August 26, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

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 SUSPENSION OR, IN THE ALTERNATIVE, REPRIMAND OR CENSURE AND REQUEST FOR ATTORNEYS FEES

I. INTRODUCTION

Hydro Resources, Inc. ("HRI"), hereby moves 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 brings this motion on the grounds that Intervenors and the above named counsel repeatedly have engaged in disruptive, contemptuous and borderline libelous conduct during the course of this 10 C.F.R. Part 40, Subpart L proceeding which has impeded the fair and efficient administration of justice. HRI also requests attorneys fees in the amount equal to HRI's costs in bringing this motion and defending against Intervenors' frivolous claims which are

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contained in their more than 9,000 pages of pleadings filed in this proceeding and are discussed below.

This matter is properly brought before the Presiding Officer pursuant to 10 C.F.R. § 2.713.[1]

II. BACKGROUND

On April 13, 1988, Hydro Resources, Inc. first applied to the U.S. Nuclear Regulatory Commission for a license to construct and operate in-situ leach mining facilities on a plot known as Section 8, located approximately six miles north of the town of Church Rock, New Mexico. HRI subsequently amended its license application twice to encompass ISL mining operations on two leased properties near the town of Crown Point, New Mexico, ISL mining on part of another parcel near Church Rock, and a central processing facility at Crownpoint to dry and package yellowcake.

After nearly a decade of exhaustive study which is amply reflected in the voluminous Environmental Impact Statement, Safety Evaluation Report, and multiple iterations of the Consolidated Operations Plan, NRC issued HRI a source materials license, subject to a series of administrative conditions, permitting HRI to construct and operate ISL facilities on an incremental basis over a twenty year period. The license provides that HRI may first construct

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[1] See In the Matter of Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-36, 16 N.R.C. 1512, 1514 n. 1 (1982), citing 45 Fed. Reg. 3594 ("While the Commission has inherent supervisory power over all agency personnel and proceedings, it is not necessarily appropriate to bring any and all matters to the Commission in the first instance. Under the Commission's rules (10 C.F.R. 2.713), where a complaint relates directly to a specified attorney's actions in a proceeding before a licensing board, that complaint should be brought to the board in the first instance if correction is necessary for the integrity of the proceedings.").

and operate ISL mining facilities at Church Rock Section 8 and effectively prohibits operations beyond Section 8 prior to a successful groundwater restoration demonstration at Section 8.

ENDAUM, SRIC, and Grace Sam and Marilyn Morris[2] successfully moved to intervene and be heard on specified areas of concern. Since that time, Intervenors have filed some 9000 pages of documents in this informal, Subpart L hearing, much of that, needlessly duplicative testimony of purported experts, all the while wasting the time and money of HRI,[3] the NRC Staff, and the Presiding Officer with endless procedural motions, including needless, premature appeals to the Commission and, more recently, a series of premature petitions seeking review of the Presiding Officer's partial initial decisions before the United States Court of Appeals. Notably, after filing these 9,000 pages, Intervenors have failed to raise any evidence of adverse effects on safety and health from the more than twenty (20) years of ISL mining operations. In addition, as discussed further below, Intervenors' counsel have engaged in blatantly improper conduct by impugning the integrity of the Presiding Officer in the press and by testifying before the Commission about this matter, in utter disregard of a Commission order prohibiting such testimony.

III. LEGAL STANDARD

Section 2.713 of NRC's regulations governs the appearance and practice of parties and their representatives before the NRC in adjudicatory proceedings. See 10 C.F.R. § 2.713 (1997). That Section provides, in pertinent part:

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[2] This motion is not directed at Grace Sam and Marilyn Morris or their attorneys. Consequently, for purposes of this motion, the term "Intervenors" shall refer only to ENDAUM and SRIC and their attorneys.

[3] HRI estimates that it has expended nearly $10 million in costs and expenses to date in applying for and defending its license.

> (a) . . . In the exercise of their function under this subpart, the Commission . . . function[s] in a quasijudicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.
>
> . . .
>
> (c) Reprimand, censure or suspension from the proceeding. (1) A presiding officer . . . may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party representative of a party who shall . . .be guilty of . . . disruptive or contemptuous conduct.

Id.

A. Presiding Officer's Authority to Regulate the Proceedings.

Under the Commission's Rules of Practice, the presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. 10 C.F.R. § 2.714; In the Matter of Public Service Company of New Hampshire, et al., (Seabrook Station, Units 1 and 2), 18 N.R.C. 1184 (1983) ("Seabrook"). The presiding officer has all powers necessary to achieve those ends, including the power to regulate the course of the hearing and the conduct of the participants. 10 C.F.R. § 2.714(e). Where it is necessary to the orderly conduct of a proceeding, the presiding officer may reprimand, censure or suspend from participation in a proceeding any party or representative of a party who refuses to comply with the Board's directions, or who is guilty of disorderly, disruptive or contemptuous conduct. 10 C.F.R. § 2.713(c)(1); id.

The presiding officer has the discretion to exercise these powers in order to facilitate the efficient reception of relevant evidence in a manner consistent with fundamental fairness to all parties. A presiding officer is given broad latitude to assert these powers when he or she perceives the conduct of any party to be disruptive of the orderly presentation of evidence. Id.

In its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), the Commission specified that it expects judges to actively manage their hearings and to impose sanctions where parties fail to fulfill their obligations. To sit silently in the background of a proceeding while the parties place anything they wish on the record is to default on one's duty to implement this Commission policy. While some parties may see this as bias, it is no more than carrying out the presiding officer's obligation to "run a tight ship," as the Commission expressly desires. Id.

The HRI proceeding, like the Seabrook proceeding, is a complex, tendentious, and, at times, acrimonious case. In such cases, a judge must take pains to ensure that a record is developed which specifically addresses the contentions at issue, and is not replete with extraneous accusations and speeches (id.); "intemperate, even disrespectful rhetoric" on the part of attorneys is not to be tolerated. In the Matter of Hydro Resources, Inc., LBP-98-4, 47 N.R.C. 17 (1998); Curators of the University of Missouri, CLI-95-17, 42 NRC 229, 232-233, fn. 1 (1995), citing, inter alia, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 838 (1974) ("Northern Indiana"). By the terms of Section 2.713(a), the Commission's lack of tolerance for such conduct by attorneys applies equally to parties.

B. Nuclear Regulatory Commission Proceedings Must Comport With the Orderly Administration of Justice.

The Board's opinion in Northern Indiana quotes from the American Bar Association's Canons of Ethics that "[h]aranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system" [footnote omitted]. The Appeal Board noted that "[n]ame calling adds nothing to the stature of counsel or to the merits of his argument." Id. The parties have the general responsibility to conduct themselves with honor in NRC proceedings as they should in a court of law. 10 C.F.R. § 2.713; In the Matter of Public

Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ASLBP No. 82-471-02-OL) (Offsite Emergency Planning); LBP-88-28 (1988).

With regard to pleadings filed by any party, the Commission has stated that "frivolous, disruptive, and contemptuous pleadings cannot and will not be entertained by the Commission." Id. Moreover, "[a]ny party or its representative who fails to comply with an order or is "guilty of disorderly, disruptive, or contemptuous conduct" may be reprimanded, censured, or suspended from participation "if necessary for the orderly conduct of a proceeding." 10 C.F.R. § 2.713(c); see also Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority, 685 F.2d 547, 564n.30 (D.C. Cir. 1982); In the Matter of Philadelphia Electric Company, (Limerick Generating Station, Units 1 and 2), ALAB-840, 24 N.R.C. 54 (1986).

"A licensing board is not expected to sit idly by when parties refuse to comply with its orders." In the Matter of Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 N.R.C. 1923 (1982). A licensing board is to be accorded the same respect as a court of law. See 10 C.F.R. § 2.713(a). Pursuant to 10 C.F.R. § 2.718, a licensing board has the power and the duty to maintain order, to take appropriate action to avoid delay and to regulate the course of the hearing and the conduct of the participants. Furthermore, pursuant to 10 C.F.R. § 2.707, the refusal for a party to comply with a Board order relating to its appearance at a proceeding constitutes a default for which a licensing board "may make such orders in regard to the failure as are just." Id. The powers of a licensing board to maintain order and regulate the course of a proceeding were given further explication by the Commission in its "Statement of Policy on Conduct of Licensing Proceedings", CLI-81-8, 13 NRC 452, 454 (1981):

> When a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party. A spectrum of sanctions from minor to severe is available to the

> boards to assist in the management of proceedings. For example, the boards could warn the offending party that such conduct will not be tolerated in the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party's contentions, *impose appropriate sanctions on counsel for a party, or, in severe cases, dismiss the party from the proceeding.* In selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance.

(Emphasis added).

IV. ARGUMENT

As set forth in greater detail below, Intervenors and their counsel have engaged in multiple instances of improper conduct and should be sanctioned.

