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OFFICE OF THE
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ADJUTANT GENERAL
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

**Title: PREHEARING CONFERENCE OF
HYDRO RESOURCES, INC.**

Case No.: 40-8968-ML

Work Order No.: ASB-300-454

LOCATION: Crownpoint, NM

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P R O C E E D I N G S

[9:40 a.m.]

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3 MR. BLOCH: My name is Peter Bloch and I am the
4 Chairman, the presiding officer of this case, Docket No.
5 40-8968ML, in the matter of Hydro Resources, Incorporated,
6 concerning a leach mining and milling license.

7 With me today is my special assistant, Thomas D.
8 Murphy, who is also a judge at the Atomic Safety and
9 Licensing Board Panel for the NRC.

10 I would appreciate if those parties who are
11 present would introduce themselves for the record, beginning
12 at my right.

13 During the hearing it's important that we use the
14 microphones because they are picked up more readily by the
15 reporter.

16 MR. CAPITAN: I'm Mitchell Capitan, one of the
17 intervenors for Eastern Navajo Dine Against Uranium Mining.

18 MR. MEIKLEJOHN: My name is Douglas Meiklejohn.
19 I'm with the New Mexico Environmental Law Center. I'm one
20 of the counsel for Eastern Navaja Dine Against Uranium
21 Mining and Southwest Research and Information Center.

22 MR. BLOCH: If people prefer to remain seated,
23 that's fine.

24 MS. MATANICH: Good morning. I'm Johanna
25 Matanich, counsel at the New Mexico Environmental Law

1 Center, representing Eastern Navaja Dine Against Uranium
2 Mining and the Southwest Research Information Center.

3 MS. CURRAN: Good morning. I'm Diane Curran. I'm
4 an attorney with the firm of Harmon, Curran, Spielberg &
5 Eisenberg, in Washington, DC, and I'm one of the attorneys
6 representing ENDAUM and SRIC.

7 MR. WALLACE: Good morning. I'm Mike Wallace and
8 I'm a hydro geological consultant to the intervenors.

9 MR. SHUEY: My name is Chris Shuey. Good morning.
10 I'm with Southwest Research and Information Center, one of
11 the intervenors.

12 MR. VENTURA: Good morning. My name is Roderick
13 Ventura, from DNE Legal Services. I'm one of the attorneys
14 representing Marilyn Morris and Grace Sam.

15 MR. GOLLIS: Good morning, Your Honor. My name is
16 Samuel Gollis. I'm also with DNE People's Legal Services,
17 representing intervenors Marilyn Morris and Grace Sam.

18 MR. BLOCH: And for the staff of the Commission?

19 MR. CARLSON: Good morning, Your Honor. My name
20 is Bob Carlson. I'm the Project Manager for the HRI
21 project, for the NRC.

22 MR. HULL: I'm John Hull, counsel representing the
23 NRC staff.

24 MS. YOUNG: I'm Mitzi Young, attorney with the
25 Office of General Counsel for the Nuclear Regulatory

1 Commission, representing NRC staff.

2 MR. BLOCH: Off the record.

3 [Discussion off the record.]

4 MR. BLOCH: Let's continue. In preparation for
5 this morning's conference, on September 10, I issued a
6 tentative agenda. Before we even get to that agenda,
7 however, there is the question of the economic viability of
8 the project, and that has an important impact on possible
9 scheduling. So if Mr. Thompson doesn't mind, I would like
10 to know if there is anything additional that you can tell us
11 about when or how we're going to know whether economic
12 factors will influence the discontinuation of the license.

13 MR. THOMPSON: I'm not sure I understand exactly
14 what you're asking, Your Honor. I'm sorry.

15 MR. BLOCH: Well, you had stated in the filing
16 that because of the price of uranium, it might be that the
17 entire project would become uneconomical. I'm about to
18 start a schedule in which people are going to be digging in,
19 putting a lot of effort into providing contentions and I'm
20 reluctant to do that if the likelihood is that after they're
21 ready and they're ready to go to trial, we're just going to
22 discontinue the case.

23 MR. THOMPSON: I guess at this time, Your Honor,
24 our position would be that we're prepared to go forward and
25 discuss the bifurcation issue and the decision on the

1 bifurcation issue would have some impact on the decisions
2 that the company would make with respect to whether to go
3 forward or to attempt to move to put things in abeyance.

