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

2:02 p.m.

JUDGE MOORE: This is Judge Moore. Thank you for joining.

For the court reporter's sake, would each of you identify yourself and the party you represent please?

MR. JANTZ: Yes, this Eric Jantz. I'm representing Eastern Navajo-Dine Against Uranium Mining and Southwest Research and Information Center.

MR. FETTUS: And this is Geoffrey Fettus and I am here representing ENDAUM and the Natural Resources Defense Counsel.

MR. SMITH: This is Tyson Smith for the NRC staff.

MR. PUGSLEY: Christopher Pugsley on behalf of Hydro Resources, Inc.

MR. PELIZZA: Mark Pelizza, Hydro Resources, Inc.

JUDGE MOORE: I believe that's everyone. The purpose of this telephone conference is to hear brief arguments on the intervener's December 29th, 2004 motion for a subpoena for the supplementation of the record and to stay the proceeding.

Mr. Jantz, since it's your motion, you

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1 first have the floor. I have a number of questions  
2 for each of you, so let's just start with my questions  
3 to you, Mr. Jantz, before you get on with anything  
4 else.

5 MR. JANTZ: Certainly, Your Honor.

6 JUDGE MOORE: In April of 2004, we held a  
7 telephone conference that set a date of April 30th for  
8 a joint status report to be filed. In that joint  
9 status report, the last that was said was that the  
10 interveners and the applicant had essentially narrowed  
11 their differences, were still engaged in conversations  
12 and were done to the language of a protective order to  
13 move this forward. Then not another word was heard  
14 about that by me from any of the parties.

15 Then on November, I believe it was 5, I  
16 issued a scheduling order that indicated a start date  
17 for that schedule would be the resolution of  
18 intervener's motion to suspend the proceedings until  
19 the reinstatement of Adams. That motion was denied on  
20 December 7th, which started the scheduling clock  
21 running and intervener's first filing on the first  
22 group of issues dealing with ground water and assuerty  
23 are currently due on January 21st, 2005.

24 Now, on December 29, you filed this  
25 motion. What happened between April and December

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1 29th?

2 MR. JANTZ: Well, Your Honor, I don't want  
3 to speak for Mr. Pugsley or Mr. Thompson, but we --  
4 HRI -- Mr. Pugsley and I specifically continued to  
5 negotiate terms of a protective order and some  
6 procedure to allow experts for interveners to have  
7 access to the documents that we're requesting here.

8 And in fact, at one point one of our  
9 experts did go up to the Crownpoint facility to take  
10 a preliminary look at things. However, just before  
11 the Christmas holidays and just before I filed this  
12 motion, those discussions broke down. So we had been  
13 discussing some reasonable way to allow interveners'  
14 experts access to this information from April up until  
15 the point where the motion was final.

16 JUDGE MOORE: Well, very frankly, it is  
17 deeply disturbing to the presiding officer that that  
18 length of time with not nary a word spoken that it was  
19 not already resolved or further action need to be  
20 taken. Now on the eve of filing deadlines you're  
21 seeking to stay the proceedings and the presiding  
22 officer, very frankly, does not look favorably upon  
23 that request because I can see no excuse for you not  
24 having been in here much earlier on this.

25 Now, give me some dates as to at least on

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1 December 5 when the clock started to run, or I'm  
2 sorry, December 7th. Had the negotiations broken down  
3 at that point?

4 MR. JANTZ: No, Your Honor. They broke  
5 down just prior to the Christmas holiday.

6 JUDGE MOORE: And you saw no sense of  
7 urgency in all of this with the clock running starting  
8 on December 7th?

9 MR. JANTZ: Well, we did see a sense of  
10 urgency, however, we much preferred to work something  
11 out rather than come to the presiding officer to  
12 settle this dispute.

13 JUDGE MOORE: What was the stumbling  
14 block?

15 MR. JANTZ: Well, the stumbling blocks  
16 were twofold. First of all, the insistence at one  
17 point of HRI that interveners bear the cost of having  
18 any extra staff, any extra HRI staff deal with  
19 supervising our experts and their looking through  
20 these documents. And since most of my clients are  
21 non-profit organizations, we simply just didn't have  
22 the resources to be able to agree to something like  
23 that.