A. SRIC's Statements to the Commission Constitute Ex Parte Communication Warranting Disqualification

On June 17, 1999, Diane Curran, Chris Shuey, and Johanna Matanich, on behalf of SRIC, made written and oral presentations ("Comments") to the Commission during a public meeting concerning "proposed changes in uranium recovery regulation."[4] Comments at 1. The public notice from the Commission announcing the meeting admonished the parties to refrain from making statements referring to issues presently pending in litigation before an NRC administrative law judge.[5] Although spokespersons for Intervenors[6] attempted to characterize

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[4] A copy of these comments is attached hereto as Exhibit A.

[5] A copy of the Commission notice admonishing the parties is attached hereto as Exhibit B. Additionally, this admonition was repeated, orally, at the Commission hearing held on June 17, 1999. See Transcript of Commission Meeting of June 17, 1999, at 5-6.

their comments as within the "spirit of public debate," counsel for SRIC defied the Commission's admonition and spoke directly to issues currently before the Presiding Officer and the Commission in the pending HRI litigation. This testimony was in direct violation not only of the Commission's explicit prohibition, but also violated the NRC regulation prohibiting ex parte communication. Because of this intentional and flagrant violation of NRC regulations and the Commission's express prohibition, SRIC's counsel and Mr. Shuey should be sanctioned and disqualified from further participation in this proceeding.

10 C.F.R. § 2.780 states, in relevant part:

In any proceeding under this subpart-

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

10 C.F.R. § 2.780. While the prohibition set forth in section (a) does not apply to "[c]ommuncations regarding generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC, it does apply to communications associated with the resolution of any proceeding pending before the NRC." 10 C.F.R. § 2.780(f)(4). Sanctions against a party or its representative could be imposed under 10 C.F.R. § 2.713 if the party submitting the ex parte communication is "guilty of disorderly, disruptive, or contemptuous conduct." The Commission under 10 C.F.R. § 2.780(d) could also require the party to show cause why its claim or interest in the proceeding should not be denied or otherwise adversely affected because of an ex parte

[6] Diane Curran, Counsel for SRIC, and Chris Shuey, a SRIC employee, both testified at the hearing. Johanna Matanich, a co-counsel for SRIC, is credited with contributing to SRIC's written testimony, but did not testify during the hearing.

communication. In the Matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), CLI-86-18, 24 N.R.C. 501 (1986).

Intervenors' testimony before the NRC is disruptive of the pending challenge to HRI's license and clearly is contemptuous; Intervenors' conduct warrants severe sanctions. The process has been prejudiced by the statements made by SRIC's counsel to the Commission. SRIC's counsel and Mr. Shuey argued, both in writing and orally, specific issues that were before either the Presiding Officer or the Commission, including, but not limited to, NRC's jurisdiction over the groundwater and other subsurface aspects of ISL mining, groundwater protection at an ISL mine including the adequacy of protection pursuant to UIC permits, the effects and legality of performance-based licensing, and the design of ponds and impoundments at an ISL mine.

In fact, throughout SRIC's written and oral presentations, counsel for SRIC cites to multiple specific facts presently at issue in the HRI proceeding. For example, on page 4 of their written presentation, in discussing NRC's authority to regulate subsurface activities at ISL facilities, counsel discusses at length the chemical concentrations in HRI's lixiviant and compares it with baseline and chemical and radiological characteristics of Crownpoint water. Counsel goes so far as to attach and discuss a chart focusing on HRI lixiviant chemistry and water quality in Crownpoint that are presently the subject of dispute in the HRI proceeding.[7] Counsel also attaches and discusses pages 2-6 and 3-26 of the FEIS for the Crownpoint project; these specific pages have been cited in the pending dispute between the parties.

These materials were referenced and discussed at length in Ms. Curran's testimony to the Commission on June 17, 1999. See Transcript at S-116 – 119. During her testimony, Ms.

Curran spoke to issues in dispute in the HRI proceeding. First, Ms. Curran began by speaking about jurisdiction over groundwater at ISL mining facilities, an issue fully briefed in the HRI matter. She then stated "[i]n New Mexico, the proposed HRI mine is in an area that is [a] drinking water supply." Transcript at S-118. This matter too is in dispute. Ms. Curran, with the assistance of Mr. Shuey, goes on to testify about whether wells have been developed at the site, Transcript at S-120, whether the aquifers to be used at the CUP are used for drinking water, id., whether drinking water quality will be affected, id. at 121, the issue of performance based licensing which is presently being challenged in the HRI matter, id. at S-127 –130, the regulation of liquid waste, id. at S-130, etc.

Counsels' oral and written comments were made while decisions on these issues are pending either with the Presiding Officer or the Commission. Cf. ALAB-840, 24 NRC (slip op. at 11). Under the circumstances, the above named counsel should be disqualified from further participation in this proceeding for intentionally engaging in ex parte communication in violation of NRC regulations.

Finally, the mere fact that copies of the transcript of the hearing, and the prepared comments and accompanying attachments of the Intervenors and their counsel, were circulated to the parties in the HRI proceeding does not excuse Intervenors' and their counsel's sanctionable conduct. One can only conclude that Intervenors and their counsel had a premeditated intention to ignore the Commission's admonition and engage in ex parte communication at the hearing as they had prepared, prior to the hearing, written and oral statements and materials discussing matters at issue in the HRI proceeding. This fact, and this fact alone, requires the imposition of sanctions.

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[7] See Attachments 1 and 2 to to SRIC's "Comments on the NRC Staff's Initiatives on Uranium Recovery Regulation" (June 17, 1999).

B. Intervenors' Counsel's Statements to the Press Warrant Sanctions

Responding to a reporter's question concerning matters in the HRI proceeding, Douglas Meiklejohn, counsel for ENDAUM and SRIC, unequivocally accused the Presiding Officer in the HRI proceeding of bias. Specifically, Meiklejohn stated:

> This is a legal proceeding with serious consequences for real people. This is not an exercise in which HRI and the staff are to be given as many chances as they need to get their information right. *He is simply not dealing with them the same way he's dealing with us.*

See Attachment C (emphasis added). Mr. Meiklejohn also discussed matters at issue in the pending proceeding. Id. Meiklejohn's statements to the press warrant sanctions.

The Code of Professional Responsibility at DR-7-107 (H) restricts the comments that counsel representing a party in an administrative hearing may make to the public. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744 (1980). Rule 3.6 of the Model Rules of Professional Conduct[8] prohibits attorneys from making statements to the press which the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing the proceeding. Rule 3.6 is designed to prevent attorneys from trying a client's case in the media. Rule 3.6(a) states:

> A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

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[8] The Commission has looked to both the Model Rules and Code of Professional Responsibility when reviewing the propriety of actions of counsel. See e.g., The Regents of the University of California (UCLA Research Reactor), LBP-84-22, 19 NRC 1383, 1401 (1984) (applying Model Rules); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744 (1980) (applying Model Code).

Model Rule 3.6 applies to administrative adjudications.[9]

When the Model Rules were drafted in the early 1980's, the drafters adopted the "substantial likelihood of material prejudice" test. In order to discipline an attorney for extrajudicial statements about a pending proceeding, three conditions must be satisfied:

> (1) The statement must be one that a reasonable person would "expect" to be publicized in the media.
>
> (2) The attorney must know that the dissemination of his or her statement will have a "substantial likelihood" of prejudicing the proceedings.
>
> (3) The likely prejudice must be "material."

Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering § 3.6:201 (1997). In Gentile v. State Bar of Nevada, 501 U.S. 1030, 1075 (1991), the Supreme Court upheld the "substantial likelihood of material prejudice" test as a "constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials."

Clearly, here, there is substantial likelihood that counsel's comments to the press are materially prejudicial to the proceeding, as the Presiding Officer was made aware of the claims of bias and may consciously, or unconsciously, have acted in some manner to ensure that future claims of bias would not result. As noted by the Supreme Court in Gentile, the danger that a lawyer's comments to the press may interfere with the administration of justice has been recognized by the American Bar Association since at least 1908, when the ABA promulgated the "Canons of Professional Ethics." Specifically, the Supreme Court cited Canon 20: "Newspaper

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[9] See Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering § 3.6:201 (1997) (Proceedings in which "the decision maker is barred from receiving off-the-record information

publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned." Gentile, 501 U.S. at 1066. Likewise, in United States v. Charles T. Pasciuti, 803 F. Supp. 563, 568 (D.N.H. 1992), the court stated:

> Counsel's function is to present argument so that a cause can be decided according to law. Refraining from attacking the court is a corollary of the advocate's right to speak on behalf of his client . . . [S]tanding firm is laudable, but attorneys should avoid attacking a court, even when abused by a judge.

Counsel's statements in the press accusing the Presiding Officer of bias clearly are grossly improper and interfere with the fair administration of justice. In Patterson v. Colorado ex rel. Attorney General of Colorado, 205 U.S. 454, 463 (1907), the Supreme Court declared that "when a case is finished, courts are subject to the same criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

D.R. 7-107(H) of the Model Code provides:

> During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communications if it is made outside the course of the official proceeding and relates to . . . (4) His opinion as to the merits of the claims defenses, or positions of an interested person. (5) Any other matter reasonably likely to interfere with a fair hearing."

