

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

DOCKETED
USNRC

January 24, 2005 (3:35 pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judge:
Thomas Moore, Presiding Officer

In the Matter of:

Hydro Resources, Inc.
P.O. Box 777
Crownpoint, NM 87313

)
)
) Docket No.: 40-8968-ML

)
) Date: January 19, 2004
)
)

**HYDRO RESOURCES, INC.'S AND EASTERN NAVAJO DINE AGAINST
URANIUM MINING AND SOUTHWEST RESEARCH AND INFORMATION
CENTER'S JOINT MOTION FOR APPROVAL OF PROTECTIVE ORDER**

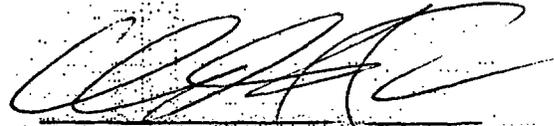
Hydro Resources, Inc. (HRI) and the Eastern Navajo Dine Against Uranium Mining (ENDAUM) and the Southwest Research and Information Center (SRIC) (collectively the "Intervenors"), by their undersigned counsel of record, hereby submit this Joint Motion for Approval of Protective Order regarding HRI's decision to voluntarily grant Intervenors access to certain documents regarding HRI's NRC license to operate an *in situ* leach uranium mining operation in Church Rock and Crownpoint, New Mexico.

Pursuant to discussions with the Presiding Officer and Intervenors earlier this year, HRI and Intervenors commenced discussions regarding a Protective Order to allow Intervenors access to specific documents previously requested for review by Intervenors. After a series of negotiations, HRI and Intervenors have drafted and finalized a Protective Order permitting specifically designated persons to review the documents specifically listed in Intervenors December 29, 2004, Motion for a Subpoena that currently are not

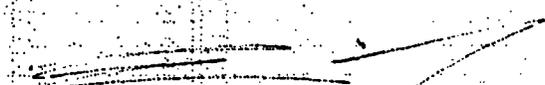
part of the NRC Subpart L hearing file for this proceeding. The following persons shall execute Attachment A to the Protective Order entitled *Confidentiality Undertaking* thereby entitling them to review the documents covered by this Protective Order:

1. Eric Jantz
2. Doug Meiklejohn
3. New Mexico Environmental Law Center Employees and Staff
4. Mike Wallace and Globalhaptics Staff
5. Richard Abitz
6. Geoffrey Fettus
7. Spencer Lucas

For the foregoing reasons, HRI and Intervenor hereby request that the Presiding Officer formally approve the attached Protective Order for use in this proceeding.



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CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Protective Order”) entered into as of this 19th day of January in the year 2005, by and among Hydro Resources, Inc. (“HRI”), a wholly owned subsidiary of Uranium Resources, Inc. (“URI”) and the New Mexico Environmental Law Center, (“NMELC”).

WHEREAS: As before the Presiding Officer of the NRC’s Atomic Safety and Licensing Board in the case of *In the Matter of Hydro Resources, Inc.* (Docket No. 40-8968-ML) (ASLBP No. 95-706-01-ML), HRI has agreed to grant NMELC access to certain documents;

WHEREAS: HRI does not waive its right to oppose discovery in accordance with 10 CFR § 2.1231(d) of the Commission’s rules for Subpart L proceedings;

WHEREAS: HRI and NMELC intend to provide adequate protections for such documents; and

WHEREAS: HRI and NMELC intend to enter into a Protective Order providing for such protections.

In consideration of the mutual promises contained herein, the parties, HRI and NMELC agree as follows:

- 1. HRI intends to grant access to NMELC to the following documents and materials, if they exist, prepared by HRI or its contractors regarding HRI’s NRC-licensed *in situ leach* uranium mining operation (Crownpoint Uranium Project or CUP):**
 - a. The following documents (Protected Information or “Requested Documents” as described in NMELC’s December 29, 2004 Motion for Subpoena),¹ subject to the procedures listed in Section 5 of this Protective Order, will be subject to this Protective Order:**
 - i. Fence diagrams and/or structural cross-sections for Section 17, Unit 1, and Crownpoint. Fence diagrams and/or structural cross sections are referred to in the Consolidated Operations Plan, revision 0.0 at page 90 (1996)², attached hereto as “Exhibit 1”. They are also**

¹ NMELC’s December 29, 2004 Motion also contains citations to “exhibits” which will be used as references for determining which documents are to be disclosed under this protective order.