24 And second, that HRI insisted that the  
25 entire proceedings be sealed if there were any sort of

1 proprietary information involved. We also were having  
2 some trouble figuring out what HRI meant by  
3 proprietary information. It was our understanding  
4 that proprietary information would only include ore  
5 body and grade, but HRI had said that that would  
6 include economic and trend analysis. But we weren't  
7 entirely clear on that, what that might have meant.  
8 It looked like just prior to the holidays we were very  
9 close to agreement, however, at that point I felt that  
10 negotiations wouldn't go any further and that we had  
11 to file this motion just to be able to cover our bases  
12 and I informed HRI that we'd be willing to withdraw  
13 the motion if we were able to work something out,  
14 however HRI preferred to litigate this rather than  
15 continue with negotiations.

16 JUDGE MOORE: Mr. Jantz, do you have  
17 anything in addition to the arguments you've made in  
18 your paper that you'd like to state now?

19 MR. JANTZ: No, Your Honor. I think the  
20 pleadings speak for themselves. You know, we just  
21 believe that since these documents are referenced in  
22 the record, in the FEIS, that it's a presumption that  
23 the staff reviewed them and that we should likewise be  
24 able to review them. And it was never said that they  
25 hadn't reviewed them. They simply said that they

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1 weren't in their possession or that they were not part  
2 of the hearing file, we have no idea whether or not  
3 the staff reviewed them or not.

4 JUDGE MOORE: I think the argument needs  
5 to be looked at from two perspectives. Mr. Jantz,  
6 what is always in NRC proceedings the subject, put  
7 aside NEPA matters, the subject of all challenges is  
8 the applicant's application, is it not?

9 MR. JANTZ: I believe, yes.

10 JUDGE MOORE: Now, with regard to NEPA  
11 matters that fall within the staff's province, then  
12 that is where the emphasis looks at the staff's NEPA  
13 activities. Would you agree with that?

14 MR. JANTZ: Well, yes. That's the  
15 analysis for the staff's NEPA --

16 JUDGE MOORE: Now, with the four items  
17 you've listed in your motion, the staff, I believe,  
18 has indicated that none of these matters are or have  
19 been in its possession. Is that accurate?

20 MR. JANTZ: That is my understanding, that  
21 they have said -- well, I don't know if they've ever  
22 qualified it by "have never been in their possession."  
23 They've always said the documents are not in their  
24 possession at the time. However, that doesn't seem to  
25 me to mean that they haven't reviewed them because

1 they may have gone to HRI or URI facilities, reviewed  
2 the documents, taken notes and had the notes with them  
3 to inform their decision. It doesn't necessarily mean  
4 that they were in possession of these documents at the  
5 time we requested them.

6 JUDGE MOORE: Now, with the exception of  
7 Item 2, the bore hole data, which is referenced by you  
8 only to the environmental impact statement, is that  
9 bore hole data anywhere relied upon, referenced and  
10 obviously the basis for any of the material in the  
11 applicant's application?

12 MR. JANTZ: And that would include the  
13 Crownpoint technical reports, the technical reports  
14 from Crownpoint Church Rock, DOD, etcetera?

15 JUDGE MOORE: Do those technical reports  
16 reference the bore holes that you're referring to in  
17 No. 2 of those items?

18 MR. JANTZ: Right. Right. If you'll give  
19 me a moment, Your Honor?

20 JUDGE MOORE: Well, we can make it the  
21 applicant --

22 Mr. Pugsley, can you answer that question?

23 MR. PUGSLEY: If you could please repeat  
24 it, sir, I'd appreciate it.

25 JUDGE MOORE: The Item 2 in intervener's

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1 motion referring to the bore hole data for bore hole  
2 2.8/17/7.

3 MR. PUGSLEY: Yes.

4 JUDGE MOORE: Is that information  
5 referenced, referred to or form the basis of any of  
6 the material in the applicant's application?

7 MR. PUGSLEY: As addressed by Mr. Pelizza  
8 in his affidavit, paragraph 17, he states specifically  
9 that, and I quote, "The geophysical log for that  
10 particular bore hole is currently in the  
11 administrative record on Figure 2.6-4 of the Church  
12 Rock revised environmental report, revised 10/11/94."

13 JUDGE MOORE: So then it is accurate to  
14 state that that bore hole information is part of the  
15 application?

16 MR. PUGSLEY: Yes, sir. The geophysical  
17 log for that is part of the administrative record,  
18 part of the application in the revised environmental  
19 report. However --

20 JUDGE MOORE: You're using terms of art  
21 that unfortunately are meaningless to the presiding  
22 officer. You're saying "geophysical log" and the  
23 intervener is talking about bore hole information.  
24 Are those synonymous?

