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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF GENERAL COUNSEL  
RULEMAKING AND ADJUDICATION  
ADJUDICATION STAFF

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

SERVED OCT 19 1999

In the matter of

HYDRO RESOURCES, INC.  
(2929 Coors Road  
Suite 101  
Albuquerque, New Mexico 87120)

Docket No. 40-8968-ML

Re: Leach Mining  
and Milling License

ASLBP No. 95-706-01-ML

MEMORANDUM AND ORDER  
(Motion to Hold in Abeyance)

Hydro Resources, Inc. (HRI) filed a "Motion to Place Hearing in Abeyance" (Abeyance Motion) on September 14, 1999. In its Abeyance Motion, at page 2, HRI stated that "HRI does not intend to go forward with operations at Section 17, Crownpoint, and/or Unit 1 at this time." It requested that the hearing be held in abeyance, subject to an Order that HRI must serve one month advance notice that it intends to mine at one of the listed sites. This Abeyance Motion is opposed by Marilyn Morris and Grace Sam in a response of September 7, 1999, and by Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") in a response

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of September 28, 1999 (Intervenors' Response). The Staff of the Commission filed its response, supporting the Abeyance Motion, on October 5, 1999.

Although Intervenors, opposing HRI's Abeyance Motion, make lengthy arguments, I consider my decision to grant the request for an abeyance to be straightforward. This proceeding has been "bifurcated," meaning that the issues that have been litigated in the already-concluded phase of the proceeding, were limited to (1) any issue that challenged the validity of the license issued to HRI; (2) any aspect of the license concerning operations on Church Rock Section 8; and (3) any aspect of the license concerning transportation or treatment of materials extracted from Section 8. See "Memorandum and Order" (Scheduling and Partial Grant of Motion for Bifurcation)(September 22, 1998 at 2-3) (unpublished) (September 22 Order).

It is important to stress that Intervenors have had the chance to raise *any* matter "that challenged the validity of the license issued to HRI." They had this right in addition to the right to challenge the license for Church Rock Section 8. The conclusion of Phase I before the Presiding Officer marks the failure of Intervenors to demonstrate *either* the invalidity of the overall license or the invalidity of the license for Church Rock Section 8.

Now HRI approaches the Presiding Officer with a request to hold the case in abeyance. Its reason for the request is that it has no present intention to mine anywhere but Section 8. See LBP-99-30, 49 NRC \_\_\_\_, slip op. at 56 (August 20, 1999). For that reason, it thinks it would be a waste to litigate the validity of its license with respect to these other sections. I agree.

The principal argument of Intervenors, opposing the Abeyance Motion, is that the National Environmental Policy Act of 1969 (NEPA) “unequivocally requires that the environmental impacts of a proposed project be considered in their entirety, rather than evaluated piecemeal.” SRIC and Endaum Response at 9. However, the FEIS in this case considers the entire project. See NUREG-1508 (the Final Environmental Impact Statement (FEIS) for HRI’s proposed ISL mining project). In addition, Intervenors were free to challenge the validity of the entire license if there were any grounds to do that. Thus, the overall effects of this project have already been twice considered by the NRC.

ENDAUM’s and SRIC’s argument that the deferral of further adjudication (which would result if the Abeyance Motion is granted) would violate the hearing requirements of the Atomic Energy Act of 1954 (AEA) relies on *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1132 (1985), and AEA section 189(a)(1) (42 U.S.C. § 2239(a)(1)(A)). See SRIC’s Response Brief at 6.

ENDAUM’s and SRIC’s reliance on *Union of Concerned Scientists* is misplaced, since there is in this case no denial of a right to a hearing on any material issue. Under the Order I am entering today, hearings are likely to be completed on all material issues before any licensed mining occurs. See *Union of Concerned Scientists*, 735 F.2d at 1438-39.<sup>1</sup>

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<sup>1</sup> See *Concerned Scientists*, 735 F.2d at 1444 n.12. See also LBP-98-5, 47 NRC 119, 134-35 (1998) (noting that materials licenses may be issued prior to any hearing in Subpart L proceedings, and ruling that ENDAUM and SRIC had failed to establish their right under the AEA to a prelicensing hearing).

I am not persuaded by the due process and Administrative Procedure Act arguments of the Intervenors. In *City of West Chicago v. NRC*, 701 F. 2d 632 (7<sup>th</sup> Cir. 1983), the court held that an informal hearing was adequate to fulfill the agency's obligation to hold a hearing under the AEA, § 189(a). The rule applied by that court was a rule of reason. Likewise, in this case, Intervenors argue that the NRC must complete its hearing promptly in order to comply with hearing requirements. I do not consider it unreasonable to defer current litigation of matters not in current controversy.

To be sure, Intervenors have invested substantial legal and technical resources in this proceeding. Whatever is already in the record will, of course, be available for them to reference should the proceeding be resumed. In addition, they may choose to preserve testimony of their witnesses in affidavit form. These affidavits, if they choose to use them, will be available for use in future proceedings.

In addition, if the Abeyance Motion were denied, Intervenors would have an opportunity to litigate their concerns before licensee commenced field operations under its license. It is my conclusion that Intervenors should not lose that procedural advantage because the motion for abeyance is being granted. Accordingly, I must determine how much advance notice must be given by HRI before it mines additional sections. In light of determinations that have already been made, I consider eight months advance notice of mining activity to be adequate to permit full litigation of any issues that may be raised prior to expanding the mining operation into a new site.

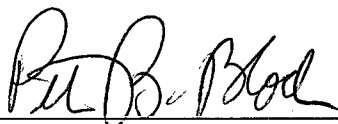
ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 19th day of October, 1999, ORDERED, that:

1. The relief requested by Hydro Resources, Inc., in its "Motion to Place Hearing in Abeyance" (Abeyance Motion) on September 14, 1999 is *granted*, as modified in the subsequent paragraphs of this Order. Accordingly, this proceeding shall be held in abeyance but for matters covered below.

2. Hydro Resources, Inc., must file notice in this proceeding eight months prior to the inception of mining on any property covered in its license and not yet subject to a hearing.

3. This is an interlocutory decision of the Presiding Officer.



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Peter B. Bloch, Administrative Judge  
Presiding Officer

Rockville, Maryland

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O--MOTION...ABEY.--LBP-99-40 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this  
19 day of October 1999

  
Office of the Secretary of the Commission