

September 30, 1999
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 OCT -4 P 3:59

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SPECIAL
RULEMAKING AND
ADJUDICATION STAFF

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of:)

HYDRO RESOURCES, INC.)
P.O. Box 15910)
Rio Rancho, New Mexico 87174)

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

**MOTION FOR LEAVE TO REPLY AND REPLY TO THE RESPONSE OF
INTERVENORS, ENDAUM AND SRIC, AND THE RESPONSE OF NRC STAFF TO
HRI'S MOTION FOR SUSPENSION OR, IN THE ALTERNATIVE, REPRIMAND OR
CENSURE AND REQUEST FOR ATTORNEYS FEES**

I. INTRODUCTION

Hydro Resources, Inc. ("HRI"), hereby moves for Leave to Reply and Replies to the Response of Intervenors, Eastern Navajo Dine Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC"), and the Response of the Staff of the Nuclear Regulatory Commission ("NRC Staff") to HRI's Motion to suspend, or in the alternative, reprimand or censure Intervenors Eastern Navajo Dine Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC") and their counsel, Douglas Meiklejohn, Johanna Matanich, and Lila Bird of the New Mexico Environmental Law Center and Diane Curran of Harmon, Curran, Spielberg & Eisenberg LLP from participation in the above captioned proceeding. HRI seeks leave to reply, in accordance with 10 C.F.R. § 2.730(c), specifically to address outright factual inaccuracies that would otherwise confuse an

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U.S. NUCLEAR REGULATORY COMMISSION
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already complex record. HRI will not herein reiterate the arguments previously raised in its Motion.¹

II. DISCUSSION

A. The Presiding Officer Retains Jurisdiction to Impose Sanctions

Intervenors argue at some length that the Presiding Officer no longer has jurisdiction to address HRI's request for sanctions. Intervenors support their argument with caselaw citations standing for the proposition that once a Licensing Board or Presiding Officer has issued a partial initial decision disposing of an issue, that tribunal relinquishes jurisdiction to take further action regarding that issue. HRI does not dispute this. HRI's Motion does not seek further consideration of any decided issue. Rather, HRI's Motion requests that the Presiding Officer sanction Intervenors' multiple specific instances of misconduct and act to discourage Intervenors' ongoing course of misconduct, to the extent that this proceeding, presently or in the future, should continue. The cases cited by Intervenors do not deprive the Presiding Officer of the authority to impose the requested sanctions.

B. Intervenors' Remarks to the Commission Regarding This Matter Were Wholly Inappropriate

The conduct of Intervenors' counsel, Diane Curran, in addressing to a meeting of the Nuclear Regulatory Commission specific facts and issues pending before the Presiding Officer in this matter was inappropriate. The fact that Anthony Thompson happened to be present for Ms. Curran's inappropriate remarks does not legitimize such remarks. As noted by Intervenors, Mr. Thompson happened to be present at this particular hearing as counsel to another client, the

¹ HRI does not take issue with any particular point raised by NRC Staff. HRI can only surmise that NRC Staff, faced with the choice of downplaying the egregiousness of Intervenors' conduct or admitting that NRC's informal Subpart L process has been abused to the point of being rendered utterly unworkable, has elected to put the best face on what has clearly devolved into a morass. In this regard, HRI notes only that if NRC is going to allow Subpart L hearings for minimal risk ISL licenses routinely to become multi-year wars of attrition, then the American uranium mining industry, and, conceivably, the American nuclear industry, will be driven out of business.

National Mining Association (“NMA”). Contrary to Intervenor’s presumption, HRI is not a member of the NMA. Mr. Thompson had no prior notice that Intervenor intended to argue the instant case to the Commission, nor was Mr. Thompson, present representing another client, in a position to strenuously object. Intervenor’s assertions that Mr. Thompson’s activities on behalf of NMA constitute *ex parte* contacts are misguided. As noted, HRI is not a member of NMA and had no part in developing or funding the complained-of presentations Mr. Thompson made to NRC on NMA’s behalf. Moreover, the complained-of presentations do not reference HRI’s New Mexico activities (*i.e.*, the subject of the instant licensing proceedings).

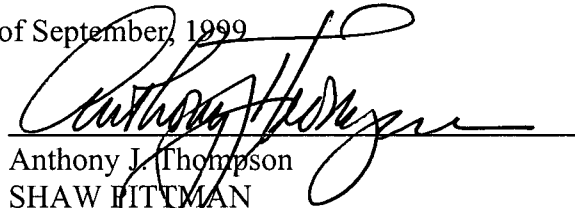
C. Intervenor’s Arguments Concerning HRI’s UIC Permit Are Mistaken

Intervenor asserts that the aquifer exemption granted to HRI by EPA Region 6 on June 21, 1989, is invalid. In addition, they argue that the underground injection control (“UIC”) permit issued to HRI by the State of New Mexico is invalid because EPA Region 9 has asserted jurisdiction over any UIC permit for Section 8. Intervenor correctly note that the issue of state versus EPA jurisdiction over Section 8, with respect to the issuance of a UIC permit, is presently the subject of litigation in the U.S. Court of Appeals for the 10th Circuit. See HRI v. EPA, No. 97-9556 (10th Cir.). HRI’s aquifer exemption granted by EPA, however, is not presently subject to litigation. Moreover, contrary to Intervenor’s claims, HRI’s UIC permit and aquifer exemption remain in effect and are not subject to any stay. As such, both the permit and the aquifer exemption are legally enforceable.

IV. CONCLUSION

For the reasons set forth above, HRI respectfully requests that the Presiding Officer suspend, or in the alternative, reprimand or censure Intervenors and their counsel and grant HRI attorneys fees in the amount equal to HRI's costs in bringing this motion and defending against Intervenors' claims discussed above.

Respectfully submitted this 30th day of September, 1999



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NUCLEAR REGULATORY COMMISSION

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| _____) | |
| In the Matter of:) | |
| HYDRO RESOURCES, INC.) | Docket No. 40-8968-ML |
| 2929 Coors Road, Suite 101) | ASLBP No. 95-706-01-ML |
| Albuquerque, NM 87120) | |
| _____) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents, HYDRO RESOURCES, INC.'S MOTION, in the above-captioned proceeding were sent to the following by overnight mail on this 30th day of September, 1999.

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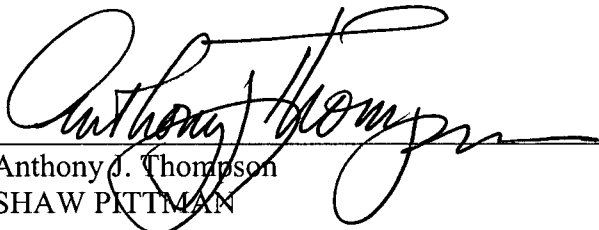
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