

September 2, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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

Docket No. 40-8968-ML

Re: Leach Mining and Milling License

**HRI'S BRIEF ON SUGGESTED SCHEDULING  
SUBMITTED PURSUANT TO THE PRESIDING OFFICER'S  
JULY 30, 1998 MEMORANDUM AND ORDER**

Pursuant to the Presiding Officer's unpublished order dated July 30, 1998, as modified by the Presiding Officer's unpublished order dated August 26, 1998, all parties are to file "summaries of positions on matters in LBP 98-9"<sup>1</sup> by September 2, 1998. Hydro Resources, Inc. ("HRI"), licensee herein, respectfully submits that the NRC Staff properly determined the sufficiency of HRI's license application and validly issued a license for the Crownpoint Uranium Project permitting HRI to conduct in-situ leach ("ISL") uranium mining at three sites, Church Rock, Unit 1, and Crownpoint.

<sup>1</sup> July 30, 1998 order, at 3.

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**I. The Pending Proceedings Should Be Bifurcated.**

HRI's ISL license is subject to 62 conditions intended to ensure protection of public health and the environment throughout implementation of the licensed activities. As discussed in HRI's Request for Clarification and for Bifurcation filed June 4, 1998<sup>2/</sup>, and in the NRC Staff's Response to the July 30 Order<sup>3/</sup>, these conditions will be satisfied with site-specific information, on a wellfield by wellfield basis, as each production area is readied for operation and restoration.

As HRI repeatedly has represented to all parties and the Presiding Officer, HRI will only consider commencing ISL operations on that distinct portion of the Church Rock site previously identified as Section 8 at any time for the next several years. Section 8, with no nearby drinking water wells, no underground mine workings, no pre-existing surface contamination, and the most readily accessible (i.e., shallowest) ore body, is the least environmentally sensitive and most economically viable segment of the licensed project. HRI's experience with Section 8 and changing conditions in the international uranium market will inform HRI's decision when and if to proceed with other proposed phases of this project (i.e., Section 17, Unit 1, or Crownpoint). Such decisions, however, are at a minimum several years off.

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<sup>2/</sup> HRI Request for Partial Clarification or Reconsideration and Request for Bifurcation, June 4, 1998, at 6-9.

<sup>3/</sup> NRC Staff's Response to July 30 Order, August 31, 1998, at 10-17.

Because HRI's activities will be restricted to Section 8<sup>4/</sup> for at least two to four years, HRI reiterates its request that Intervenor's challenges to HRI's license be confined to Intervenor's concerns pertaining to uranium recovery activities on Section 8 and associated processing at Crownpoint. Forcing litigation now of issues associated with activities that may or may not ever occur is wasteful of judicial resources and the resources of all parties. Accordingly, proceedings addressing possible future activities on Section 17, Unit 1, and Crownpoint should be held in abeyance until such time as the issues associated with such activities may become ripe for review. HRI understands NRC Staff to concur in this view.<sup>5/</sup>

Intervenor has alleged, without specificity, that such bifurcation may deprive them of their ability to litigate issues pertinent to future phases of the project. The Presiding Officer can allay this concern by ordering HRI to provide reasonable notice to all Intervenor of HRI's intent to engage in *any* activities outside of Section 8.<sup>6/</sup>

## II. Narrowing the Issues to be Litigated: Submittal of Written Presentations

As discussed in the August 20, 1998 letter from HRI counsel Anthony Thompson to Presiding Officer Bloch, HRI believes that it has complied with all regulatory and other procedural

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<sup>4/</sup> HRI refers here to uranium extraction activities at Section 8. Uranium processing, such as drying, elution, and packaging, would take place, as planned, at existing facilities at Crownpoint.

<sup>5/</sup> See NRC Staff's Response to July 30 Order, at 18 and at fn. 10.

<sup>6/</sup> As noted at footnote 4, supra, HRI presently intends to conduct drying, elution, and packaging activities associated with uranium recovered from Section 8 at existing Crownpoint facilities. These activities should be excepted from the proposed notice requirement.

requirements applicable to the licensing process and is satisfied that it possesses a valid license, properly issued. In light of this circumstance, Mr. Thompson's letter requested that the Presiding Officer order Intervenors to submit contentions specifying the nature and bases of each license issue Intervenors wish to litigate.