² COP revision 2.0, §8.2, which corresponds to the above citation for revision 0.0 does not contain any reference to fence diagrams, cross-sections, or boreholes.

referred to in Analysis of Hydrodynamic Control, HRI, Inc., Crownpoint and Church Rock New Mexico Uranium Mines, at 3 and 7 (Geraghty and Miller, 1993), attached hereto as "Exhibit 2" and NUREG 1508 at 3-15. These diagrams are the bases for the site-specific determinations that no inter-aquifer connections caused by changes in geologic strata positions or thicknesses exist. In particular, they purport to support HRI's claims that mine fluids will not affect any underlying or overlying fresh water aquifers;

- ii. Borehole information for Borehole 2.8/17/7, referred to at p. 3-35 of NUREG-1508 and the borehole upon which Fig. 3.7 in NUREG-1508 is based. These NUREG pages are attached hereto as "Exhibit 3". This information should include down-borehole camera images, rock cores, core photos, drillers notes and loggers notes;
- iii. Documentation of driller's logs, pump test information and water level information, including hydrographs, for wells CP-1 and CP-4 and documentation of well completion difficulties for well CP-4. This information is referred to in the Crownpoint Technical Report at pages 46, 49-55 and at Appendix A, Table 4 (1992), attached hereto as "Exhibit 4". The site-specific aquifer testing effort of which these wells were a part is explicitly referred to in NUREG-1508 at 3-29. While HRI provided pump test information for some of its exploration holes, it has not provided this information for CP-1 and CP-4, and this information is not part of the hearing file. Additionally, in an October 16, 1998 letter to Mr. Bob Carlson, attached hereto as "Exhibit 5", Mark Pelizza states that geophysical logs of monitor wells CP-1 through CP-10 are provided in the hearing file. However, geophysical logs are different from driller's logs and each type of log provides different information. In the October 16, 1998 letter, Mr. Pelizza does not address the absence of driller's logs.

2. With respect to the materials referenced in Section 1 of this Protective Order, such materials (hereinafter "Protected Information") shall include but are not limited to the following: original or reproduced copies of any and all proprietary documents or portions thereof, procedures or any other proprietary materials disclosed to NMELC under this Protective Order; portions of any legal pleadings, motions, memoranda or other documents or materials prepared or used by NMELC which include, reference, implicate, cite or, in any other way, mention the Protected

Information; and portions of any and all verbal, electronic, printed or other communications which include, reference, implicate, cite or, in any other way, mention the Protected Information.

3. With respect to the Protected Information referenced in Sections 1 & 2 of this Protective Order, NMELC agrees to:

- a. restrict disclosure of all Protected Information only to NMELC's employees or representatives and designated experts on a need-to-know basis for such Information for purposes of evaluating the Protected Information and only after advising them of the requirements of this Protective Order and having them sign an undertaking in the form of Attachment A entitled *Confidentiality Undertaking* agreeing to be bound by the terms of this Protective Order;**
- b. not disclose any of the Protected Information to any other third party unless required to do so by law, regulation or legal process and only after notifying HRI and NRC prior to disclosure of the requirement and providing HRI with the opportunity to seek an appropriate protective order;**
- c. use the Protected Information only for the purposes of evaluating the HRI license and license application;**
- d. use the same degree of care with respect to the Protected Information as it uses to protect its own confidential and private information which standard of care shall be no less than reasonable care;**
- e. return the Protected Information to HRI within 15 days after the date of final NRC action on the HRI license and/or Court of Appeals, including all original and reproduced copies containing Protected Information then in the possession of NMELC or its representatives or experts and shall ensure the destruction of any summaries, notes or extracts thereof except attorney work product;**

4. Only individuals who have established to HRI that they possess a need to know basis (i.e., a need to view or possess) the Protected Information and have executed Attachment A to this Protective Order may have access to the Protected Information. HRI reserves the right to determine whether a member of NMELC or one of its designates has properly established a need to view or possess the Protective Information. Should NMELC dispute any such determination by HRI, NMELC shall file a written notice with the Presiding Officer describing, in detail, the reasons why such person(s) has the requisite need to view or possess the Protected Information. HRI shall be entitled to file a written response to such a written notice with the Presiding Officer within ten (10) days of NMELC's filing.