The standard under D.R. 7-107 is "reasonable likelihood of prejudice," which is a lower standard than Model Rule 3.6's "substantial likelihood of material prejudice," which was upheld by the Supreme Court in Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991). While the

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should be considered adjudicative for purposes of Rule 3.6, even if they are rulemaking proceedings.").

Gentile Court did not evaluate the constitutionality of the "reasonable likelihood" test, it refers to the test as "less protective of lawyer speech than Model Rule 3.6." After Gentile was decided, both the Second Circuit and the Fourth Circuit have upheld the constitutionality of the "reasonable likelihood" test. See United States v. Cutler, 58 F.3d 825 (2d Cir. 1995); In re Joseph D. Morrissey, 168 F.3d 134 (4th Cir. 1999).[10]

D.R. 8-102(B) provides, in pertinent part, that "[a] lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer." In In re Paul G. Evans, 801 F.2d 703 (4th Cir. 1986), the Fourth Circuit upheld the district court's disbarment of an attorney for a violation of DR 8-102(B) where the attorney drafted a letter to a Magistrate who had ruled adversely to his client, accusing the Magistrate of incompetence and religious and racial bias. Similarly, in In the Matter of Greenfield, 24 A.D.2d 651 (N.Y. App. Div. 1965), the court upheld the suspension of an attorney from practice for writing letters to a judge accusing him, without any basis in fact, of misconduct in office, and circulating the letters to other officers of the court. The Greenfield court noted:

> Judicial officers, as we have said, are not immune from suit or criticism but, like everyone else, they are protected against scandalous charges. To make a public, false and malicious attack on a judicial officer is more than an offense against him individually; it is an offense against the dignity and integrity of the courts and of our judicial system . . . [i]t tends to impair the respect and authority of the court. **In this and in other jurisdictions, the rule is well settled that an attorney who engages in making false, scandalous or other improper attacks upon a judicial officer is subject to discipline.**

Id. at 350-351 (emphasis added).

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[10] However, the Fourth Circuit's decision in Morrissey relied mainly on its holding in Hirschkop v. Snead, 594 F.2d 356 (1979), where the court approved of the "reasonable likelihood" test only in criminal matters and specifically deemed the test constitutionally infirm in the context of administrative proceedings.

In The People ex rel. The Chicago Bar Ass'n, Relator, v. Metzen, 125 N.E. 734, 735 (1919), the Supreme Court of Illinois took disciplinary action against an attorney for furnishing a story to the press and writing a letter to a judge who decided a case against him, accusing the judge of incompetency. The court noted that "[u]njust criticism, including language and offensive conduct toward the judges, personally, by attorneys, who are officers of the court, which tend to bring the courts and the law into disrepute and to destroy public confidence in the judiciary." In addition, in Iowa Supreme Court Board of Professional Ethics and Conduct v. Edward Ronwin, 557 N.W.2d 515 (1996), the Supreme Court of Iowa upheld the disbarment of an attorney for violating D.R. 8-102(b) where the attorney made frivolous and unsupported allegations against justices.

For the reasons stated above, counsel's statements to the press accusing the Presiding Officer of bias in connection with the pending proceeding warrant sanctions.

C. Intervenors' Claims of Bias are Unfounded and Outrageous and Warrant Sanctions.

In their March 26, 1999 Petition for Interlocutory Review, Intervenors begin their brief by stating: "For the second time in three weeks, the Presiding Officer has demonstrated this is not an impartial proceeding." See Petition for Interlocutory Review (March 26, 1999) at 1. Intervenors go on to argue that interlocutory review is warranted because the HRI proceeding is being affected in a pervasive or unusual manner as "it is hard to imagine any action that could more pervasively and unusually affect this proceeding than this new confirmation that the case is not being handled in an impartial manner." Id. at 2. Further, they argue that the various orders issued to date in the HRI proceeding "demonstrate that this proceeding is not impartial," that the Presiding Officer "favorably treat[ed]" the Staff and HRI, and that "[t]he Presiding Officer has

violated his principal duty by favoring the Staff." Id. at 4-8. In sum, Intervenors charge that the Presiding Officer is biased.[11]

Intervenors' accusations based, apparently, on the Presiding Officer's procedural, and to a lesser extent, substantive orders, are improper, unfounded, and outrageous. As the NRC previously has observed, "[I]t is well-settled that the appearance of bias under 28 U.S.C. § 455(a) cannot be shown by adverse rulings made on the merits. In re IBM, 618 F.2d at 929. As Judge Mulligan stated in that case: 'A trial judge must be free to make rulings on the merits without the apprehension that if he makes a disproportionate number in favor of one litigant, he may have created the impression of bias. Judicial independence cannot be subservient to a statistical study of the calls he made during the contest.'" In the Matter of Public Service Company of New Hampshire, et al., (Seabrook Station, Units 1 and 2), 18 N.R.C. 1184 (1983). In language equally applicable to this case, the NRC stated:

> This Judge has no bias in favor of or against any party or any party's substantive position on the merits of any issue. The Licensing Board's admission of many contentions into this proceeding reflects its determination to give a full and fair hearing to the Intervenors' legitimate concerns. Indeed, SAPL's brief does not point to any instance where this Judge's conduct in supervising the proceeding reflects a predetermination of the merits of the case. SAPL seems, rather, to be under the mistaken impression that a judge has no right to regulate the scheduling of this proceeding. This contradicts the plain intent of 10 C.F.R. §§ 2.713 (c)(1) and 2.714. What Intervenors misinterpret as bias is nothing more than an exercise of these powers.

Id.

The Model Code of Professional Responsibility, Disciplinary Rule 7-106(C)(6) expressly states that a lawyer appearing in a professional capacity before a tribunal shall not "[e]ngage in undignified or discourteous conduct which is degrading to a tribunal." Intervenors' groundless

[11] We note that this is not the only occasion that Intervenors make this charge, see article

claims of bias are disruptive to this proceeding and are discourteous and degrading to this tribunal. Intervenors' counsel should be sanctioned for unseemly and unprofessional conduct.

D. Intervenors' Counsel Repeatedly Fail to Cite Complete or Adverse Authority

A lawyer citing legal authority to an adjudicatory board in support of a position, with knowledge of other applicable authority adverse to that position, has a clear professional obligation to inform the board of the existence of such adverse authority. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1174 n. 21 (1983), citing Rule 3.3(a)(3) of the ABA Model Rules of Professional Conduct. Counsel appearing before all NRC adjudicatory tribunals "have a manifest and iron-clad obligation of candor. This obligation includes the duty to call to the tribunal's attention facts of record which cast a different light upon the substance of arguments being advanced in administrative proceedings." Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 532 (1978).

Intent to deceive is relevant to the question whether sanctions should be entered against counsel on account of a misrepresentation. Parties and their counsel must adhere to the highest standards of disclosing all relevant and material information to the Licensing Board. In the Matter of the Regents of the University of California, LBP-84-22, 19 N.R.C. 1383 (1984). Counsel's obligations to disclose all relevant and material information to the Licensing Board under the Atomic Energy Act are not substantially different from those laid out by the ABA's Model Rules of Professional Conduct. Id.

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entitled "Anti-nuke activists claim judge is biased" (March 31, 1999) (attached as Exhibit C).

In many instances throughout the HRI proceeding, Intervenors have failed to abide by these rules. For example, when briefing their contention regarding radiation issues, Intervenors cite to 10 C.F.R. Part 20.1302(b) for the premise that HRI must "demonstrate that the total effective dose above background to any individual in the unrestricted area does not exceed 100 millirem per year . . . ."[12] As NRC Staff points out, however, "Intervenors mischaracterize 10 C.F.R. § 20.1302(b)(1) . . . [t]he regulation actually refers to "the total effective dose equivalent to the individual likely to receive the highest dose from the licensed operation." 10 C.F.R. § 20.1302(b)(1) (emphasis added).[13]

Similarly, [14] in their Presentation on performance-based licensing issues, Intervenors state that HRI's license contains a license condition (LC 9.4) referencing "essential" safety commitments and complain that "the law does not countenance such qualifiers" on safety precautions.[15] As previously noted by the Staff, however, the word "essential" does not appear in LC 9.4 .[16] Likewise (and as also pointed out by NRC Staff[17]), Intervenors cite in support of their PBL argument Sholly v. NRC, 651 F.2d 780, 791 (D.C. Dir. 1980), a decision that had previously been vacated and remanded by the Supreme Court. See 459 U.S. 1194 (1981).

Intervenors have misstated facts and/or the law on other occasions. For example, Intervenors' National Historic Preservation Act brief states that Intervenors' expert, Mr. Dodge, concluded that the NHPA process was not properly completed for Churchrock. In fact, Mr.

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12 Intervenors' Air Emissions Brief at 5.

13 NRC Staff Air Emissions Brief at 3-4.

14 See NRC Staff PBL Brief at 6-7, n. 8.

15 Intervenors' PBL Brief at 17.

16 Staff PBL Brief at 7, n. 8.

17 Id.

Dodge stated this opinion with reference to Crownpoint and Unit 1 only. Intervenors' NHPA Brief at 13. Intervenors' misstatement is highlighted by NRC Staff's Response Brief at page 10.

