

February 14, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

February 15, 2005 (8:30am)

Before the Presiding Officer:
E. Roy Hawken, Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

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

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

**INTERVENORS' UNOPPOSED MOTION TO MODIFY THE NOVEMBER 5,
2004 SCHEDULING ORDER**

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby request that the Presiding Officer modify certain briefing requirements established in the Order of November 5, 2004. Intervenors seek 1) relief from the requirement that relevant portions of licensing documents, except for the Final Environmental Impact Statement ("FEIS"), be attached to their presentation as exhibits, when such documents are cited the brief; and 2) to organize their brief differently from the requirements in the November 5 Order. In support of this motion, Intervenors state as follows:

1. On November 5, 2004, the former Presiding Officer issued a scheduling order for the portion of the above-captioned proceeding covering Section 17, Unit 1 and Crownpoint.¹ A copy of that Order is attached hereto as Exhibit A.

¹ On February 3, 2005 the former Presiding Officer issued an order modifying the November 5, 2004 Order with respect to the schedule by which the parties will file their presentations, but

2. The November 5 Order requires that “any party relying on licensing documents (other than the FEIS) such as HRI’s Consolidated Operations Plan (COP), shall include the relevant portions of such licensing document as an exhibit accompanying the pertinent written presentation.” Order (Schedule for Written Presentations), Part 2 at 3 (Nov. 5, 2004).

3. Intervenors submit that given the anticipated number of references to licensing documents in Intervenors’ groundwater presentation, and that both ENDAUM and SRIC are non-profit organizations, this requirement will be financially burdensome in terms of copying and mailing expenses.

4. Additionally, it is Intervenors’ position that this requirement will cause their presentation to be unwieldy and confusing.

5. Intervenors request that instead of requiring that relevant referenced portions of licensing documents be attached as exhibits, parties may simply cite to those documents by their accession number and hearing file notebook number, in addition to the specific page number of the document.

6. The November 5 Order also requires that the presentation be organized in a specific manner. Order (Schedule for Written Presentations), Part 2A-D, at 3-4 (Nov. 5, 2004). Specifically, the Order requires arguments to be organized by proposed mining site, starting with Section 17, continuing with Unit 1 and concluding with Crownpoint. Intervenors submit that the organizational requirements of the November 5, 2004 Order will ultimately lead to confusion because:

a. Some of Intervenors’ arguments are applicable generically to all the

specifically instructed that the parties would continue to be bound by the provisions in parts 2 and 3 of the November 5 Order. Order (Revised Schedule for Written Presentations) at 3 (Feb. 3, 2005).

remaining proposed mine sites and abiding by the organizational requirements of the November 5 Order would lead to undue repetition; and

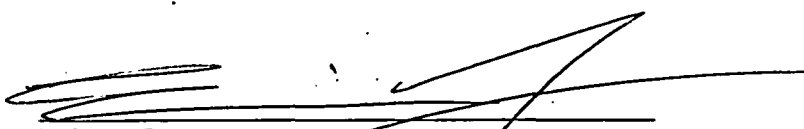
b. Some of Intervenor's arguments are applicable to one or two, but not all the remaining proposed mine sites and therefore do not fit into the framework required by the November 5 Order.

7. Intervenor therefore request that they be able to organize their brief as deemed appropriate by their legal counsel, provided that such organization meets the substantive requirements in the November 5 Order.

8. The granting of this motion will not prejudice any party to this proceeding.

9. Counsel for HRI concurs with this motion. Counsel for the NRC Staff concurs with this motion.

Respectfully submitted this 14th day of February, 2005.



