources Inc.'s ("HRI") Response To Intervenor's Motions To Supplement The Final Environmental Impact Statement For Sections 8 and 17 And To Re-Open And Supplement The Record For Section 8 ("HRI Response") and the Nuclear Regulatory Commission Staff's ("NRC Staff" or "Staff") Answer To Intervenor's Motions To Supplement FEIS ("Staff Response")¹.

Although the right to reply to a response to a motion is not permitted under 10 C.F.R. § 2.730(c), a party may seek leave to reply. Detroit Edison Co. (Enrico Fermi

¹ HRI's Response was filed June 21, 2004. The Staff's Response was filed on June 25, 2004. In the interest of efficiency, Intervenor seek to reply to both Responses in one pleading.

Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978). Leave to reply is granted “sparingly, and then only upon a strong showing of good cause.” Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30A, 14 NRC 364, 372 (1981).

Intervenors have good cause to reply here, in order to correct erroneous and incomplete statements by HRI and the Staff regarding 1) the nature of the local hydrological gradient and the potential for HRI’s Church Rock operations, when combined with pumping from Springstead Estates Project (“SEP”), to influence groundwater flow; 2) HRI’s and the Staff’s legal arguments regarding when and how the Crownpoint Uranium Project Final Environmental Impact Statement (“FEIS”) should be supplemented; 3) HRI and the NRC Staff’s characterization of the geological and hydrological features of the Westwater, Dakota, and Cowsprings aquifers; 4) the NRC Staff’s analysis of the oxidizing conditions in and around the mine workings on Section 17; 5) the characterization of the environmental justice community in Church Rock; and 6) Intervenors should be given the opportunity to challenge the assumptions and processes involved with HRI’s expert’s groundwater modeling.

First, Intervenors seek to rebut HRI’s and the Staff’s inaccurate assertion that groundwater pumping could never substantially affect groundwater flow and thus HRI’s ability to control excursions and restore groundwater. HRI Response at 8-11; Staff Response at 7-8. Both HRI and the NRC Staff fail to account for the relationship between regional groundwater flow and local groundwater flow. Intervenors’ expert, Mr. Michael Wallace, will provide testimony explaining this relationship and showing how it is indeed possible for the combined pumping of HRI’s operations and the SEP to

influence the flow of groundwater locally and endanger potential sources of drinking water.

Second, the Staff misconstrues its the duty to supplement the FEIS. The Staff asserts that FEIS supplementation is not appropriate under the circumstances of the SEP, and that in any event, the FEIS is subject to informal supplementation. Staff Response at 9-11. However, the Staff's arguments ignore Nation Environmental Policy Act ("NEPA") case law and purpose. Intervenors should have the opportunity to rebut the Staff's NEPA arguments.

Third, Intervenors seek to address HRI's and the Staff's inaccurate characterization of the hydrology and geology in the Church Rock area. Intervenors seek to address inaccurate and incomplete assertions, among others, made about the "tilt" of the rock underlying Sections 8 and 17, the productivity of confined aquifers as compared to unconfined aquifers, and the presence of the Recapture Shale beneath Sections 8 and 17.

Fourth, Intervenors should be given leave to reply to the HRI's and the Staff's analysis of oxidizing conditions at the old mine workings at Section 17. HRI Response, Affidavit of Craig Bartles at ¶ 27; Staff Response, Affidavit of Ron Linton at ¶ 14. HRI's and the Staff's Responses mischaracterize Intervenors' concerns with the oxidizing conditions in the underground mine workings and Intervenors should have the opportunity to rebut these characterizations.

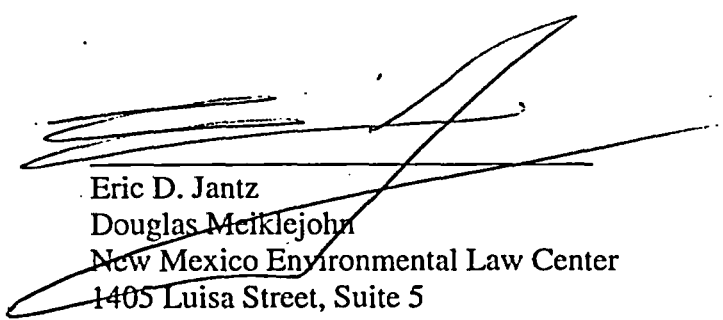
Fifth, Intervenors should be given leave to reply to HRI's characterization of the FEIS' environmental justice analysis and subsequent decisions regarding that analysis. HRI Response, Affidavit of Mark Pelizza at ¶¶ 50-52. HRI ignores information

regarding the former Presiding Officer's environmental justice decision and does not address the environmental justice analysis provided by the FEIS.