Also, to HRI's astonishment, Intervenors repeatedly have claimed that HRI did not have a valid UIC permit for its proposed operations at Church Rock Section 8. These claims are unfounded as HRI was issued a valid UIC permit for its operations following a hearing process that SRIC participated in extensively. The fact that SRIC participated in the UIC hearing process, and accordingly, was aware that a UIC permit had been issued, failed to notify the court as such, and argued throughout the HRI proceeding that HRI lacks a permit, is deceitful and demands the imposition of sanctions.

Intervenors also ignore the duty of candor in crafting their Environmental Justice claim. Intervenors discuss at length Executive Order 12898 ("EO"), requiring that federal agencies incorporate in their decisionmaking environmental justice concerns.[18] Astonishingly, however, Intervenors fail to cite the particular portion of the EO that makes clear that the EO expressly does not provide a basis for challenging NRC's action on HRI's license.[19] Intervenors appear to have consciously ignored this provision, as they have been reminded of its existence multiple times during the course of this proceeding, notably in the Staff's February 19, 1999 brief

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[18] See generally, Intervenors' Environmental Justice Brief.

[19] The Executive Order, at 6-609, states:

> This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies. . . . This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

EO 12898, 59 Fed. Reg. 7629, 7633 (Feb. 16, 1994), codified at 3 C.F.R. § 859 (1995).

regarding NHPA and NAGRPA issues which was filed prior to Intervenors' Environmental Justice Brief.[20]

Intervenors' repeated misstatements of law and fact are inconsistent with the administration of justice and the duty of candor and work to deceive and wrongfully burden the other parties and the Court.

E. Intervenors' Failure to File Within the Appropriate Time Bars the Pleading from the Record and Warrants Sanctions

In accordance with the Presiding Officer's April 21, 1999 Order, HRI and the NRC Staff on May 11, 1999, filed answers to questions posed by the Presiding Officer in his April 21 Order. Intervenors, as was their right pursuant to the terms of the Order, chose not to answer the Presiding Officer's questions and filed nothing on or before the May 11, 1999 deadline. Then, on May 25, 1999, Intervenors filed "Intervenors' Joint Response to HRI's and the NRC Staff's Responses To The Presiding Officer's April 21, 1999 Memorandum and Order (Questions)." The Presiding Officer's April 21 Order plainly authorizes such a filing. As detailed in the June 10, 1999 Motions to Strike filed by HRI and by the NRC Staff, however, Intervenors' May 25 filing is, in large part, actually a response to the Presiding Officer's questions which should have been filed on or before May 11.

Intervenors' failure to file timely responses to the Presiding Officer's questions and then filing answers to the Presiding Officer's questions when in fact they were only entitled to reply to the answers provided by the NRC Staff and HRI results in a default pursuant to section 2.707. Moreover, Intervenors' attempt to circumvent the schedule established by the Presiding Officer for answering his questions warrants sanctions.

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[20] See HRI Environmental Justice Brief at 4, n. 4; see also, NRC Staff Brief on NAGPRA and NHPA issues.

A party should not be allowed simply to disregard deadlines imposed by the Presiding Officer or, as here, to abuse scheduling orders to gain an advantage over parties who are following the rules. The licensing board previously has made clear its disapproval of tactics similar to those employed by Intervenors:

> The Petitioners lacked the fundamental courtesy to formally . . . seek a continuance or, to this date, otherwise explain to the judges of this Board and to the other parties their failure to appear. This we believe is not only default, but contemptuous conduct, proscribed by the Commission's regulations, 10 C.F.R. § 2.713(c), and is conduct disdained throughout American jurisprudence.

In the Matter of Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), ASLBP No. 91-633-05-OLA-2, 33 N.R.C. 259 (1991); see also, In the Matter of Public Service Company of New Hampshire, et al. (Seabrook Station, Unit 1), ALSBP No. 50-443-OLA, 34 N.R.C. 261 (1991) ("Even in instances involving lay litigants, we expect adherence to deadlines to ensure the orderly administration of the adjudicatory process."). Intervenors' failure to adhere to the deadline established by the Presiding Officer and their late filing of responses to the Presiding Officer's questions, without seeking a continuance, constitutes a default. Intervenors' attempt to excuse their late filing by styling their answers to the Presiding Officer's questions "responses" to the filings of HRI and Staff crosses the line into "contemptuous conduct, proscribed by the Commission's regulations . . . disdained throughout American jurisprudence." Id. This type of conduct is prejudicial to HRI and to the fair administration of justice and should be sanctioned.[21]

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[21] In the Matter of Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 N.R.C. 1923 (1982): As read by the Appeal Board in Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2) ALAB-678, 15 NRC 1400, 1416-20 (1982),the Commission's Policy Statement requires that a board apply a four-factor test in determining the appropriate sanctions to be imposed for a default: (1) the relative importance of the unmet obligation and its potential for harm to other parties or the orderly conduct of the proceeding; (2) whether the default is an isolated incident or a part of a pattern of behavior; (3)

F. Intervenors' Disparagement of HRI's Experts Requires the Imposition of Sanctions

Intervenors baldly assert in their brief concerning groundwater issues[22] that Geraghty & Miller ("G&M"), HRI's consultants, "misrepresent groundwater pathways and divides at all of sites [sic.] that were modeled." GR. BR. at 19. G&M is a nationally recognized groundwater and hydrology consulting firm that is used extensively by governmental agencies, including the U.S. Environmental Protection Agency, and non-governmental organizations, including private industry as well as organizations. Ignoring G&M's extensive experience, and quoting their expert Mr. Wallace, Intervenors' brief goes on to state that proper representation of the HRI data shows that excursions will occur. Id. Intervenors quote Mr. Wallace for the proposition that the data was somehow manipulated by G&M and that the "divide lines were drawn on the diagram by hand . . . and a reviewer who did not suspect that the divide lines were misdrawn would likely be misled . . . ." Id. at 20. Intervenors' and their experts assertions that G&M misrepresented and manipulated data to intentionally mislead are simply false. Moroever, these unsupported allegations go beyond the realm of mere advocacy into the world of libelous activity, and exemplify the typical tactics employed by Intervenors and their counsel throughout the HRI proceeding. At a minimum, Intervenors' disparagement and borderline libelous claims demand the imposition of sanctions.

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the relative importance of the safety or environmental concerns raised by the party; and (4) all of the circumstances.

[22] See Intervenors' Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Groundwater Protection (Jan. 1999) ("Gr. Br.").

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 26th day of August, 1999.

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ON BEHALF OF HYDRO RESOURCES, INC.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

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

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 26th day of August, 1999.

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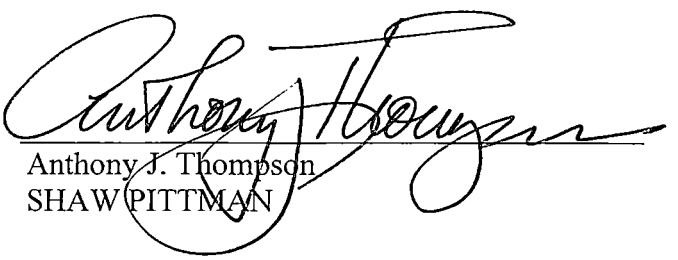

Anthony J. Thompson
SHAW PITTMAN

EXHIBIT A

Before the U.S. Nuclear Regulatory Commission

COMMENTS ON THE NRC STAFF'S INITIATIVES ON URANIUM RECOVERY REGULATION

Submitted by
SOUTHWEST RESEARCH AND INFORMATION CENTER

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June 17, 1999

INTRODUCTION

Southwest Research and Information Center ("SRIC") appreciates the opportunity to comment on the Nuclear Regulatory Commission ("NRC") Staff's memoranda concerning proposed changes in uranium recovery regulation. SRIC, through its Washington, D.C., counsel and Albuquerque-based staff, looks forward to summarizing and discussing its concerns about these initiatives before the Commission itself at the public meeting on June 17, 1999.

As the Commission is aware, SRIC, Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), and two Navajo women, Ms. Grace Sam and Ms. Marilyn Morris, are intervenors in an ongoing proceeding before the Atomic Safety and Licensing Board on the matter of the license issued to Hydro Resources, Inc. ("HRI"), for the Crownpoint Uranium Project ("CUP"). SRIC will abide by the Commission's admonition to refrain from making oral or written remarks that refer to arguments now pending in that adjudication. We will use this opportunity, however, to highlight why we believe that the Staff's initiatives may reduce the level of health and environmental protection to which the affected public is entitled under the Atomic Energy Act ("AEA") of 1954, as amended by the Uranium Mill Tailings Radiation Control Act ("UMTRCA") of 1978. Hence, it is in the spirit of broad public debate over policies that are important for the protection of human health and the environment that we offer our comments on the Staff's proposals regarding uranium recovery policy and regulation.