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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

In the Matter of

HYDRO RESOURCES, INC.
P.O. Box 777
Crownpoint, New Mexico 87313

Docket No. 40-8968-ML

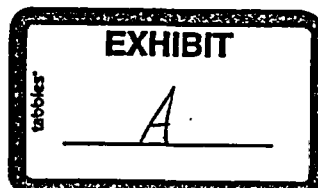
ASLBP No. 95-706-01-ML

November 5, 2004

ORDER

(Schedule for Written Presentations)

On October 22, 2004, the Presiding Officer issued LBP-04-23, 60 NRC ____ (2004), denying the motions of Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) (Intervenors) to direct the Staff to supplement the final environmental impact statement (FEIS) for the Hydro Resources, Inc. (HRI) Crownpoint Uranium Project. Previously, all parties agreed that the FEIS supplementation issues should be resolved before proceeding with the parties' written presentations on Intervenors' areas of concern with respect to the Church Rock Section 17, Crownpoint Unit 1, and Crownpoint mining sites included in HRI's materials license. Now that the FEIS supplementation motions are resolved, this Order sets out the schedule for the parties' written presentations under to 10 C.F.R. § 2.1233 and establishes a schedule for HRI and the NRC Staff to respond to the Intervenors' newly filed November 2, 2004, motion to suspend the proceeding until public access is restored to the NRC's Agencywide Document Access and Management System (ADAMS).



1. In establishing the schedule for the parties' written presentations, the Presiding Officer notes that the parties earlier agreed that the Intervenor's areas of concern should be grouped and addressed in the following order: (1) groundwater protection, groundwater restoration, and related surety estimates; (2) liquid waste disposal and surface water protection; (3) historic preservation (NHPA, NGPRA); (4) financial and technical qualifications; (5) air emission controls; (6) adequacy of EIS (cumulative impacts, mitigation actions); and (7) environmental justice. The parties also agreed that each written presentation addressing each of the seven groupings of areas of concern should speak to all three remaining mining sites in contrast to addressing all the areas of concern for the first site before addressing the second site and then the third site. Finally, the parties previously agreed that the Intervenor's should have 45 days in which to file each of their seven written presentations addressing the groupings of areas of concern, HRI should have 45 days to file each of its responses, and the Staff should have 10 days from the filing of HRI's responses to file each of its responses.

Therefore, the Intervenor's first written presentation on the first of the seven groups of areas of concern (i.e., groundwater protection, groundwater restoration, and related surety estimates) shall be filed 45 days from the date set in the Presiding Officer's order resolving the Intervenor's November 2, 2004, motion to suspend the proceeding. HRI's response to the Intervenor's first written presentation shall be filed 45 days after the Intervenor's filing and the Staff's response shall be filed 10 days after HRI's response. The Intervenor's second written presentation addressing the second group of areas of concern (i.e., liquid waste disposal and surface water protection) shall be filed 45 days after the filing of Intervenor's first written presentation. HRI's second response shall be filed 45 days after Intervenor's second filing and the Staff's second response shall be filed 10 days after HRI's second response. The same schedule applicable to the parties' second set of filings shall be followed for each of the remaining groups of areas of concern. In the event the Presiding Officer has written questions

for the parties or finds that oral presentations or questioning is necessary, the schedule will be adjusted to accommodate those activities.

2. Each party's individual written presentation shall be accompanied and fully supported by affidavits of experts and other documentary material presented as separately lettered exhibits. All affidavits shall be organized by separately numbered paragraphs and each affidavit and exhibit shall have the pages numbered sequentially. The written presentations of each party shall reference the appropriate expert affidavits (by paragraph number) or exhibits (by page number) for each factual claim. Further, any party relying on licensing documents (other than the FEIS) such as HRI's Consolidated Operations Plan (COP), shall include the relevant portions of such licensing document as an exhibit accompanying the pertinent written presentation.

In order to ensure that each area of concern and all subsidiary issues relating to each area of concern are clearly identified and addressed for each of the three remaining mining sites, the parties' written presentations shall contain a table of contents organized as follows:

- A. Each area of concern shall be set out and numbered consecutively with a Roman Numeral starting with Roman Numeral I.
- B. Following each Roman Numeral designation of the area of concern, the Section 17 site shall be spelled out and designated by the capital letter A, the Crownpoint Unit 1 site shall be spelled out and designated by the capital letter B, and the Crownpoint site shall be spelled out and designated by the capital letter C. In addition, there shall be a section designated capital letter D to include the information required in Part 3 of this Order, infra, with regard to the Section 8 site.
- C. Following the capital letter designation of each site, any subsidiary issues relating to

the area of concern shall be set out and designated by the Arabic number starting with number 1 and continuing with consecutive numbers.

