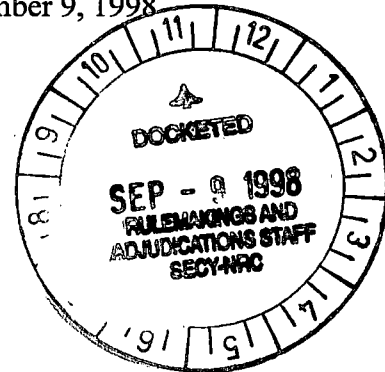


September 9, 1998

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 )

) Docket No. 40-8968-ML

HYDRO RESOURCES, INC. )

2929 Coors Road, Suite 101 )  
Albuquerque, New Mexico 87120 )

) ASLBP No. 95-706-01-ML  
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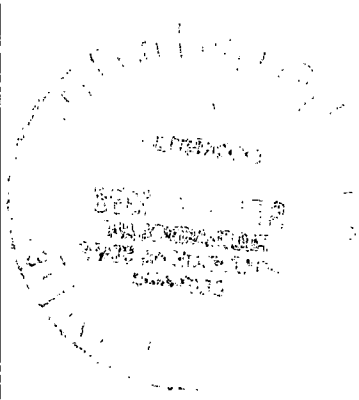
MARILYN MORRIS'S AND GRACE SAM'S RESPONSE TO BRIEFS FILED  
BY HRI AND NRC STAFF

Pursuant to the Presiding Officer's Order dated July 30, 1998, NRC Staff and HRI filed their briefs on scheduling matters on August 31 and September 2, respectively. Intervenors Marilyn Morris and Grace Sam hereby submit their response to those briefs.

**I. THIS PROCEEDING SHOULD NOT BE BIFURCATED TO SEPARATELY ADDRESS SECTION 8 MINING.**

There is no legal justification for bifurcating this proceeding. HRI and NRC Staff present no adequate reason why bifurcation is necessary or prudent. HRI continues to assert that, because it does not plan to commence ISL operations beyond Section 8 within the next few

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years,<sup>1</sup> environmental and health and safety issues regarding Section 17, Unit 1 and Crownpoint are not ripe for review.<sup>2</sup> Whatever HRI's proposed schedule for implementing mining operations, it is not relevant to the Presiding Officer's decision whether to bifurcate this proceeding. Intervenors challenge the NRC's issuance of the materials license to HRI. They contend that the license is deficient pursuant to 10 C.F.R. § 40.32. The license grants HRI the right to mine in Section 8, Section 17, Unit 1 and Crownpoint. To limit this proceeding to a determination of the germane areas of concern as they impact only HRI's proposed operations on Section 8 will effectively foreclose administrative review of the bulk of the mining operations contemplated by the license. Since this proceeding will decide whether the NRC should have granted the materials license to HRI, all issues that the license and HRI's application present are ripe for adjudication now and should be heard by the Presiding Officer.

## II. SCHEDULING OF WRITTEN PRESENTATIONS

Ms. Morris and Ms. Sam agree with HRI and the NRC Staff that they should not be required to file written contentions for the purpose of narrowing issues. Instead, they should be permitted to make written presentations in accordance with the regulations governing Subpart L proceedings. See 10 C.F.R. § 2.1233. Ms. Morris and Ms. Sam disagree, however, with the

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<sup>1</sup> HRI's Brief on Suggested Scheduling Submitted Pursuant to the Presiding Officer's July 30, 1998 Memorandum and Order dated September 2, 1998 (hereinafter "HRI's Scheduling Brief") at 2.

<sup>2</sup> Id. at 3.

suggestion of the NRC Staff, in which HRI concurs,<sup>3</sup> that the Presiding Officer set a page limit on the written presentations as a means of narrowing the issues<sup>4</sup> and order Intervenors, HRI and the Staff to file their written presentations by October 30, November 30 and December 7, 1998, respectively.<sup>5</sup> The page limitation and schedule for filing written presentations suggested by the NRC Staff and HRI is inappropriate -- both limitations appear calculated to prevent Intervenors from obtaining a fair and impartial hearing on all the areas of concern the Presiding Officer previously has ruled are germane in this proceeding.

The Presiding Officer has a duty to "conduct a fair and impartial hearing according to law." 10 C.F.R. § 2.1209. Implementation of a page limitation and the filing schedule suggested by the NRC Staff and HRI would violate that duty. A page limitation will not serve to narrow the issues, but only prevent a thorough and complete discussion of them. The Presiding Officer has acknowledged that this proceeding has the potential to be "complex, contentious and expensive"<sup>6</sup> and has stated that the Hearing Record in this case occupies about 16 feet of shelf space.<sup>7</sup> In light of the complexities of the issues and scope of the record, it would be manifestly unfair to limit Intervenors' ability to discuss the issues and record fully in the written presentations on which the Presiding Officer will base his decision. Obviously, Intervenors will have to present organized, concise and well-written presentations in order to allow the Staff and

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<sup>3</sup> HRI's Scheduling Brief at 4-5.

<sup>4</sup> NRC's Scheduling Brief at 6.

<sup>5</sup> Id. at 7, n.15.

<sup>6</sup> Memorandum and Order dated May 13, 1998, LBP 98-9 at 34.

<sup>7</sup> Memorandum and Order dated July 13, 1998, at 2.

HRI to properly respond and to effectively communicate with the Presiding Officer. Given the number of issues Intervenors need to address, a page limit is not the way to try to guarantee a cogent discussion of the issues.

Similarly, the proposed October 30 deadline is simply unrealistic given the number of issues involved. Efficient and organized presentations of all issues in this matter will take time to prepare and adequately present. The length of the record itself demonstrates that time will be necessary for proper preparation and analysis. Furthermore, as mentioned in Ms. Morris's and Ms. Sam's Scheduling Brief, expert witnesses will be used to properly analyze the issues. Their input will take time to gather and prepare in an organized and readable fashion. Allowing adequate time for proper presentation of the written materials is much more likely to lead to a fair and efficient proceeding.

### **III. PRESENTATION TIME AT SCHEDULING CONFERENCE.**

At the scheduling conference, Ms. Morris and Ms. Sam request 35 minutes for their presentation and 10 minutes for their rebuttal.

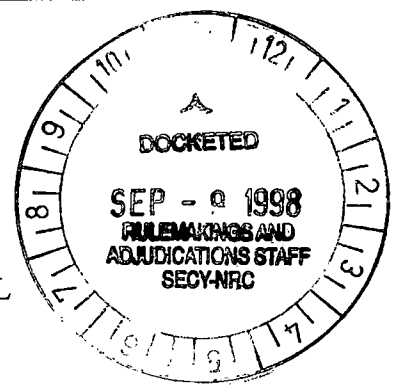
Dated this 9th day of September, 1998.



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL



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

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Marily Morris's and Grace Sam's Response to Briefs Filed by HRI and NRC Staff, this 9th day of September, 1998, via first class U.S. Mail, in accordance with the requirements of 10 C.F.R. § 2.712, to the following persons:

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attention: Rulemakings & Adjudications Staff

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Presiding Officer  
Atomic Safety & Licensing Bd Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Reg. Commission  
Washington, DC 20555

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Dated this 9<sup>th</sup> day of September, 1998.

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*A L Eddy*