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RULEMAKING AND
ADJUDICATIONS STAFF

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: OWFN 16-C-1
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
HYDRO RESOURCES, INC (HRI)
Docket No. 40-8968-ML

Dear Rulemaking and Adjudications Staff:

Through an oversight, the hard copies of the "NRC Staff's Response Brief on Financial Surety Issues," dated September 3, 1999 (NRC Response), were served in the above-captioned proceeding without page 5 of the filing. The copies of the filing that were transmitted by e-mail, however, were complete.

Attached is a copy of page 5 for inclusion in your copy of the NRC Response. The Staff regrets any inconvenience caused by this matter.

Sincerely,


Mitzi A. Young
Counsel for NRC Staff

cc w/encl:

Peter Bloch, ASLB
Johanna Matanich
Anthony Thompson
Samuel Gollis
Diane Curran
Richard Clement
Mitchell W. Captain

Thomas Murphy, ASLB
SECY
ASLB Panel
Adjudicatory File
OCAA
Jep Hill
W. Paul Robinson

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and SRIC may challenge the adequacy of financial assurance provisions in the license as the matter has been found germane to this proceeding, *see* LBP-98-9, 47 NRC 261 (1998), but any challenge to the adequacy of cost estimates for an approved surety arrangement should await the existence of an NRC-approved surety plan.

A. Applicable Financial Surety Requirements

1. Criterion 9 of Appendix A

Criterion 9 contains financial provisions intended to ensure that adequate funds will be available for decommissioning purposes even if the NRC licensee becomes insolvent, and authorizes use of surety mechanisms such as surety bonds, certificates of deposits, and irrevocable letters or lines of credit.⁴ While Criterion 9 states that the amount of surety “must be based on Commission-approved cost estimates in a Commission-approved plan” for decommissioning and reclamation of tailings and/or wastes that is to be submitted by a “licensee . . . in conjunction with an environmental report that addresses the expected environmental impacts of its milling operation,” the provision does not specify when the plan must be submitted, but only when an approved plan must be in place. *See* Criterion 9. Criterion 9 appears to be better suited to a mill seeking to modify or renew its operations rather than a ISL mining license applicant. In short, Criterion 9 should not be read to require the submission and approval of a financial assurance plan *before* an ISL license is issued.

With respect to the need for a financial assurance plan, Criterion 9 states, in pertinent part, as follows:

⁴ Criterion 9 was published in final form in October 1980, as part of the original Appendix A to 10 C.F.R. Part 40. *See* 45 Fed. Reg. 65521, at 65535 (October 3, 1980).