SRIC'S INTERESTS AND HISTORY ON URANIUM MILLING ISSUES

SRIC's staff has been closely and routinely involved in uranium mining and milling policy and technical issues for parts of three decades, beginning in the mid-1970s. SRIC was one of several public-interest organizations that campaigned for and championed passage of the UMTRCA — the first federal statute to authorize federal and state cleanup of abandoned, or "inactive," mills and tailings sites, and licensing and regulation of "active" uranium mills and mill tailings facilities. SRIC also participated extensively in the initial NRC and USEPA rulemakings that implemented UMTRCA requirements, and was a co-plaintiff with other national environmental groups in federal-court appeals of some of the NRC mill licensing regulations and the EPA general environmental standards.

SRIC's interest then, as it is now, was to ensure that the public health and safety and the

environment were protected from the radiological and nonradiological hazards associated with uranium milling and tailings disposal. To that end, the organization worked closely with communities and community groups on site-specific uranium mining and milling concerns, providing technical advice and field-level assistance largely at the request of local groups. From this work, we developed long-term relationships with several Navajo communities adversely affected by uranium waste mismanagement, such as the July 1979 Church Rock tailings spill. These relationships continue to this day, as evidenced by SRIC's partnership with ENDAUM in the adjudication of the HRI license.

OVERVIEW OF SRIC'S COMMENTS ON NRC STAFF'S CURRENT URANIUM RECOVERY REGULATORY INITIATIVES

In preparing these comments, SRIC's counsel and staff reviewed the following documents:

(1) NRC Staff. "Recommendations on Ways to Improve the Efficiency of NRC Regulation at *In Situ* Leach Uranium Recovery Facilities," SECY-99-013 (March 12, 1999);

(2) NRC Staff. "Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other Than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other Than Natural Uranium Ores," SECY-99-012 (April 8, 1999);

(3) NRC Staff. "Draft Rulemaking Plan: Domestic Licensing Of Uranium and Thorium Recovery Facilities — Proposed New 10 CFR Part 41," SECY-99-11 (January 15, 1999); and

(4) National Mining Association. "Recommendations for a Coordinated Approach to Regulating the Uranium Recovery Industry." (April 1998; hereafter referred to as "NMA White Paper".)

Based on these documents, and other relevant information, correspondence and memoranda, SRIC prepared comments that address the following issues: (1) the NRC's jurisdiction over the subsurface aspects of uranium ISL mining; (2) the lack of an adequate basis for delegating ground-water protection at ISL facilities to the EPA or to states and tribes with primacy to regulate solution mining pursuant the Underground Injection Control ("UIC") Class III program of the federal Safe Drinking Water Act ("SDWA") ; and (3) legal and policy problems with new

10 CFR Part 41 regulations now being considered by the NRC Staff, particularly the questionable legality of performance-based licensing ("PBL") and the proposed elimination of certain prescriptive siting and design requirements for uranium processing waste disposal impoundments.

At this time, SRIC recommends that the Commission *not adopt* either Option 2a or Option 2b, as those options are described in SECY-99-12. We are concerned that much of impetus for the staff's initiatives in these areas to help solve the uranium industry's long-standing economic difficulties, without adequately addressing the impacts of these changes on public health and safety. This is particularly apparent with respect to the issues of NRC jurisdiction over ISL operations, PBL, alternate feed materials, and disposal of non-11e.(2) wastes.

(1) NRC HAS AUTHORITY TO REGULATE SUBSURFACE OPERATIONS AT URANIUM ISL FACILITIES

SRIC agrees with and has long supported the Commission's authority to regulate ground-water protection at uranium ISL facilities. The Mining Association, however, asserts that NRC does not have authority under the AEA to regulate ground water at ISL sites. See, April 1998 White Paper at 104-113. Having reviewed the Mining Association's discussion of this matter, we conclude that the Association is just plain wrong. As we discuss below, its analysis suffers from a fundamental error about the point at which source material, i.e., uranium, is removed from its place of deposit in nature.

First, our reading of the NRC Part 40 regulations indicates that they contain a three-step approach to determining if a uranium recovery activity is covered by the licensing requirements of Part 40 or is exempt from them. The first step is to determine if the material is "source material," i.e., does it contain a uranium concentration of 0.05 percent or greater? If the answer is "yes," then the second step is to determine if the source material is removed from its place in nature. If the answer is "yes," then the third step is to determine where the material is being "refined or processed?" See, 10 CFR 40.13(b). If the answer is "yes," then the activity is not exempt and is subject to the Part 40 licensing requirements.

With respect to uranium ISL operations, the answers to each of these steps is "yes," and

each of the steps is accomplished *underground*. With regard to the first step, virtually all uranium host rocks, including those at ISL mines, have uranium concentrations exceeding 0.05%.[1] Hence, the answer to Step 1 is "yes."

In the ISL process, water fortified with oxygenates (called "lixiviant") is circulated through the uranium ore host rocks. The effect of the circulation of the lixiviant is to strip the uranium from the host rock thereby causing it to become dissolved in the ground-water/lixiviant solution.[2] The resulting uranium concentration in the "pregnant" lixiviant is typically several orders of magnitude higher than the baseline uranium concentration in the native ground water.[3] See, Attachments 1, 2 and 3. Since the leaching process *removes* the uranium *from its place of deposit in nature*, its host rock, the answer to the second step is "yes." In this regard, the Mining Association's conclusion that "the ore is not removed from its place of deposit in nature until it reaches the surface" (White Paper at 106) is clearly erroneous.

Finally, as can be seen from the discussion above, processing of the source material begins *in the ground water*. Part 40.13(b) uses the terms "refine and process" to determine if an activity is exempt or not.[4] The dictionary definition of the verb infinitive "to process" is "to

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[1]Average ore grades for several uranium deposits mined by the ISL method in Wyoming and Texas ranged from 0.08% to 0.2%. See, W.C. Larson, "Uranium In Situ Leach Mining in the United States," U.S. Bureau of Mines Information Circular 8777 (1977), Appendix B at 54-65. The Church Rock, N.M., ore grade at a site proposed for ISL mining is reported as 0.202%. See, also, Hydro Resources, Inc., Church Rock Environmental Report (April 1988) (ACN 8805200344), Figure 6.6-2 at 363.

[2]Gunn, J., Layton, M., Park, J. In-Situ Leach Uranium Mining (October 1988) at 4. Attached to SECY-99-013 (March 12, 1999) as Attachment 1.

[3]See, Tables 2.1 at 3.12 of NUREG-1508, *Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, McKinley County, New Mexico* (February 1997), at 2-6 and 3-26, respectively (attached to these comments as Attachments 1 and 2). Compare, for instance, the anticipated chemical concentrations in HRI's pregnant lixiviant with baseline chemical and radiological characteristics of water from the Crownpoint, New Mexico, municipal wells, which tap the same aquifer that would be leach mined. See, also, Attachment 3 to these comments, which shows a direct comparison of pregnant lixiviant concentrations to baseline water quality.

[4]The term "beneficiation," which the Mining Association cites so liberally in its White Paper, does not appear in the NRC regulation.

prepare, treat or convert by subjecting to some special process; to put through the steps of a proscribed procedure." Similarly, the definition of the verb infinitive "to refine" is "to reduce to a pure state; purify." Lixiviant injection mobilizes uranium, separating it from the host rock and increasing its concentration in the ground water — physical and chemical processes that clearly connote processing and refining of the source material. Hence, the answer to the third step also is "yes." Accordingly, uranium ISL mining is not exempt from the regulations, and NRC has authority to regulate it.

SRIC believes, therefore, that NRC was correct in the early 1980s when it concluded that its jurisdiction to regulate uranium recovery extended to the subsurface in ISL mines because removal and processing occur in the ground water, and that this finding is not inconsistent with its determination that underground and open-pit mining are not subject to the licensing requirements of Part 40. In conventional underground and open pit mining, the uranium is not removed from its host rock until the rock is transported from the mine to the mill for crushing, grinding, and the addition of leaching acids and chemicals. This is distinguished clearly by the ISL process of using lixiviant to strip, or remove, the uranium from its host rock in the *subsurface hydrologic environment.*

(2) DELEGATION OF ISL GROUND-WATER REGULATION TO EPA OR THE STATES/TRIBES IS NOT JUSTIFIED

The NRC Staff is recommending that NRC remove itself "from the review of ground-water protection issues at ISL facilities" and instead "rely on the EPA UIC program" to protect ground water at ISL sites. SECY-99-013 at 10. The Staff's position appears to be based partly on an Office of General Counsel ("OGC") opinion[5] that such delegation, without loss of authority, would be appropriate to address the dual regulation concerns of the industry. See, SECY-99-013 at 3. This position, therefore, seems to rest largely on addressing industry's concerns, rather than on an analysis of whether it is appropriate, as a policy matter, for NRC to declaim jurisdiction that it has expressed and exercised for the last 20-plus years, or whether the EPA and state or tribal UIC programs are fully applicable to the wide range of ground-water

[5]We cannot comment at this time about the substance of the OGC opinion because it was not attached to the March 12 memorandum and we have not yet obtained a copy of it to review.

protection issues that are intrinsic to uranium ISL operations.