25 MR. PUGSLEY: I do not believe so.

1 JUDGE MOORE: Let's all get on the same  
2 sheet of music please. I'm talking about the  
3 information that the intervener in Item 2 of this  
4 motion is requesting and I want to know is that  
5 information as stated by the intervener in its motion  
6 in any way, shape or form part of the application?  
7 Not geophysical logs, but the information requested by  
8 the intervener?

9 MR. PUGSLEY: The information requested by  
10 the intervener is listed is down bore hole camera  
11 images, rock cores, core photos, driller's notes and  
12 logger's notes in No. 2 --

13 JUDGE MOORE: Correct.

14 MR. PUGSLEY: -- is not. It was never  
15 submitted or requested by the staff in the process.

16 JUDGE MOORE: I just want to know, does  
17 any of that material make up part of this application?  
18 Not the staff's review. Your application. Was it  
19 relied upon? Is it cited? Is it referenced in the  
20 materials that make up your application?

21 MR. PUGSLEY: The only part that was put  
22 in the application, sir, was the one piece of  
23 information referenced in Mr. Pelizza's affidavit.

24 JUDGE MOORE: All right. We'll move on  
25 for a moment. That really doesn't answer the

1 question.

2           Could the conclusions in the application  
3 have been reached without that information requested  
4 in Item 2 of the intervener's motion?

5           MR. PUGSLEY: I believe it could have,  
6 yes.

7           JUDGE MOORE: Could have? Now, was it?

8           MR. PUGSLEY: If you'll just give me one  
9 moment. I do not believe any of this information was  
10 included in the license application and I am not aware  
11 of any reason to believe that the conclusions drawn  
12 needed to rely on this information.

13           JUDGE MOORE: Mr. Pelizza, can you answer  
14 that question more directly?

15           MR. PELIZZA: Yes, Your Honor. When one  
16 speaks of bore hole information and all of the things  
17 that were listed in the request, the geophysical log  
18 is a subset of that data set. The only thing that was  
19 submitted as part of the application was the  
20 geophysical log.

21           JUDGE MOORE: I understand that. But did  
22 you use in reaching any of the conclusions or  
23 statements or reference in any way in the materials  
24 that make up the application the rest of that  
25 information, not just that subset?

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1 MR. PELIZZA: No, I did not.

2 JUDGE MOORE: What was the purpose of  
3 having it then?

4 MR. PUGSLEY: I don't know if it exists.  
5 You know, there is no bore hole camera images for that  
6 well that I know of. There are no rock quarries.  
7 There are no core photos. And I'm not even familiar  
8 with drillers' or loggers' notes. The only piece of  
9 information that I know and that was relied upon was  
10 the geophysical log.

11 JUDGE MOORE: And from reading the papers  
12 it appears to me that you have done some searching of  
13 all your records to see if any of this material  
14 exists. Is that correct?

15 MR. PELIZZA: Yes.

16 JUDGE MOORE: And so you are stating now  
17 that to the best of your knowledge there are no  
18 drillers' notes or well log notes, is that correct?  
19 Loggers' notes?

20 MR. PELIZZA: The only notes that may  
21 exist are lithology logs and we did not rely upon  
22 those.

23 JUDGE MOORE: Do they exist?

24 MR. PELIZZA: I don't know that they  
25 exist. (Inaudible) find them.

1 JUDGE MOORE: I'm sorry, I couldn't  
2 understand the last part of what you just said.

3 MR. PELIZZA: We could not find them.

4 JUDGE MOORE: So you looked and could not  
5 find them?

6 MR. PELIZZA: That is correct.

7 JUDGE MOORE: Mr. Jantz, do you have  
8 anything further?

9 MR. JANTZ: No, Your Honor. Simply  
10 reiterated the points that I made beforehand, that  
11 again the items that are referred to in the record.