4 Getting some idea of what the schedule might be
5 and what the issues might be would have a major impact.

6 Also, there are events that could take place in
7 the next month or so at NRC with respect to potential
8 rule-making that might have an impact, and I can't say what
9 those are at this time.

10 MR. BLOCH: No. I wasn't asking you to predict
11 that. That said, I have a couple of matters I want to
12 comment on before we get into the matter of the agenda.

13 One is that I really had hoped that I would have
14 received a more complete analysis plan from the intervenors.
15 What I'm looking for is something that would justify
16 additional time, if they need it, which means specific tasks
17 that have to be completed, including tasks that have already
18 been completed during the time that the record has been
19 available and tasks that have already been contracted for
20 with specific efforts, so that I really have an idea of what
21 is necessary for scheduling the work that they consider to
22 be important for this case.

23 In reading the staff's filing, I was puzzled as to
24 why, even if there was bifurcation -- that is, even if we
25 were to concentrate now on the portoin of the project that's

1 going to go forward first, why there would be any separate
2 licensing proceeding anyway.

3 Wouldn't it be appropriate to just retain
4 jurisdiction and continuing hearing issues when they become
5 available? That's a question that I hope will be addressed
6 during the discussion.

7 And there is an item on the agenda relating to
8 length limitations on filing. I just want to say a word
9 about what that's about. The most important thing for the
10 efficiency of this proceeding is that whatever is filed be
11 concise and to the point and carefully documented.

12 If we had page limitations, what I anticipate
13 would be a page limitation on the presentation itself, but
14 not on attachments or explanations or evidence that would be
15 filed along with it.

16 Are there any comments by way of proposed
17 amendments for the proposed agenda?

18 MS. MATANICH: Yes, Your Honor. We have a couple
19 of comments.

20 ENDAUM and SRIC would like to propose two
21 modifications to the agenda. First, we would like to have
22 more time to argue agenda item number three, the bifurcation
23 issue, and we would like to propose that agenda items four
24 --

25 MR. BLOCH: How much is more time?

1 MS. MATANICH: Fifteen minutes per party rather
2 than four minutes per party. We feel that four minutes is
3 simply not enough time to fully address this issue. It's an
4 important preliminary decision for licensing and we feel
5 strongly that separation of Section 8 is going to prejudice
6 the intervenors.

7 MR. BLOCH: And the next suggestion you have?

8 MS. MATANICH: The second suggestion is that we
9 modify agenda items four through seven to group them into a
10 single agenda item and allow each party to present 20
11 minutes to prepare -- to present their scheduling
12 presentations.

13 As it is, we feel that you have asked us to frame
14 our arguments only to respond to what HRI has proposed and
15 that's reflected in the titles of each of those agenda
16 items.

17 MR. BLOCH: What is important for me is that I
18 know the extent to which these categories are fulfilled. So
19 that if I decide that they are relevant to scheduling, I
20 would be able to know how to do that.

21 If you were to make a presentation that was
22 combined, would you nevertheless be indicating which of the
23 items fit each of these categories?

24 MS. MATANICH: Yes. We would respond to the
25 proposal within our arguments.

1 MR. BLOCH: So we have two suggestions for changes
2 in the agenda. Are there other suggestions?

3 MS. MATANICH: Those are the only two that we
4 have.

5 MR. BLOCH: Any suggestions from other people?

6 MR. THOMPSON: Your Honor, we, in our most recent
7 filing, attached to Mr. Pelizza's affidavit an analysis of
8 issues that we think address the items four through seven
9 that you have raised and we would simply use that as a basis
10 for discussing what we think are issues essentially that are
11 limited to Section 8 and issues that are common to all of
12 the -- all of the mining sites or potential mining sites and
13 those which are site-specific and not right at this time for
14 briefing and consideration.

15 MR. BLOCH: Do you agree with ENDAUM and SRIC that
16 items four through eight should, therefore, be combined?

17 MR. THOMPSON: That would be fine with us. We
18 pretty have the same --

19 MR. BLOCH: Four through seven.

20 MR. THOMPSON: Four through seven, right.

21 MR. BLOCH: Is there any opposition to that part
22 of the proposal to amend the agenda?

23 MR. CARLSON: Not from staff, Your Honor.

24 MR. BLOCH: So on the first part of -- on the
25 first agenda amendment suggestion of 15 minutes on number

1 three, is there any opposition to that suggestion?