NRC Staff, in its "Response to July 30 Order" filed August 31, 1998, objected to the request set forth in Mr. Thompson's letter, noting that while "filing contentions might be a way of narrowing issues, such use of (Subpart G) procedures here would not be authorized without first obtaining the Commission's approval pursuant to § 2.109(k)."<sup>7/</sup> NRC Staff suggest that "a better approach would be for the Presiding Officer to issue an order requiring Intervenors to submit written presentations pursuant to 10 C.F.R. § 2.1233," detailing "the bases for claiming that the license application is deficient" and identifying the information relied upon to support each such claim.<sup>8/</sup>

HRI agrees with the NRC Staff proposal and requests that the Presiding Officer order Intervenors to submit written presentations detailing the bases for each allegation of a deficiency in HRI's license application and specifying the information in the hearing file that is being relied upon to support such allegation. HRI is amenable to scheduling the Intervenors' written presentations and the HRI and Staff responses thereto in accordance with the timetable suggested

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<sup>7/</sup> Id. at 5.

<sup>8/</sup> Id. at 6.

by NRC Staff in its "Response to July 30 Order."<sup>9/</sup> HRI concurs also in the Staff's suggestion that a page limit be imposed, to ensure that the presentations are succinct and serve to narrow the issues to be litigated.

### III. HRI May Request That Entire Matter Be Held In Abeyance.

HRI wishes to inform the Presiding Officer and all parties that two recent developments are causing HRI to consider requesting that the Presiding Officer place this entire proceeding in abeyance. First, United States Enrichment Corporation, an entity recently privatized by the Department of Energy, has just announced its intent to place as much as 75 million pounds of uranium on the international market over the next five years. While ongoing developments in Russia and in world uranium markets make this occurrence uncertain, the sudden availability of such a large quantity of uranium would likely depress uranium prices to such an extent that HRI's planned activities, even on Section 8, would not be economically viable.

Additionally, NRC has just conducted a series of public meetings to consider, among other things, potential rulemaking proceedings for uranium recovery facilities, including ISL. NRC's public meeting notice specifically requested comment on a position championed by the National Mining Association "White Paper" (submitted to NRC earlier this year) that NRC is without jurisdiction to regulate wellfields.<sup>10/</sup> Of course, if the NRC were essentially to withdraw

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<sup>9/</sup> Id. at fn. 15. Staff suggests that Intervenor be required to submit their written presentations not later than October 30, 1998, with HRI to submit its written presentation not later than November 30, 1998, and NRC Staff to make its submittal not later than December 7, 1998.

<sup>10/</sup> See 63 Fed. Reg. 42644.

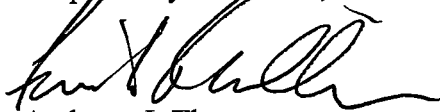
from regulation of well fields at ISL mining facilities, then most of the issues raised by Intervenor would no longer be subject to NRC adjudication.

HRI is monitoring both of these situations and will act in a manner appropriate to protecting HRI's interests, as developments warrant.

### Conclusion

For all of the reasons set forth above, HRI respectfully requests that the Presiding Officer: (1) bifurcate this proceeding and prepare to proceed at this time only with issues pertaining to Section 8; (2) order Intervenors to submit written presentations, and order HRI and NRC Staff to submit written presentations in response thereto, in the manner and in accordance with the schedule proposed by NRC Staff; and (3) clarify that statements made at the limited appearance sessions are not a part of the hearing record and that parties may respond to such statements at each party's discretion.

Respectfully submitted,

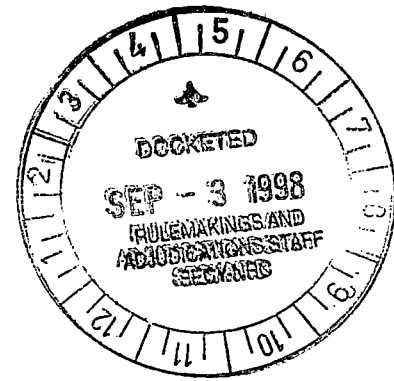


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Docket No. 40-8968-ML  
ASLBP No. 95-706-01-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document (HRI's Brief On Suggested Scheduling Submitted Pursuant To The Presiding Officer's July 30, 1998 Memorandum And Order) in the above-captioned proceeding have been served on the following by Facsimile (or, in the instances where a fax number is not available, as indicated by an asterisk, by Certified Mail, Return Receipt Requested) on this 2nd day of September, 1998.

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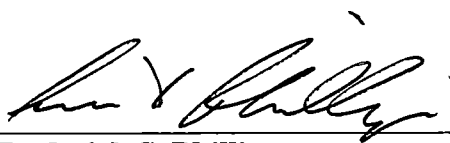
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