12 JUDGE MOORE: Mr. Pugsley?

13 MR. PUGSLEY: Yes, sir?

14 JUDGE MOORE: I have a couple questions  
15 for you.

16 MR. PUGSLEY: Yes, sir.

17 JUDGE MOORE: Your analysis team is  
18 troubling to me because it seems to be taking the  
19 position that there is already created an  
20 administrative record that the purpose of this  
21 informal proceeding is only to review and I would beg  
22 to differ with you that the record for decision is to  
23 be made by this proceeding and respond and to answer  
24 any challenges brought forth in the areas of concern  
25 of the interveners. So, I'm afraid your analysis does

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1 not persuade me because I believe it is an error. And  
2 what is at issue in every case is the adequacy of the  
3 application, not in any way, with the exception of  
4 NEPA matters, the adequacy or sufficiency of the  
5 staff's review of that application. The application  
6 can be challenged and must stand on its own two feet  
7 to survive scrutiny.

8 That said, I'm troubled by your answer to  
9 all of this is in the context, it wasn't provided to  
10 the staff, therefore it's not part of the  
11 administrative record. It's my position, and although  
12 I stated it only in the context of NEPA in two  
13 previous telephone conferences with you, that if this  
14 requested material was relied upon by the applicant,  
15 whether or not it was requested by the staff, it is  
16 part of the application and pursuant to the  
17 regulations 2.1231 it needs to be placed in the  
18 hearing file upon request.

19 Now that said, it appears to me that a  
20 great deal of this information doesn't exist from your  
21 searching, but some of it does. And from Mr. Jantz  
22 has told me, all negotiations have broken down. Do  
23 you concur with that?

24 MR. PUGSLEY: I do, sir.

25 JUDGE MOORE: Do you concur with the time

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1 line that he stated?

2 MR. PUGSLEY: I do, sir.

3 JUDGE MOORE: Can you tell me why this  
4 matter was not brought back before me long before this  
5 motion?

6 MR. PUGSLEY: Well, Your Honor, it's  
7 always been HRI's position that based on the  
8 Commission's prohibition of discovery in 10 C.F.R.  
9 2.1231(d) that we were not under an obligation to  
10 provide these documents. But as a gesture of good  
11 faith, as we noted in April, we were going to sit down  
12 with the interveners and discuss terms of a protective  
13 order. And we did continue those negotiations.  
14 However, if an agreement could not be reached, HRI was  
15 believing, as argued in the brief, that we were not  
16 under an obligation to provide these documents because  
17 first off, there is no discovery allowed in these  
18 proceedings, and second, that the hearing file was  
19 compiled by NRC staff several years ago and included  
20 information that met the regulations in part (b) of  
21 that same section, 2.1231, and saying that it consists  
22 of the application, any EIS or assessment, any NRC  
23 report and any correspondence between the applicant  
24 and the NRC that is relevant to the application.

25 So other than that, that is the reason why

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1 HRI stated specifically that if it wasn't given to NRC  
2 staff and reviewed by NRC staff, that it wasn't part  
3 of the hearing file and wasn't subject to challenge in  
4 a sub-part (1) proceeding.

5 JUDGE MOORE: So it's your position, as I  
6 understand what you're saying, that material that the  
7 applicant relies upon in reaching in the conclusions  
8 in its application does not need to be ever made part  
9 of the hearing file unless it's requested by the  
10 staff?

11 MR. PUGSLEY: Well, that is basically our  
12 position, yes.

13 JUDGE MOORE: All right. Now, can you  
14 just explain for me the incongruity of that position  
15 with the bedrock principle that what is always at  
16 issue in a challenge to a license application is the  
17 adequacy or the sufficiency of the application, not  
18 the staff's review of that application?

19 MR. PUGSLEY: Well, Your Honor, that's  
20 part of the reason why -- because the challenge is the  
21 adequacy of the application and that is what is  
22 included in the hearing file, it does not fly in the  
23 face of what you're saying because the prohibition on  
24 discovery specifically states that there will be no  
25 discovery by means of document production and if the

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1 documents that are submitted as part of the  
2 application and the findings therein are found by  
3 interveners to be insufficient to support the staff  
4 agency action, they are free to, as Judge Bloch stated  
5 in 1998, to challenge the sufficiency of that  
6 application. And if they want to do that, that's  
7 their right. But it does not fly in the face of your  
8 bedrock premise, as you brought it up, because the  
9 Commission has specifically stated that there will be  
10 no discovery by means of document production.

11 JUDGE MOORE: All well and good, but that,  
12 I believe, is just avoiding the question of is not the  
13 material that is relied upon by the applicant in  
14 reaching the conclusions in its written application  
15 that is submitted in point of fact part of the  
16 application?

