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September 15, 1999  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULES AND PRACTICE  
ADJUDICATION

BEFORE THE COMMISSION

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

**INTERVENORS EASTERN NAVAJO DINÉ AGAINST URANIUM MINING'S  
AND SOUTHWEST RESEARCH AND INFORMATION CENTER'S  
RESPONSE TO HRI'S MOTION TO STRIKE**

**I. INTRODUCTION**

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby submit their response to Hydro Resources, Inc. ("HRI's") Motion to Strike Intervenors' Reply Brief on Review of Partial Initial Decision LBP-99-13, Financial Assurance for Decommissioning, and Request for Attorneys' Fees (September 14, 1999) ("HRI Motion"). The HRI Motion unreasonably seeks to strike Intervenors' Reply Brief in its entirety for allegedly exceeding page limits and seeks sanctions against Intervenors and their counsel in the form of attorneys' fees incurred in the preparation of the motion to strike.

**II. ARGUMENT**

When they submitted their Reply Brief on Review of Partial Initial Decision LBP-99-13 ("Intervenors' September 13<sup>th</sup> Reply Brief"), Intervenors ENDAUM and SRIC

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U.S. NUCLEAR REGULATORY COMMISSION  
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WASHINGTON, D.C. 20542

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understood that it was properly submitted pursuant to the Commission's July 23, 1999 Order, CLI-99-22, slip op. At 24, 50 NRC \_\_\_\_ (July 23, 1999) ("Commission Order"). The Commission's Order states that "Intervenors may file a reply brief within 10 days of receiving the briefs of the NRC Staff and HRI" and that "[t]he reply brief shall be no longer than 10 pages." Commission Order at 25. In accordance with the practice throughout this proceeding before the Presiding Officer, counsel for ENDAUM and SRIC interpreted the Commission Order to mean that they were permitted to submit a ten page reply brief to each of the response briefs filed by HRI and the Staff. On that basis, Intervenors consolidated their reply briefs into one brief less than 20 pages in length.

Having reviewed HRI's Motion to Strike and having reconsidered the language of the Commission's Order, counsel for Intervenors now believe that their interpretation of the Commission's Order may have been incorrect, and that the Commission intended that the Intervenors file one reply brief no more than ten pages long. Therefore, Intervenors request that the Commission accept for filing the attached ten page reply to the responses filed by HRI and the Staff. As is apparent from the attached reply, it presents the same arguments as were set forth in Intervenors September 13<sup>th</sup> Reply. The only difference between the two replies is that the arguments are presented in ten pages in the attached reply as opposed to the 15 pages contained in the Intervenors' September 13<sup>th</sup> Reply. Because this is a reply and because the Intervenors are presenting exactly the same arguments in the attached reply as they did in their September 13<sup>th</sup> Reply, there will be no

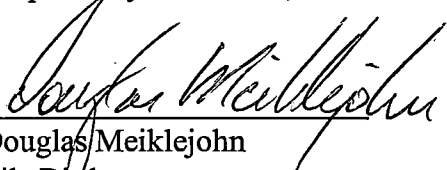
prejudice to either HRI or the Staff if the Commission does accept the attached reply for filing.

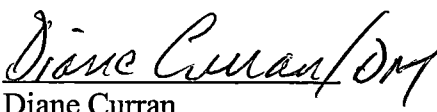
Finally, Intervenors request that the Commission deny HRI's request for sanctions, including attorneys' fees. If they have misinterpreted the Commission's Order, counsel for Intervenors did so based on the extensive practice before the Presiding Officer throughout this proceeding. Such a mistake does not amount to a refusal to follow orders of the Commission or a licensing board or any other type of conduct that is grounds for sanctions outlined in the Commission's regulations (10 CFR §2.713) or in the Commission's Policy on sanctions. See STATEMENT OF POLICY ON CONDUCT OF LICENSING PROCEEDINGS, CLI-81-8, 13 NRC 452 (1981).

### III. CONCLUSION

For the foregoing reasons, Intervenors request that the Commission accept for filing the attached reply and deny HRI's request for sanctions. In the alternative, if the Commission's Order should be read to permit the filing of a reply no more than 20 pages in length, the Intervenors request that the Commission deny HRI's Motion in its entirety.

Respectfully Submitted,

  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of )

HYDRO RESOURCES, INC. )

P.O. Box 15910 )

Rio Rancho, NM 87174 )

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

**CERTIFICATE OF SERVICE**

I hereby certify that:

On September 15, 1999, I caused to be served copies of the following:

**INTERVENORS EASTERN NAVAJO DINÉ AGAINST URANIUM MINING'S  
AND SOUTHWEST RESEARCH AND INFORMATION CENTER'S  
RESPONSE TO HRI'S MOTION TO STRIKE**

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. Service was also made via e-mail to the parties marked below by an asterisk. The envelopes were addressed as follows:

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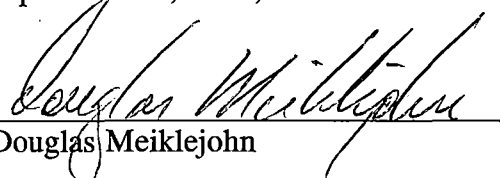
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