Any party to this proceeding seeking to add or substitute for the individuals who have demonstrated a need to view or possess the Protected Information and who have executed a copy of Attachment A to this Agreement must inform HRI, in writing, and must receive, in writing, HRI's approval prior to allowing such party(ies) access to the Protected Information.

Such procedures shall include but are not limited to:

- a. No documents containing Protected Information or references to such Information shall be filed with the NRC or distributed to any other entities via electronic mail;**
- b. All official filings or other documents filed with the NRC or any other adjudicatory or regulatory entity shall include a cover letter referencing the confidential nature of such filings;**
- c. All official filings or other documents containing references to Protected Information shall be kept confidential subject to the terms of this Protective Order and shall not be distributed to any person(s) who is/are not signatories to Attachment A of this Protective Order.**

5. NMELC agrees that any threatened or existing violation of this Protective Order would cause HRI irreparable harm for which it would not have an adequate remedy at law, and, as a result, HRI shall be entitled to seek immediate injunctive relief prohibiting such violation in addition to any other rights or remedies. If a party is liable to the other on account of this Protective Order, the measure of damages shall include but shall not be limited to any amount for indirect, incidental, consequential or punitive damages and/or lost profits. To the extent that NRC may do so, NRC may pursue appropriate criminal penalties if necessary. However, nothing in this Section shall be construed as a requirement that NRC pursue such criminal penalties and, in no way, shall be construed as a waiver or contracting away in this proceeding of NMELC's rights.

6. Counsel, representatives, consultants and any other individual(s) who has reason to suspect that documents or other materials containing the Protected Information may have been lost or misplaced (for example, because an expected paper has not yet been received) or that the Protected Information has otherwise become available to unauthorized persons, shall notify HRI promptly of those suspicions and the reasons for them.

7. The parties recognize that they will undertake to provide the level of confidentiality determined by this Protective Order to be appropriate. HRI, NMELC, and NRC Staff each has the right to seek changes in the level of confidentiality to be afforded by this Protective Order, subject to the following:

- a. **Nothing in this Protective Order shall be deemed to preclude NMELC from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order. Accordingly, nothing in this Protective Order shall be deemed to preclude any party in any other administrative or judicial proceeding from seeking protected status for any such information or materials;**

8. This Protective Order shall be governed and construed in accordance with the laws of the State of New Mexico without giving effect to its principles of conflict of laws. The parties shall submit to the exclusive jurisdiction of the State and federal courts located in the State of New Mexico for any dispute arising out of this Protective Order.

9. If any provision of this Protective Order is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Protective Order shall be construed as if the illegal, invalid or unenforceable provision had never been a part of this Protective Order and the remaining provisions of this Protective Order shall be given full force and effect.

10. No party shall assign its right or delegate its duties hereunder to a third party without the prior written consent of the other party.

11. HRI shall retain all rights, title, and interest in and to the Protected Information referenced under Sections 1 & 2 of this Protective Order that is viewed, copied or removed from their place of storage subject to this Protective Order.

12. This Protective Order shall become effective as of the date first written above. This Protective Order contains the entire agreement between the parties concerning the confidentiality and non-disclosure of the Protected Information and no modifications of this Protective Order or waiver of its terms and conditions shall be binding unless agreed to in writing by each party hereto.

13. The parties agree that its representatives executing this Protective Order have the full and complete authority to bind all members of its organization, agency, or company.