17 Let's make a simple example. If you  
18 reference other documents but don't include them as  
19 part of the application, are not those references part  
20 of the application?

21 MR. PUGSLEY: I would have to say not  
22 necessarily because we are in agreement with the  
23 staff's statement in their brief that an application  
24 does not necessarily have to have every single  
25 document.

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1 JUDGE MOORE: That certainly is correct,  
2 but it strikes me as only common sense that if those  
3 are materials that are relied upon and you don't  
4 dispute the fact that if the staff asks you for them  
5 they would then magically become part of the  
6 application. Why they're not still part of the  
7 application if the staff doesn't ask for them? And if  
8 they are part of the application, upon request, they  
9 should be made part of the hearing file and I think  
10 that's just frankly a common sense reading of this  
11 regulation.

12 So cutting to the chase, how many pages of  
13 documents and documents were involved when you and the  
14 interveners broke off discussions? It's a very small  
15 number of documents, is it not?

16 MR. PUGSLEY: I could not put a number on  
17 it, Your Honor. I'm not exactly sure how much it is.

18 JUDGE MOORE: Okay.

19 MR. PUGSLEY: But I can say that the -- I  
20 understand the point you're coming from here.  
21 However, the reason that this prohibition on discovery  
22 was put in was to put a limit on how much paper work  
23 would be put into an application and a hearing file,  
24 for that matter, for review. And that's the whole  
25 reason that there's the ability of the interveners to

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1 make an argument that the record is insufficient to --  
2 or, I'm sorry, that the application is insufficient,  
3 including all documentation that was either submitted  
4 initially in the license application or given to NRC  
5 staff pursuant to an RAI or other formal or informal  
6 document request.

7 JUDGE MOORE: Right.

8 MR. PUGSLEY: There's a reason that  
9 they're able to make the argument that the hearing  
10 file application is insufficient.

11 JUDGE MOORE: Mr. Pugsley, unfortunately  
12 I'm interested in expediting this and where your  
13 argument is taking me is the next logical step.  
14 Because of the questions that are raised about this  
15 data, I believe that -- and the answers that have been  
16 provided in response to this motion, it's almost an  
17 assuery that the presiding officer to answer these  
18 questions on this question that you put in terms of  
19 sufficiency will need to see this information  
20 downstream at an oral hearing and that is going to  
21 delay things further. My point is simply one of  
22 expedition and to speed this whole process along  
23 doesn't it make sense to do it now so we don't have  
24 any delay?

25 MR. PUGSLEY: Well, I understand what

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1 you're saying, Your Honor, and like I said, I can't  
2 put a finger on an exact number of what kind of  
3 documents we're talking about here.

4 JUDGE MOORE: Because downstream after the  
5 papers are filed and this argument is phrased in the  
6 way you have stated, which is the option left to the  
7 intervener, the conscientious presiding officer is  
8 going to demand to see those documents. Then all the  
9 experts that the conscientious presiding officer wants  
10 to talk to them about or question them about will have  
11 to see them and have time to prepare and we're talking  
12 about delay. To me it makes eminent good sense that,  
13 and from all that appears, it's a very small number of  
14 documents, that if in fact they exist and if in fact  
15 they were in any way, shape or form relied upon by the  
16 applicant in the application to reach the conclusions  
17 that are in the application, it makes sense that this  
18 be done now so that the process moves ahead as  
19 scheduled.

20 Staff, do you have anything to add?

21 MR. SMITH: No, Your Honor.

22 JUDGE MOORE: Do any of you have anything  
23 further?

24 (No audible response.)

25 JUDGE MOORE: I would like to then put you

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1 on hold for a moment while I organize my thoughts  
2 because I'm prepared to rule on this now. So I'm  
3 going to place you all on hold.

4 (Whereupon, at 2:30 p.m. off the record  
5 until 2:32 p.m.)

6 JUDGE MOORE: This is Judge Moore. Are  
7 you all still on the line?

8 MR. JANTZ: This is Eric Jantz. I'm here,  
9 Your Honor.

10 JUDGE MOORE: Mr. Pugsley?

11 MR. PUGSLEY: Yes, sir, I'm here.

12 JUDGE MOORE: Mr. Smith?

13 MR. SMITH: Yes, sir.

14 JUDGE MOORE: All right. The Board is  
15 prepared to rule on this.

16 One, the motion of a subpoena is denied  
17 and the motion for a stay is denied. The reason  
18 obviously is that I find it untenable that this wasn't  
19 presented to me a long time ago. That being the case,  
20 there can be no irreparable injury because there was  
21 an adequate opportunity, certainly from last April and  
22 certainly again from November, that this matter could  
23 have been presented.