2 [No response.]

3 MR. BLOCH: There being none, both of the
4 amendment suggestions are accepted.

5 MR. THOMPSON: I guess the only question I have,
6 Your Honor, is that you had -- in item two, are we going to
7 address item two and then go to item three?

8 MR. BLOCH: That's the way the agenda runs, yes.

9 MR. THOMPSON: I just didn't know whether we were
10 rolling past that.

11 MR. BLOCH: So item two is scheduled for seven
12 minutes per party. I think that we should begin with the
13 intervenors in this instance.

14 MS. MATANICH: Your Honor, I would propose that it
15 would be more appropriate for HRI to begin, since
16 bifurcation was their original proposal.

17 MR. BLOCH: Item two is an introductory statement,
18 general position and requirements for filing. Do you still
19 think it would be more appropriate for them?

20 MS. MATANICH: I do.

21 MR. BLOCH: Is there any objection to the licensee
22 going first?

23 [No response.]

24 MR. BLOCH: There being no objection, licensee may
25 start.

1 STATEMENT BY ANTHONY THOMPSON

2 MR. THOMPSON: Your Honor, HRI would like to thank
3 you for your patience over the last couple of days through
4 the presentations of interested and potentially affected
5 individuals and your interest in viewing the sites and
6 discussing what the in situ mining process is about
7 yesterday.

8 HRI is interested in a reasonable and efficient
9 process. This is a Part 40 license. This is an informal
10 hearing. And the Commission's policies are clearly
11 addressed or clearly express a Commission preference for a
12 risk-informed approach to regulation and that means one must
13 take into consideration in developing a hearing record what
14 the risks are and the hearing has to reflect an
15 understanding of that.

16 The intervenors have to show particularized and
17 reasonably probable significant risk to public health or the
18 environment; that is, to persons, specific persons, who,
19 what the potential harm might be, why it's significant, and
20 how that harm is going to come about, that potential harm is
21 going to come about.

22 All of this against the background of 25 years of
23 experience with in situ leach mining in three different
24 states, three different EPA regions, and wherein there have
25 been no adverse impacts demonstrated on public health and

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1 safety.

2 In situ leach mining is widely recognized in the
3 literature as an environmentally benign way to extract
4 uranium and other minerals. It is essentially a closed loop
5 system with a water softener.

6 The system is based on mining in a portion of an
7 aquifer that is not a drinking water portion of the aquifer.
8 It is a system based on a design impact to that particular
9 portion of the aquifer; that is, the mining zone.

10 That mining zone is defined by EPA granting an
11 aquifer exemption. That aquifer exemption has leaps and
12 bounds, it has a defineable relationship to the rest of the
13 aquifer, and it's based on EPA finding that that portion of
14 the aquifer does not currently and cannot and will not serve
15 as a source of drinking water in the future.

16 It appears to us that Petitioners' concerns about
17 in situ leach mining really are that they just don't think
18 it's a good idea to be able to do mining in an area where
19 there is good water within the same general area.

20 Unfortunately, that is a gripe with the EPA UIC,
21 underground injection control program, whose regulations
22 were passed some 20 years ago, and the law of time to
23 challenge the concept of the aquifer exemption, the UIC
24 permit and permits that NRC grants, which do many of the
25 same sort of oversight responsibilities as EPA with respect

1 to mining within the exempted portion of an aquifer, the
2 time for challenging that has long since passed and it's not
3 the forum for challenging here.

4 The NRC license that has been issued for this --
5 for HRI contains protected conditions. Those protected
6 conditions require, as does the UIC permit, that HRI's
7 operations in this defined aquifer exemption zone must
8 maintain -- must be maintained within that aquifer
9 exemption.

10 So the mining takes place in a defined zone.
11 There are monitor wells to determine if there is potential
12 for excursions outside of the mining zone. The mining
13 process basically creates a cone of depression to pull water
14 in towards the center, because there is more water extracted
15 in the process than is injected.

16 This is one of the basic protections that is
17 inherent in all ISO mining, along with the monitor wells to
18 detect if there are excursions. If there is an excursion,
19 the operator has to, under license condition, notify NRC and
20 has to correct the excursion.