The NRC Staff has not provided a clear or convincing basis for its proposal to delegate ground-water protection regulation to EPA or to EPA-authorized states or tribes. None of the SECY papers we have reviewed contains a comparison between the ground-water protection requirements of NRC and those of EPA or authorized states or tribes pursuant to the UIC Class III program to evaluate the Mining Association's claims of regulatory duplication. Neither the NRC Staff nor the Commission has determined that NRC's responsibilities under the AEA to protect public health and safety and the environment from the use of radioactive materials will be fulfilled by delegating ground-water protection solely to EPA and the states or tribes. As a practical matter, any such determination by the Commission would need to evaluate state UIC requirements because EPA does not, at least at this time, directly permit any uranium ISL mine under its own UIC requirements since all existing ISL facilities are located in UIC-primacy states.

Implicit in the Staff's discussion of the OGC opinion is the notion that NRC would retain regulatory authority over ground water at ISL facilities, but not exercise it, regardless of whether EPA or a state or tribe with UIC primacy would. Retaining authority without exercising it exposes the agency to legal challenge by the public.

Delegating ground-water protection authority to EPA would certainly create at least one gap in the regulatory program. EPA does not have a uranium-in-drinking water standard, even though it proposed one in 1991. States which now regulate uranium ISL facilities pursuant to their state-level UIC programs have differing uranium restoration standards, and none of them are based on drinking water protection. In New Mexico, for instance, the uranium restoration standard would be 5 milligrams per liter ("mg/l"), based on the state's Water Quality Control Commission standards for *protection of ground water*.[6] 20 NMAC 3103. Similarly, we do not view NRC's use of its 10 CFR Part 20 Appendix B uranium-in-water effluent standard as appropriate to protect drinking water. Whatever the level, NRC ought to be satisfied that there is

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[6]SRIC's view is that the New Mexico WQCC's uranium value is an extraordinarily high level that is not protective of public health or the environment, especially when the native ground water concentration ranges from 0.001 mg/l to 0.02 mg/l, or 250 to 5,000 times the *less than* the uranium standard.

an appropriate restoration standard for uranium before delegating its authority.

Furthermore, there is no evidence in the relevant SECY papers that NRC has had agency-to-agency contact with EPA about delegating ground-water protection responsibilities for uranium ISL mines. Until this week, we could find no one at EPA in either Region IX or at headquarters who had been consulted by the NRC Staff about this matter, or who knew that NRC was even considering removing itself from ISL ground-water regulation. Interagency communication must take place at the highest levels of the agencies, and in consultation with the affected states and tribes, before such a fundamental change in the current regulatory structure is made.

(3) ADVISABILITY OF PROCEEDING WITH A NEW 10 CFR PART 41

The Staff enunciated three options for addressing uranium recovering regulations in the "Rulemaking Plan" attached to SECY-99-011 (January 15, 1999). The Staff also listed several specific proposed changes, deletions and clarifications to existing NRC regulations in Attachment 1 to the January Rulemaking Plan. The purpose of the proposed rulemaking would be to "codify the numerous regulatory decisions and precedents that have been developed [for]... ISL facility regulation" through reliance on guidance documents and license conditions. SECY-99-011 at 2.

SRIC agrees that the nature of the domestic uranium recovery industry has changed markedly since the Part 40 Appendix A licensing requirements were adopted in the early and mid-1980s. Creating a new Part 41 to address ISL operations is not, by itself, a bad idea to address the need to clarify and consolidate requirements applicable specifically to ISL operations. However, several of the proposed changes listed in Attachment 1 to SECY-99-011 appear to be oriented toward *relaxing* or even *eliminating* certain requirements, based almost exclusively on the uranium industry's stated desire for extensive regulatory flexibility, and in some case, even deregulation. Additionally, the Staff's options for removing NRC regulation of certain ISL waste streams, as set forth in SECY-99-013 (at 9), could make ISL regulation even more unwieldy by causing it to be divided potentially among three different governmental units: the NRC, the EPA and states or tribes with their own regulations governing effluent disposal. On whole, SRIC is concerned that the Staff's proposed changes are ill-conceived and will have

the net effect of decreasing protection of public health and safety and the environment.

In the sections below, we discuss our concerns about four of the proposed rulemaking issues: (a) operational flexibility; (b) deletion of certain "prescriptive" siting and design requirements; (c) disposal of liquid effluents from ISL operations; and (d) development of uniform spill-reporting requirements. Because of the short time we have had to prepare these comments, we are not commenting at this time on two other important matters: disposal of non-11e.(2) byproduct material in licensed tailings impoundments and use of alternate feed material in licensed uranium mills. SRIC reserves its right to comment on those matters at a later date.

(a) Issue 5: Operational Flexibility

We fear that the centerpiece of the Staff's initiative to create a new 10 CFR Part 41 is to codify deregulation of the uranium ISL industry through performance-based licensing ("PBL"), disguised as "operational flexibility." See, SECY-99-011, Attachment 1 at A-2 to A-3. While we cannot discuss those aspects of PBL that we think are illegal because the matter is currently on appeal in the HRI license adjudication, we urge the Commission to consider the legal and policy problems inherent in PBL.

Performance-based licensing in effect turns over to the operators fundamental regulatory decisions left more appropriately to the regulatory agency. Operators can change the scope of their ISL operations unilaterally, without agency oversight or approval and outside of the scope of public review and comment. The extent to which any change in an operation violates an NRC requirement or a license condition can be determined only upon the agency's inspection of documents and reports prepared by the licensee and maintained at the licensee's mining site. Hence, active "regulation" of uranium recovery is replaced by discretionary enforcement. Since, under most current PBL licenses, operators are required only to file an annual report with the NRC, the public is blind to the operator's decisions to change the project for up to a year after they were made.

SRIC is particularly concerned that operators will change numerical restoration standards upon their own, internal finding that such changes will not adversely affect public health and safety, or the environment. Such changes will not be known to the agency until long after they

are made, and not known to the local communities whose ground water could be affected adversely for many years as a result of such changes.

(b) Issue 8: Deletion of Prescriptive Siting and Design Requirements

The Staff proposes to eliminate certain siting and design requirements that, with the exception of mentioning Criterion 4 of Appendix A, are largely unspecified in Attachment 1 to SECY-99-011 (at A-4). SRIC fears that the Staff may be proposing to eliminate the essential surface impoundment design criteria in Criterion 5, the cover requirements of Criterion 6, and the monitoring requirements of Criterion 7. The regulations incorporated in Criteria 5 and 7 were adopted to prevent and detect ground-water contamination at tailings impoundments, while requirements in Criterion 6 were adopted to ensure long-term stabilization and control of tailings. Both were adopted in compliance with the generally applicable environmental standards promulgated by EPA in 40 CFR Part 192, Subparts D and E, which were based on RCRA-level design standards for hazardous waste impoundments. The NRC mill licensing criteria and the EPA general standards were authorized by the original UMTRCA in 1978 and by its amendments in 1982.

To relax these requirements for surface impoundments at uranium ISL sites would strike at the heart of the Mill Tailings Act's intent to prevent new ground-water contamination from tailings and to prevent dispersion of tailings through water and wind erosion and human disruption. While surface impoundments at ISL sites are necessarily smaller than those at conventional mills, they have the same potential for leakage if not designed and maintained properly.

As set forth in Attachment 1 (at A-4), the Staff's proposal for eliminating siting and design requirements appears oriented toward expanding the universe of PBL-eligible actions that licensees may take. Ultimately, however, the Staff's proposals must be consistent with requirements of the AEA, as amended by UMTRCA. Eliminating design and cover requirements, or relegating them to PBL status, may be inconsistent with the agency's statutory mandates under the AEA and UMTRCA.

(c) Issue 1: Regulations for ISL Facilities—Liquid Waste Disposal

In SECY-99-013 (at 9-10), the Staff proposes to divorce NRC of regulating waste waters generated by production bleed and restoration operations at ISL facilities. SRIC assumes that this proposal, along with the Staff's stated intention to delegate regulation of ground water at ISL sites, is part and parcel of its desire to craft a new Part 41 for ISL operations. Unfortunately, the Staff's liquid waste proposal makes no sense technically or administratively.

From a technical perspective, production bleed and restoration waste waters are so intrinsically connected with the processing of source material, i.e., uranium, that they should be regulated as byproduct material as defined in section 11e.(2) of the AEA. Production bleed waters would not be generated if the ISL operation were not in place. Production bleed effluents are the un-reinjected waste liquids necessarily generated by ISL mines to maintain lixiviant control. They also are likely to contain elevated concentrations of both radiological and nonradiological contaminants, with or without treatment prior to disposal.

Restoration waste waters almost always have high contaminant levels at the outset of restoration when contaminant levels remain high in the mined-out ore zones. These high levels would not be present in the ground water had the site not been subject to uranium ISL mining. Hence, the removal of the source material from the rock directly resulted in contamination of the ground water in the ore zone.