Title: _____

New Mexico Environmental Law Center

By: _____

Name: ERIC J Kuntz

Title: Staff Attorney

Atomic Safety and Licensing Board

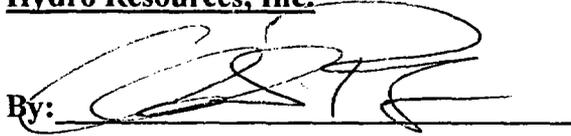
By: _____

Name: _____

Title: _____

SIGNATURE PAGE

Hydro Resources, Inc.

By: 

Name: Christopher S Pugsley, Esq.

Title: Attorney

New Mexico Environmental Law Center

By: _____

Name: _____

Title: _____

Atomic Safety and Licensing Board

By: _____

Name: _____

Title: _____

ATTACHMENT A

CONFIDENTIALITY UNDERTAKING

With reference to this Confidentiality and Non-Disclosure Agreement by and among Hydro Resources, Inc., the New Mexico Environmental Law Center, and NRC Staff dated as of January 19, 2004 (“Agreement”), the undersigned affirms that he has read the Agreement and agrees to be bound by the terms and provisions and potential penalties therein as if he/she were himself a party thereto.

Date: _____

By: _____

Name: _____

Title: _____

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

Before the Presiding Officer:

**Thomas S. Moore, Presiding Officer
Richard F. Cole, Special Assistant**

In the Matter of:)	
Hydro Resources, Inc.)	Docket No.: 40-8968-ML
P.O. Box 777)	
Crownpoint, NM 87313)	Date: January 19, 2005
_____)	

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Hydro Resources, Inc.'s and Eastern Navajo Dine Against Uranium Mining and Southwest Research and Information Center's Joint Motion for Approval of Protective Order in the above-captioned matter has been served upon the following via electronic mail and U.S. First Class Mail on this 19th day of January, 2005.

Administrative Judge,
Thomas S. Moore
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop T-3 F23
Washington, DC 20555
Email: tsm2@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop T-3 F23
Washington, DC 20555
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Office of the Secretary
Attn: Rulemakings and
Adjudications Staff
U.S. Nuclear Regulatory
Commission
Mail Stop: OWFN-16 C1
Washington, DC 20555
Email: hearingdocket@nrc.gov

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U.S. Nuclear Regulatory Commission
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Washington, DC 20555

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Crownpoint, New Mexico 87313

W. Paul Robinson
Chris Shuey
Southwest Research and
Information Center
P. O. Box 4524
Albuquerque, NM 87106

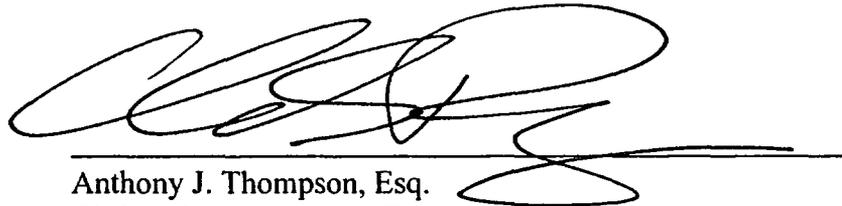
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U.S. Nuclear Regulatory Commission
Washington, DC 20555
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A large, stylized handwritten signature in black ink, appearing to read 'AJT', is positioned above a horizontal line. The signature is highly cursive and loops around itself.

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January 19, 2005

BY ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL

U.S. Nuclear Regulatory Commission
Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: OWFN-16C1
Washington, DC 20555

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

Dear Sir or Madam:

Please find attached for filing Hydro Resources, Inc.'s and Eastern Navajo Dine Against Uranium Mining and Southwest Research and Information Center's Joint Motion for Approval of Protective Order in the above-captioned matter. 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 self-addressed, postage prepaid envelope attached herewith.

If you have any questions, please feel free to contact me at (202) 496-0780.
Thank you for your time and consideration in this matter.

Sincerely,



Anthony J. Thompson, Esq.
Christopher S. Pugsley, Esq.
Law Offices of Anthony J. Thompson, P.C.
Counsel of Record to HRI

Enclosures

(hydro resourcesCOVERLETTTER.doc)