Finally, HRI's expert witness, Craig S. Bartles, refers to a hydrological model used to calculate contaminant travel time from HRI's Church Rock ISL facility to the SEP. HRI Response, Affidavit of Craig Bartles at ¶ 16. Intervenors should be given the opportunity to critique Mr. Bartles' model assumptions and processes.

Given the importance of the safety issue involved here, i.e. the environmental and health effects of HRI's Church Rock ISL facility on a community projected to have approximately 4,000 people, it is essential for the Presiding Officer to have a full and accurate record on these questions in order to make an informed decision about whether to supplement the FEIS. Accordingly, the Presiding Officer should grant Intervenors' request to reply to HRI's and the Staff's Responses.

Respectfully submitted this 7th day of July, 2004.



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Thomas S. Moore, Presiding Officer
Richard F. Cole, Special Assistant
Robin Brett, Special Assistant

In the Matter of)	
)	Docket No. 40-8968-ML
HYDRO RESOURCES, INC.)	ASLBP No. 95-706-01-ML
(P.O. Box 15910)	
Rio Rancho, New Mexico 87174))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenors' Motion For Leave To Reply To Hydro Resources Inc.'s And Nuclear Regulatory Commission's Staff's Responses In Opposition To Motion To Supplement The Final Environmental Impact Statement For Church Rock Sections 8 And 17. " in the above-captioned proceeding have been served on the following by U.S. Mail, first class, or, as indicated by an asterisk, by electronic mail and U.S. Mail, first class, this 7th day of July, 2004:

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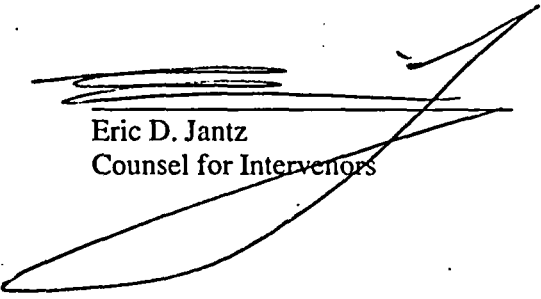
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July 7, 2004

BY ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL

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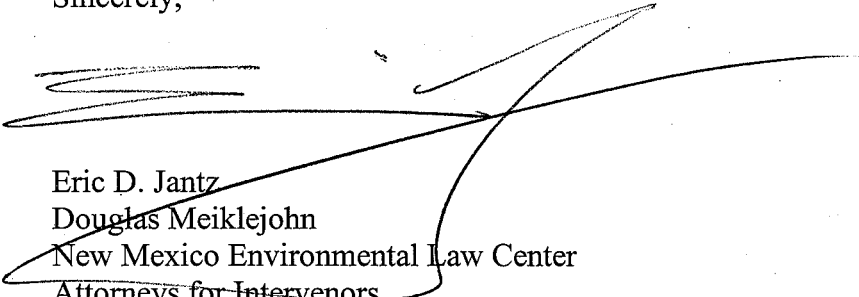
Re: In the Matter of: Hydro Resources, Inc.; Docket No: 40-8968-ML

Dear Sir or Madam:

Please find enclosed for Intervenors' Motion For Leave To Reply To Hydro Resources Inc.'s And Nuclear Regulatory Commission's Staff's Responses In Opposition To Motion To Supplement The Final Environmental Impact Statement For Church Rock Sections 8 And 17. Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the attached self-addressed, postage prepaid envelope.

If you have any questions, please feel free to contact me at (505) 989-9022.
Thank you for your attention to this matter.

Sincerely,



Eric D. Jantz
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Enclosures

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