Neither does the Staff's proposal on regulation of ISL liquid waste streams make sense from an administrative perspective. See SECY-99-013 at 9-10. If the full breadth of the Staff's proposals are adopted, *three different* federal or state (or tribal) agencies would have authority over various liquid waste streams and mining operations at ISL facilities. For instance, NRC would regulate the *surface processing facilities* at the ISL plant; EPA or a state or tribal UIC-primacy agency would regulate the UIC Class III wells, wellfields and ground-water protection; and EPA or a state or tribal agency would regulate disposal of production bleed wastes and restoration wastes under various federal, state or tribal environmental authorities. This situation cannot possibly be seen as streamlining regulation or facilitating operator compliance. And it would be a total nightmare for communities and local groups wanting to participate in regulatory decisions affecting permitting or licensing of the facilities themselves.

These and other technical and policy points were made convincingly by Mr. William

Ford in his Differing Professional Views appended to SECY-99-013. SRIC urges the Commission to give great weight to these views in its consideration of this issue.

(d) Issue 10: Need for Uniform Spill and Release Reporting Requirements

SRIC concurs with the Staff's concerns about the lack of spill and release reporting requirements in 10 CFR Part 40, the lack of uniform and consistent data and information about spills and releases, and the potential for serious contamination of land, water and air by nonradiological pollutants released from licensed facilities. Spills of pregnant lixiviant, process waste waters and restoration waste waters are well documented at various ISL sites in Texas.[7] Hence, we support NRC's proposal to develop spill reporting requirements and to incorporate those requirements into the existing Part 40 program. We recommend that they be fully applicable to ISL facilities and achieve, to the extent practicable, compatibility with spill reporting requirements adopted by EPA under authority of the Clean Water Act's National Pollutant Discharge Elimination System ("NPDES").

CONCLUSIONS AND CLOSING COMMENTS

SRIC is not convinced that the staff is ready to proceed with the rulemaking proposed in SECY-99-011. Its proposals to delegate certain existing regulatory authorities are ill-conceived and possibly illegal, and seem aimed primarily at addressing the needs of the regulated community first, and addressing protection of public health and safety and the environment secondarily. Minimally, the Commission should defer action on the Staff's proposals today and direct the Staff to develop a more thorough basis and explanation for its initiatives. Especially important in this regard is the extent to which delegating authority for ground-water protection to EPA or the states or tribes will create gaps in regulation that do not now exist.

Finally, we were displeased with the way the agency notified SRIC of today's meeting. Neither SRIC, ENDAUM, Ms. Sam, Ms. Morris or any of their counsel received letters directly from the Commission Secretary. Rather, copies of the May 27, 1999, letters sent to the Department of Energy, the Mining Association and the states of Utah and Texas were forward to

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[7]SRIC intends to submit for the record in the near future data and information documenting the spills at various ISL sites in Texas.

us via the service list specific to the HRI license adjudication. Those copies did not reach SRIC's Albuquerque office until June 3. On June 9, SRIC's counsel sent a letter to the Commission Secretary requesting time on today's agenda. We were not notified until Monday of this week (June 14) that SRIC would be permitted to address the Commission.

This indirect and impersonal method of notification was untoward in light of the fact that representatives and SRIC and ENDAUM, and their counsel, appeared at the August 25, 1998, public meeting sponsored by the NRC Uranium Recovery Branch and expressed their concerns about NRC's consideration of wide-ranging changes in the way it regulates ISL facilities. That SRIC was not directly informed was even more curious considering its 20-plus years of involvement in national and state-level uranium recovery policy and regulation.

In the future, we request advanced, direct notification of all meetings — formal and informal — on uranium recovery regulatory policy. (Our various addresses appear on the cover of these comments.) This includes meetings not only before the Commission, but also meetings between the Uranium Recovery Branch staff and uranium licensees.[8] SRIC also requests that it be kept informed by the NRC Staff of its progress in going forward with the regulatory initiatives discussed today.

Again, SRIC appreciates the opportunity to comment in writing and before the Commission on these important matters.

[8]We are aware that the Staff meets regularly with licensees in Wyoming to discuss regulatory issues. While SRIC staff cannot afford to travel to many of those meetings, we want to be informed that they are scheduled in the event that we determine that it is necessary to attend.

Table 2.1. Anticipated concentrations of principal chemical species in HRI's pregnant lixiviant from the well fields for processing
[Data are from HRI 1993a, test data, and operational licensing experience.]

Chemical species	Concentration (mg/L)
Calcium	100–350
Magnesium	10–50
Sodium	500–1600
Potassium	25–250
Carbonate	0–500
Bicarbonate	800–1500
Sulfate	100–1200
Chloride	250–1800
Nitrate	<0.01–0.2
Fluoride	0.05–1
Silica	25–50
Total dissolved solids	1500–5500
Uranium	50–250
Radium-226 (pCi/L)	1000
Other parameters	
Conductivity (μmhos/cm)	2500–7500
pH (standard units)	7.0–9.0

Table 2.2. Principal chemical reactions taking place in the ore body during uranium oxidation

(1) $2UO_2 + O_2 \text{ — — } > 2UO_3$

(2a) $UO_3 + Na_2CO_3 + 2NaHCO_3 \text{ — — } > UO_2(CO_3)_3^{4-} + 4Na^+ H_2O$

(2b) $UO_3 + 2NaHCO_3 \text{ — — } > UO_2(CO_3)_2^{2-} + 2Na^+ + H_2O$

HRI would pump uranium-enriched pregnant solution from production wells to the processing plants for uranium extraction by ion exchange. The resulting barren lixiviant would then be chemically refortified and reinjected into the well field to repeat the leaching cycle.

HRI anticipates using production flow rates of 9500 to 11,500 Lpm (2500 to 3000 gpm) at each ion exchange plant. Potential emissions at each plant were conservatively modeled assuming a maximum flow rate of 15,000 Lpm (4000 gpm), and HRI would be restricted from exceeding this rate by license condition. Maximum injection pressures to be used in each of the mine areas would be determined when the operating wells are completed. The approximate values of allowable surface (well head) pressures for each area are 2075 kPa (301 psi) at the Crownpoint and Unit 1 sites and 807 kPa (117 psi) at the Church Rock site (HRI 1996a). During normal operations, production rates would be

Table 3.12. Town of Crownpoint water quality data[a]

Parameter	Well NTUA-1 (mg/L)	Well NTUA-2 (mg/L)	Wells BIA-5&6 (mg/L)	Well BIA-6 (mg/L)	EPA (and NNEPA) drinking water standards (mg/L)
Calcium	5.0	1.3	9.2	1.8	
Magnesium	2.0	0.08	4.5	0.14	
Sodium	131.0	121.0	119.0	111.0	
Potassium	4.9	1.2	2.3	1.7	
Carbonate	17.0	20.0	1.0	8.0	
Bicarbonate	234.0	221.0	249.0	223.0	
Sulfate	82.0	52.0	98.0	49.0	250.0
Chloride	7.7	3.2	3.2	2.0	250.0
Nitrate	0.01	0.02	0.02	0.01	10.0
Fluoride	1.1	0.32	0.34	0.27	4.0 or 2.0
Silica	10.0	18.0	20.0	18.0	
TDS	402.0	351.0	406.0	325.0	500.0
Conductivity[b]	625.0	529.0	603.0	484.0	
Alkalinity	220.0	215.0	206.0	197.0	
pH[c]	8.79	8.91	8.33	8.7	6.5–8.5
Arsenic	<0.001	<0.001	<0.001	<0.001	0.05
Barium	0.02	0.05	0.05	0.06	2.0
Cadmium	0.0002	<0.0001	<0.0001	<0.001	0.01
Chromium	<0.01	<0.01	<0.01	<0.01	0.05
Copper	<0.01	<0.01	<0.01	<0.01	1.0
Iron	0.02	<0.01	0.01	<0.01	0.3
Lead	<0.001	0.002	<0.001	<0.001	0.05
Manganese	0.01	0.01	<0.1	<0.01	0.05
Mercury	<0.0001	<0.0001	<0.0001	<0.0001	0.002
Molybdenum	<0.01	<0.01	<0.01	<0.01	
Nickel	<0.01	<0.01	<0.01	<0.01	0.1
Selenium	<0.001	<0.001	<0.001	<0.001	0.05
Silver	<0.01	<0.01	<0.01	<0.01	0.1
Uranium	<0.001	<0.001	0.007	<0.001	
Vanadium	<0.01	<0.01	<0.01	<0.01	
Zinc	0.01	0.01	<0.01	<0.01	5.0
Boron	0.05	0.06	0.07	0.05	
Ammonia	<0.01	<0.01	<0.01	<0.01	
Radium-226[d]	0.6	0.3	0.6	0.3	5.0

[a]Data collected September 1990 (HRI 1996i).
[b]μmhos/cm.
[c]Units.
[d]pCi/L.

