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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

SERVED SEP 22 1998

In the matter of

Docket No. 40-8968-ML

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

Re: Leach Mining
and Milling License

ASLBP No. 95-706-01-ML

MEMORANDUM AND ORDER
(Scheduling and Partial Grant of Motion for Bifurcation)

From September 15-17, the Presiding Officer and his Special Assistant visited Crownpoint, New Mexico and heard limited appearances, completed a site visit and conducted a scheduling conference. At the close of the conference, the Presiding Officer determined that SRIC, ENDAUM, Marilyn Morris and Grace Sam shall serve their written presentations, pursuant to 10 C.F.R. § 2.1233, by February 1, 1999. The purpose of this Memorandum and Order is to add additional details to the scheduling order, including the determination of HRI's "Request for . . . Bifurcation of the Proceeding," June 4, 1998.¹

¹See also ENDAUM's and SRIC's "Opposition to HRI's . . . Request for Bifurcation," June 22, 1998, NRC Staff's "Response to HRI's Motion . . . for Bifurcation," June 26, 1998.

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I. Bifurcation or Phasing

The principal concerns of HRI in its motion for bifurcation is that: (1) it not be required to make a detailed defense of portions of its project that it will not undertake for "several years", and (2) that it not be required to produce evidence that will not be available until it undertakes exploratory drilling and testing prior to injecting lixiviant at any site other than Church Rock Section 8, on which it is prepared to commence operations. The principal concern of interveners with respect to bifurcation is that they be permitted to challenge the validity of the entire license granted to HRI and they not be required to respond piecemeal. This point was made especially forcefully by Diane Curran, attorney for SRIC and ENDAUM, at the scheduling conference.

After consideration of the entire record with respect to this matter, I have decided that Interveners will not be prejudiced if they are permitted to challenge the issuance of the HRI license but they are prohibited, on the ground of ripeness, from making detailed challenges to parts of the project that have been scheduled many years into the future and that will be completed only if conditions in the uranium market permit profitable mining at that time. The absence of rigid scheduling criteria established by statute or regulation suggests that adjudicatory boards are to decide for themselves under all the circumstances when hearings should be held on specific issues. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975). Accordingly:

1. Interveners may submit written presentations, within the scope of their germane concerns, with respect to any issue that challenges the validity of the license issued to HRI.

See LBP-98-9, 47 NRC 261 (1998: determining which concerns are germane.); CLI-98-16, 47 NRC ____ (September 15, 1998: declaring that "Failure to obtain proper permits from the Navajo nation" is not a germane concern).

2. Interveners may also submit written presentations, within the scope of their germane concerns, with respect to any aspect of the HRI license concerning operations on Church Rock Section 8 or with respect to the transportation or treatment of materials extracted from Section 8.

3. If a concern is not covered by either of the above paragraphs, then it may not be presented in this phase of the proceeding. That is, concerns relating only to the license conditions affecting Church Rock Section 17 or to Unit One or to one of the Crownpoint sections, may not now be presented as part of the first phase of this proceeding. A determination will be made at the conclusion of this phase of the proceeding, based in part on HRI's operating plans at that time, whether issues covered by this paragraph would be determined immediately or would be placed in suspense because they are not yet ripe for determination.

II. Scheduling

Intervener, SRIC and ENDAUM, provided a detailed filing schedule supporting a request to make 10 separate filings between now and December 20, 1999. ENDAUM's and SRIC's Scheduling Conference Brief, September 2, 1998 at 32. By contrast, the Staff of the Nuclear Regulatory Commission, supported by HRI, suggested that Intervener complete their presentation by October 30, 1998. NRC Staff Response to July 30 Order, August 31, 1998, at p. 7, fn. 15; HRI's Response to Scheduling Conference Briefs of All Petitioners, September 9, 1998 at 6.

In balancing the claims of the parties, I decided to set a final filing deadline of February 1, 1999, with the following additional applicable provisions:

1. Presentations should be sent to the service list so that they are received within two days following the date of filing. In addition, all presentations and responses should

be electronically sent to all members of the service list who are capable of receiving them by E-mail.

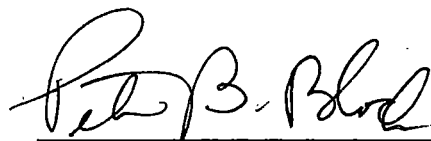
2. Presentations shall be carefully edited to make them easy to understand. They shall be carefully documented, including citations to the law and the facts.² Evidentiary material referred to in the presentations shall be placed in attachments or exhibits except for lengthy documents that are already in the record and that are carefully referenced. (Failure to comply with this provision may result in return of the filing, page limitations or other remedial action.)

3. Interveners shall divide their presentation into four roughly equal segments that will be filed on four dates that are roughly equally spaced between now and February 1, 1999. Within 10 days from today, they shall notify the service list in writing concerning the content and dates of their presentations.

4. HRI shall respond to written presentations within 30 days from when they actually receive the presentation. Staff will have an additional seven days. Motions to reply, if any, shall state the ground for reply but shall *not* attach the reply.

5. Motions for reconsideration of this Memorandum and Order may be filed so that they are received by the service list no later than September 30, 1998. In addition, interveners may include in their last presentation, in this phase of the case, a motion to make additional filings, supported by a statement of good cause.

IT IS SO ORDERED



Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland

²Citations to legal precedent should include a statement of the holding of the case that is cited or a disclosure that the cited principle is dictum.

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CERTIFICATE OF SERVICE

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

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Dated at Rockville, Md. this
22 day of September 1998

Adria T. Byrdson
Office of the Secretary of the Commission