24 That said, therefore the schedule folds  
25 and the interveners' initial filing is due on the

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1 21st.

2           However, I see the certainty of delay  
3 downstream because the interveners will do precisely  
4 what Mr. Pugsley has suggested they will do, is argue  
5 the insufficiency of data on which the applicant could  
6 reach this conclusion and I will probably be forced  
7 then to seek and see this information which will delay  
8 the proceeding.

9           Therefore, what I want the parties to do  
10 is I will give the intervener an opportunity to  
11 supplement its initial filing while the applicant's  
12 time is running to file an answer and the applicant  
13 and staff may then respond to that supplement under  
14 the same schedule as part of their answer. In that  
15 regard, since it appears that you are very close to  
16 resolving all of this, and I cannot fathom why the  
17 terms of a protective order cannot be placed in front  
18 of me next week for my signature and you all sign  
19 affidavits or declarations of non-disclosure as to who  
20 is going to get this information and where, that I'm  
21 expecting you and I'll give you the citation to a  
22 model protective order that you can feel free to pull  
23 off Adams that was just used in a case in front of  
24 another case before judges on the panel in the LES  
25 case. And I think that that can stand as a model so

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1 that you can certainly narrow your differences and get  
2 one in front of me. Here it is. It's Adams. It's  
3 Session No. MLO41470169. That was a memorandum and  
4 order signed by the LES Licensing Board on May 21st,  
5 2004 as a protective order governing disclosure of  
6 protective materials with an attached declaration of  
7 non-disclosure.

8 Is there any reason why, Mr. Fettus, you  
9 and Mr. Pugsley cannot, as you were close to doing  
10 before, within the next six or seven days agree on  
11 this language, put it in front of me for signature and  
12 exchange these documents?

13 (No audible response.)

14 JUDGE MOORE: Mr. Pugsley?

15 MR. PUGSLEY: I'm willing to discuss it,  
16 sir. I'm willing to work with the interveners.

17 JUDGE MOORE: Because I'm confident that  
18 as you've explained it to me there need not be this  
19 concern, if these are paper documents, that they can  
20 be turned over. They're fully protected. Under the  
21 terms of the protective order and the affidavit of  
22 non-disclosure, you can determine who will see them,  
23 when, the disposition of them, all of which is spelled  
24 out in all the protective orders that are used. This  
25 is basic elementary material that is used here as

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1 elsewhere all the time and I frankly am at a loss to  
2 understand, other than lawyers' natural inclination to  
3 be disagreeable, why this hasn't been resolved, but I  
4 think it now should be resolved. So I'm expecting you  
5 to present to me for signature an agreed-upon  
6 protective order governing the disclosure of the  
7 material as set forth in item 1 of the interveners'  
8 motion.

9 The bore hole information in Item 2  
10 apparently does not exist. If it does not exist, it  
11 obviously can't be turned over and need not be turned  
12 over.

13 The material in Item 3 appears to be  
14 material that can be turned over and should be so that  
15 I do not later have to call for it and have a delay in  
16 deciding this portion of the case and have a session  
17 in which the experts all have to see it, take time to  
18 examine it so that they can be questioned.

19 Then for a schedule, the interveners must  
20 file, as I said, by the 21st and they can file a  
21 supplement if need be because of anything that arises  
22 from this information by February 18th and then the  
23 applicant can respond to that additional argument as  
24 well as the staff can respond to all the arguments in  
25 the same time period that they have under the schedule

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1 as set forth in the original November 5th order that  
2 became operative through the December 7th order.

3 Is everyone clear on that?

4 MR. PUGSLEY: Yes, sir.

5 MR. JANTZ: Yes, Your Honor.

6 JUDGE MOORE: Now, any questions?

7 MR. PUGSLEY: No.

8 MR. JANTZ: None here, Your Honor.

9 MR. SMITH: None from the staff.

10 JUDGE MOORE: So that there is no  
11 misunderstanding --

12 MR. PELIZZA: May I ask one question?

13 This is Mark Pelizza.

14 JUDGE MOORE: Certainly.

15 MR. PELIZZA: I just want to make certain  
16 that what we are talking about with this material is  
17 the materials that were placed in the interveners'  
18 subpoena request.