ATTACHMENT 2

ATTACHMENT 3

Estimated "Pregnant" Lixiviant Chemistry Compared with Water Quality in Crownpoint Municipal Wells and Federal/Tribal Drinking Water Standards[1]

Chemical	Lixiviant Concentration (mg/L)	Municipal Wells Ave. ± S.D. (mg/L)	Difference Lix. v. Mun. (#x)	Drinking Water Standards (mg/L)
Arsenic[2]	0.054	<0.001 ± 0.001	54	0.05
Bicarbonate	800 - 1,500	231.8 ± 12.8	3.4 - 6.5	none
Calcium	100 - 350	4.3 ± 3.6	8 - 23	none
Chloride	250 - 1,800	4.0 ± 2.5	63 - 450	250.0
Magnesium	10 - 50	1.7 ± 2.1	6 - 29	none
Molybdenum[2]	62	<0.01 ± 0.01	6,200	none
Potassium	25 - 250	2.5 ± 1.6	10 - 100	none
Radium 226+228 (picoCuries/liter)	100 - 1,000	0.45 ± 0.17	222 - 2,222	5.0 pCi/L
Selenium[2]	4.6	<0.001 ± 0.001	46,000	0.05
Sodium	500 - 1,600	120.5 ± 8.2	4 - 13	none
Sulfate	100 - 1,200	70.3 ± 23.8	1.4 - 17	250.0
Tot. Diss. Solids	1,500 - 2,500	371 ± 39.6	4 - 6.7	500.0
Uranium	50 - 250	0.0025 ± 0.0025	20,000 - 100,000	0.020[3]

[1]Data from Tables 2.1, 3.12, 4.13 of NRC *FEIS*, 1997.
[2]Data for selected trace metals based on Mobil Sec. 9 pilot project lixiviant concentrations.
[3]USEPA proposed drinking water standard, 1991.

EXHIBIT B

DOCKET NUMBER
BYPRODUCTS 40-896 -ML/40-8681-MLA-4/4 7681-MLA-5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

DOCKETED
USNRC

June 14, 1999

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OFC
ADJ

Ms. Diane Curran
Counsel to ENDAUM and SRIC
Harmon, Curran, Spielberg
& Eisenberg, LLP
1726 M Street, NW
Suite 600
Washington, DC 20036

SERVED JUN 15 1999

Dear Ms. Curran:

On June 17, 1999, the Nuclear Regulatory Commission will hold a public meeting on uranium recovery regulation at its headquarters in Rockville, Maryland. Participants at the meeting will include governmental entities or state-related organizations, organizations which represent a broad range of industry interests, and an environmental organization. The purpose of the meeting is, first, to discuss three recent Commission papers in the area of uranium recovery regulation: "Draft Rulemaking Plan: Domestic Licensing of Uranium and Thorium Recovery Facilities -- Proposed New Part 41" (SECY-99-11); "Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other than Natural Uranium Ores" (SECY-99-12); and "Recommendations on Ways to Improve the Efficiency of NRC Regulation at *in Situ* Leach Uranium Recovery Facilities" (SECY-99-13). In addition, the meeting will discuss interpretations of current requirements, such as those on alternate feed criteria and groundwater regulation, and the need, if any, for additional NRC regulations in this area.

All of these are generic issues, of broad applicability to the NRC's activities, and the purpose of the June 17 meeting is to discuss them on a generic basis. At the same time, however, aspects of some of these same or related issues are currently being litigated in three adjudications (informal proceedings conducted under 10 C.F.R. Part 2, Subpart L, of the NRC's procedures) now in progress before Presiding Officers: *Hydro Resources, Inc., International Uranium Corp. -- IUSA* (MLA-4), and *International Uranium Corp. -- IUSA* (MLA-5). Accordingly, to assure that the June 17 discussions do not result in any prejudice to the ongoing adjudications, this cautionary letter is being sent to all participants in the June 17 meeting, with copies to the service list in each of the three adjudications.

Because the Commission is the appellate body in each of the pending adjudications, it will not entertain, in the June 17 meeting, any arguments or discussions of case-specific issues currently in litigation before Presiding Officers. Participants are cautioned not to discuss specific fact situations and specific issues involved in those proceedings. The Commission wishes to emphasize that the June 17 meeting is to be restricted to the consideration of generic issues, and the Commission will not hesitate to enforce this restriction.

JUN 18 1999

Nevertheless, the Commission recognizes the possibility that participants in the meeting may make statements or comments that are closely enough related to issues involved in the three ongoing proceedings as to raise concerns on the part of parties to those proceedings. For that reason, the Commission wishes to give notice to the parties to the adjudications that the meeting has been scheduled; to inform them that they are welcome to attend; to inform them as well that the full transcript of the meeting, as well as any materials proffered by the meeting participants, will promptly be placed in the NRC's Public Document Room; and that if circumstances should so warrant, the parties to the adjudications will be provided an opportunity to submit written comments on the statements and discussions that take place at the June 17 meeting to the dockets in the pending adjudications.

Sincerely,

Annette L. Vietti-Cook

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LTR SECY TO CURRAN RE PUB MTG 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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Washington, DC 20555

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Administrative Judge
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Docket No.(s)40-8968-ML
LTR SECY TO CURRAN RE PUB MTG

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Dated at Rockville, Md. this
15 day of June 1999

Adria T. Byrdsong
Office of the Secretary of the Commission

EXHIBIT C

Anti-nuke activists claim judge biased

By Malcolm Brenner
Staff writer

GALLUP — Environmental groups opposed to uranium mining in Crownpoint and Church Rock claim a federal judge who is ruling on the mining permit is biased in favor of the nuclear industry.

The environmentalists claim Administrative Judge Peter B. Bloch twice gave the Nuclear Regulatory Commission and the mining firm Hydro Resources, Inc. second chances to answer challenges to the project's Final Environmental Impact Statement, while denying the environmentalists similar opportunities.

"This is beginning to look like a pattern," said Chris Shuey with the Southwest Research and Information Center, one of the anti-mining groups. "Of course, we were not under any illusions of grandeur about the inherent neutrality of the Atomic Safety and Licensing Board, but we also felt we should be treated fairly. After all, we're not the people that are proposing to mine an unneeded substance from somebody's only source of drinking water."

Communications difficulties Tuesday prevented the *Independent* from sending a copy of the press release to the Nuclear Regulatory Commission for comment. However, Sue Gagner, a spokesperson with the NRC, confirmed that SRIC and Eastern Navajo Dineh Against Uranium Mining had filed an interlocutory order on March 26, asking the commissioners to stay and reverse Bloch's orders.

In August, Bloch visited the areas where HRI wants to leach-mine uranium from the Eastern Agency water table. His visit came about because of the environmentalists' challenges to the mining permit which the Atomic Safety and Licensing Board had granted HRI.

The environmentalists have mounted a number of challenges to the license. Most recently they questioned whether the FEIS took the existing levels of radiation from abandoned mines into account when evaluating the effect of radioactive air emissions from the proposed mining operation.

On March 18, Bloch gave the Nuclear Regulatory Commission staff a second chance to defend the FEIS, even though Bloch admitted the NRC staff "inexplicably abstained

See Anti-nuke activists, Page 2

Marc
Gallup-Ind.
3/31/99

Anti-nuke activists

Continued from page 1

from the fray" when briefs on the radiation exposure were required.

Douglas Meiklejohn with the New Mexico Environmental Law Center said the same thing happened in early February, when the environmentalists challenged HRI's technical and financial qualifications to run the leach-mining operation. On March 3, Bloch gave HRI and the NRC 12 extra days to submit the information.

However, Meiklejohn said, Bloch did not provide ENDAUM and SRIC a second chance to present their case on that issue, or when he ruled earlier that the environmentalists had not demonstrated that the NRC failed to protect "cultural resources."

The environmentalists appealed to the commission on March 12, but were denied on the grounds that they had not demonstrated the threat of immediate and irreparable harm.

On March 26, the SRIC, ENDAUM and NMELC again appealed Bloch's decisions to the five-member board of commissioners. The environmentalists argue that Bloch should have decided those issues on the evidence before him, even if that meant ruling against HRI and the NRC.

"It is hard to imagine any action that could more persuasively and unusually affect this proceeding than this new confirmation that the case is not being handled in an impartial manner," the environmentalists wrote.

The anti-mining groups have asserted 10 different grounds for revocation of HRI's license, including an argument that the operations will exceed the limit for radioactive air emissions and that the existing levels of radioactivity around Church Rock already exceed regulatory standards.

"This is a legal proceeding with serious consequences for real people," Meiklejohn said. "This is not an exercise in which HRI and the staff are to be given as many chances as they need to get their information right. He simply is not dealing with them the same way he's dealing with us."

ShawPittman

A Law Partnership Including Professional Corporations

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August 26, 1999

Nuclear Regulatory Commission
Office of the Secretary
2 Whiteflint North, 3rd Floor
11545 Rockville Pike
Rockville, MD 20852

Re: In the Matter of Hydro Resources, Inc.,
Docket No. 8698-ML; ASLBP No. 95-706-01-ML

To whom it may concern:

Enclosed for filing in the above-referenced case please find an original and three (3) copies of Hydro Resources, Inc.'s Motion for Suspension or, in the Alternative, Reprimand or Censure and Request for Attorneys fees. Please file stamp and return one of the copies in the enclosed postage prepaid envelope.

Very truly yours,

Anthony J. Thompson

Enclosure

cc: All Parties of Record
Hon. Richard K. Armey
Hon. Pete V. Domenici
Hon. Frank H. Murkowski
Chairman Greta J. Dicus