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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

PREHEARING CONFERENCE

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IN THE MATTER OF: :

HYDRO RESOURCES, INC. : Docket No.

CROWNPOINT, NEW MEXICO : 40-8968-ML

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Friday, January 14, 2005

Telephone Conference Call

The above-entitled matter came on for
prehearing conference, pursuant to notice, at 2:00
p.m.

BEFORE:

THOMAS S. MOORE, Chairman

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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

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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.

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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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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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