19 JUDGE MOORE: Yes, and only that. And  
20 some of that, as I've outlined, you have indicated  
21 doesn't exist so that can be discounted. Your papers  
22 indicate that you searched, and the reference is that  
23 you have searched and not been able to come up with  
24 some of this information therefore leaving the  
25 conclusion it does not exist. So obviously it cannot

1 be included. But the information in Item 1 to any  
2 structural cross section or cross sections for Unit  
3 17, Unit 1 in Crownpoint, because they are  
4 specifically referenced in the analysis of  
5 hydrodynamic control Crownpoint Church Rock, New  
6 Mexico uranium mines at pages 3 and 7, and they are  
7 attached as an exhibit here, they clearly are part of  
8 the application. Now that they have been requested,  
9 they need to be made available as part of the hearing  
10 record. Because they may well be proprietary, they  
11 will not be made public in that hearing record. Is  
12 that clear?

13 MR. JANTZ: Yes, Your Honor.

14 JUDGE MOORE: Does that answer your  
15 question, Mr. Pelizza?

16 MR. PELIZZA: Yes.

17 JUDGE MOORE: Are there any other  
18 questions?

19 (No audible response.)

20 JUDGE MOORE: Then please tell me what  
21 day, Mr. Smith and Mr. Jantz, you will present to me  
22 for signature a proposed memorandum or order covering  
23 the disclosure of these protected materials? It's got  
24 to be next week.

25 MR. JANTZ: Yes, Your Honor. This is Eric

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1 Jantz. Wednesday?

2 JUDGE MOORE: The 19th by 12:00 noon.

3 MR. JANTZ: Okay.

4 JUDGE MOORE: And you may assume that I  
5 will sign it and you are both to sign and exchange  
6 those declarations of non-disclosure so that they will  
7 already be in your possession so that you can  
8 immediately then arrange for the documents to be seen.  
9 And I suspect there are very few of them from all that  
10 I gather from these papers and what you've said today.

11 MR. JANTZ: I actually have a question,  
12 Your Honor. In terms of the logistics of having these  
13 documents referred to in our pleadings, will they be  
14 redacted? Will the entire pleading be sealed? How is  
15 this going to work? What can we expect?

16 JUDGE MOORE: If that portion of the  
17 pleading uses protected information covered by this  
18 protected order, the answer is those will be sealed  
19 and those portions will be considered protective  
20 information, which is exactly what any proposed  
21 protective order says.

22 MR. JANTZ: So just the portion of the  
23 pleading, not the entire pleading?

24 JUDGE MOORE: Well, you're filing it as a  
25 supplement.

1 MR. JANTZ: Oh, okay. Right. Right.

2 JUDGE MOORE: It then is a supplement and  
3 it uses that supplement.

4 MR. JANTZ: Understood.

5 JUDGE MOORE: And if there's the need to  
6 use and refer to it in the responses of the applicant  
7 and the staff, they should so segregate that portion  
8 of their response. Is that not clear?

9 MR. JANTZ: That is clear. One other  
10 question, Your Honor. Is there a presumption that  
11 everything that we're looking at is proprietary? Is  
12 that my understanding?

13 JUDGE MOORE: Yes, that will speed things  
14 enormously.

15 MR. JANTZ: Okay. I don't have any more  
16 questions, Your Honor.

17 JUDGE MOORE: Mr. Pugsley?

18 MR. PUGSLEY: Yes, sir?

19 JUDGE MOORE: Is that all understood and  
20 agreed by you?

21 MR. PUGSLEY: Would it be permissible,  
22 Your Honor, to ask until the close of business on  
23 Wednesday?

24 JUDGE MOORE: No. I need it by noon so I  
25 can sign it.

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1 MR. PUGSLEY: Okay.

2 JUDGE MOORE: If that's all right?

3 MR. PUGSLEY: That's fine, Your Honor.  
4 Just wanted to do that because just to give it a  
5 couple more minutes, but that's okay.

6 JUDGE MOORE: I understand, but I've been  
7 around Washington for a long time and I have a  
8 distinct impression that Wednesday is going to be a  
9 very bad day in everyone's life because of disruptions  
10 because of the inauguration.