- D. All subissues relating to any subsidiary issue shall be set out and designated by the small letters a, b, c, etc.

3. Each of the Intervenor's written presentations on the seven groups of areas of concern shall follow the format set out for the table of contents. To ensure that all issues are squarely joined for all three mining sites, each of the seven responses of HRI and the Staff shall follow the format in the corresponding written presentation of the Intervenor.

In addition, each of the Intervenor's written presentations and each of the responses of HRI and the Staff shall include as part of their discussion of each mining site for each area of concern and related subsidiary issues and/or subissues, a separate section detailing Judge Bloch's findings on that area of concern, related subsidiary issues and/or subissues with respect to the Section 8 site, including an exact citation to the rulings containing such findings and any Commission decision on review. In other words, each party's filing addressing an area of concern shall include a section designated by the capital letter D to cover Judge Bloch's findings on all the related issues associated with that area of concern with regard to the Section 8 site. Each party shall also include the date, exact title of their written presentation and supporting materials (and all appropriate ADAMS accession numbers and Hearing File numbers for that material) for such area of concern, related subsidiary issues and/or subissues, along with a brief summary of that evidence. Additionally, each party shall include as part of the discussion for each Section 8 site area of concern, related subsidiary issues and/or subissues, an explanation of the relevant differences (and the importance of those differences) or lack of differences, between the Section 8 site and the site at issue and how their new evidence for the site at issue differs, or is the same, as their previous evidence regarding the Section 8 site.

4. Finally, the responses of HRI and the Staff to the Intervenor's November 2, 2004, motion to suspend the proceeding shall be filed no later than November 15, 2004. In its response, the Staff shall include its current estimate of the date on which the documentary material related to this proceeding will be available publicly in ADAMS.

It is so ORDERED.

BY THE PRESIDING OFFICER¹

[Original Signed by]

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 5, 2004

¹ Copies of this Order were sent this date by internal e-mail or facsimile transmission to all participants or counsel for participants.

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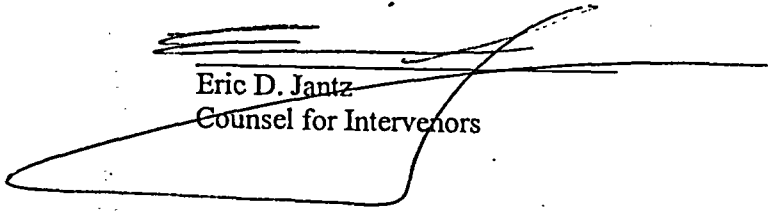
Office of Commission Appellate
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Washington, D.C. 20555

Adjudicatory File
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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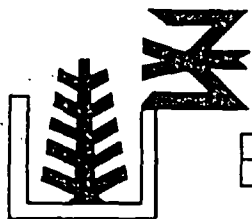
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NEW MEXICO ENVIRONMENTAL LAW CENTER

February 14, 2005

BY ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL

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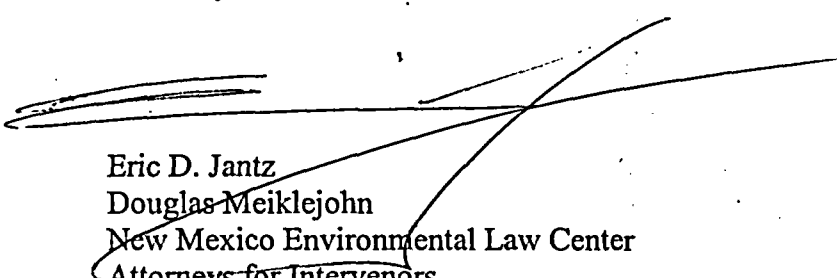
Re: In the Matter of: Hydro Resources, Inc.; Docket No: 40-8968-ML

Dear Sir or Madam:

Please find enclosed for filing "Intervenors' Unopposed Motion to Modify the November 5, 2004 Scheduling Order". Copies of the enclosed have been served on the parties indicated on the enclosed certificate of service. Additionally, please return a file-stamped copy in the attached self-addressed, postage prepaid envelope.

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

Sincerely,



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Douglas Meiklejohn
New Mexico Environmental Law Center
Attorneys for Intervenors

Enclosures

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