11 MR. PUGSLEY: Fair enough.

12 JUDGE MOORE: So if you have it to me by  
13 noon. Now, what are the logistics of that? You can  
14 e-mail it to me and I can sign the e-mail. That will  
15 give me a copy to sign and you will be immediately  
16 notified that I have so signed it. So it can be sent  
17 electronically just so long as you and Mr. Jantz are  
18 both jointly submitting it.

19 MR. PUGSLEY: That's fine, sir.

20 JUDGE MOORE: Okay?

21 MR. PUGSLEY: Yes.

22 JUDGE MOORE: I thank you. I look forward  
23 to seeing the first of these filings on the 21st of  
24 January. Then there will be a supplement, if needed,  
25 by the interveners by the 18th and the responses of

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1 the applicant and the staff will hold per my earlier  
2 orders.

3 If there are no further questions, that  
4 will conclude this.

5 COURT REPORTER: Your Honor?

6 JUDGE MOORE: Yes?

7 COURT REPORTER: This is the court  
8 reporter.

9 JUDGE MOORE: Yes?

10 COURT REPORTER: I have some questions,  
11 but they can be done off the record.

12 JUDGE MOORE: Go ahead. Let's leave it on  
13 the record.

14 COURT REPORTER: Mr. Pugsley, can you give  
15 me your address and phone number?

16 MR. PUGSLEY: Certainly. 1225 19th  
17 Street, N.W., Suite 300, Washington, D.C., 20036. And  
18 the phone number is (202) 496-0780.

19 COURT REPORTER: And, Mr. Smith, can you  
20 give me your address and phone number as well?

21 MR. SMITH: Certainly. Tyson Smith, U.S.  
22 Nuclear Regulatory Commission, Mail Stop 015 D21,  
23 Washington, D.C., 20555. And my phone number is (301)  
24 415-4073.

25 COURT REPORTER: And can the other parties

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1 just give me their phone numbers as well? I have  
2 their addresses.

3 MR. JANTZ: This is Eric Jantz. My phone  
4 number is (505) 989-9022.

5 COURT REPORTER: And, Mr. Fettus?

6 (No audible response.)

7 JUDGE MOORE: Mr. Fettus, are you still on  
8 the line?

9 MR. FETTUS: Yes, sir. Yes, sir. Sorry  
10 about that.

11 JUDGE MOORE: Would you please give the  
12 court reporter your telephone number?

13 MR. FETTUS: Yes, sir. (202) 289-2371.

14 COURT REPORTER: And, Mr. Pelizza.

15 MR. PELIZZA: Yes. Again, Mark Pelizza.  
16 (972) 219-3337.

17 COURT REPORTER: 3337?

18 MR. PELIZZA: Yes, sir.

19 COURT REPORTER: Okay. And then, Mr.  
20 Jantz, you mentioned orbody and gray?

21 MR. JANTZ: Grade, G-R-A-D-E.

22 COURT REPORTER: And ore body is O-R-B-O-  
23 D-Y?

24 MR. JANTZ: O-R-E, B-O-D-Y.

25 UNIDENTIFIED SPEAKER: Two words.

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1 MR. JANTZ: Yes, it's two words.

2 COURT REPORTER: Oh, ore body is two  
3 words?

4 MR. JANTZ: Yes.

5 COURT REPORTER: Okay. And then, Mr.  
6 Pugsley, you mentioned a Judge Bloch. Is that just B-  
7 L-O-C-K?

8 MR. PUGSLEY: Yes.

9 COURT REPORTER: And the last question,  
10 Judge Moore --

11 JUDGE MOORE: Excuse me. Let me  
12 interrupt. It's C-H.

13 MR. PUGSLEY: Oh, I apologize, Your Honor.  
14 It is C-H.

15 COURT REPORTER: All right. And, Your  
16 Honor, you mentioned NEPA matters. Is that N-E-P-A?

17 JUDGE MOORE: N-E-P-A. That's the  
18 National Environmental Policy Act.

19 COURT REPORTER: Okay. I think that's all  
20 the questions I have.

21 JUDGE MOORE: Thank you. I appreciate you  
22 all participating today. Look forward to seeing your  
23 filings. Good day now.

24 (Whereupon, the prehearing conference was  
25 concluded at 2:47 p.m.)

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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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