21 That's basically the approach to mining in the ISL
22 process. The NRC license that was granted, the safety
23 evaluation report, and indeed even the FDIS, all
24 contemplated a phased development. The license itself is
25 specifically structured to be approached in phases, with

1 Section 8 being the first phase.

2 The Commission's decision denying the request for
3 a stay clearly recognized that this project was phased and
4 to take place over as much as a 20 or 25 year period.

5 The protective conditions were recognized by the
6 Commission as well and by Judge Carter's decision on the
7 stay, such as before you can go from Section 8 to Section
8 17, much less Unit 1 or Crown Point, you have to do the
9 restoration demonstration.

10 Certainly, one of the outstanding and more
11 conservative protective conditions with respect to Crown
12 Point is that the current wells that provide water for Crown
13 Point would have to be moved before HRI could begin ISL
14 mining in the Crown Point area.

15 MR. BLOCH: You've got about half a minute left.

16 MR. THOMPSON: Okay. So I guess where we come
17 down, Your Honor, is that in Part 51, the introduction to
18 Part 51, the document states that NRC is entitled to rely
19 upon EPA determinations as to aquatic effects.

20 We have an aquifer exemption for Section 8. That
21 ought to be a fairly weighty matter with respect to what the
22 potential impacts are on the aquifer.

23 MR. BLOCH: I do want to ask one question about
24 that. What effect in this proceeding should that exemption
25 have?

1 MR. THOMPSON: I believe that that exemption
2 should have some significant weight with respect to
3 determining what potential concerns are with respect to
4 Sectoin 8, because we do have an aquifer exemption there.
5 It is defined and, therefore, they have to address that in
6 raising their questions about the impacts on the
7 environmental or --

8 MR. BLOCH: It's not clear to me exactly what
9 effect that would have, but we'll clarify that later.

10 Next would be one of the intervenors.

11 STATEMENT BY JOHANNA MATANICH

12 MS. MATANICH: We will proceed, Your Honor. I'm
13 going to get right down to business and explain -- is our
14 microphone on?

15 MR. BLOCH: Pull it to you.

16 MS. MATANICH: Let me know if I'm blasting you by
17 doing this.

18 We're here to talk about scheduling this case and
19 to discuss the proper time limit to address all the issues
20 that the intervenors have raised. ENDAUM and SRIC are ready
21 to prepare the written presentations that will demonstrate
22 the legitimacy of their concerns.

23 We have provided a plan of analysis that will
24 address each of the issues in what we feel is a timely
25 fashion. Under our proposal, all the issues in this case

1 will be resolved in less than 18 months.

2 What HRI has proposed and the staff supports is
3 separating Section 8 and leaving all the other issues in
4 indefinite abeyance. That proposal runs contrary to the
5 purpose of this proceeding. We believe the Board's
6 discretion in scheduling matters is not unlimited, that
7 there is a compelling interest in avoiding delay and that, in
8 fact, as HRI has proposed, separating Section 8, their
9 proposal would be unlawful for the Board to take.

10 We can't forget that HRI does have a license to
11 mine the entire Crown Point project and there are very few
12 restrictions on their proceeding through that project.

13 Separating Section 8 is going to harm the
14 intervenors and the general community in Crown Point and
15 Churchrock. The Board's discretion --

16 MR. BLOCH: What is -- tell me more precisely what
17 the harm would be from separating Section 8.

18 MS. MATANICH: Certainly. The intervenors will
19 suffer if you allow this case to hang in limbo after a
20 Section 8 hearing. They have mustered resources --

21 MR. BLOCH: Suppose we didn't leave it in limbo,
22 but we just started with Section 8.

23 MS. MATANICH: As I understand it, if we started
24 with Section 8, there wouldn't be any definite schedule for
25 addressing other issues.

1 MR. BLOCH: That wouldn't follow. There could be
2 a complete schedule for all the issues.

3 MS. MATANICH: In that case, we also believe
4 strongly that our schedule is the most efficient way to deal
5 with the issues because the factual bases underlying our
6 NEPA concerns and our health and safety concerns are the
7 same. So it would be most efficient for us to present our
8 witnesses and establish the facts and discuss all the issues
9 relevant to our concerns for all the mining sites at one
10 time.

11 MR. BLOCH: I take it if we were to do that, there
12 might be certain issues as to which the facts are not
13 completely developed at this time, where we would still have
14 to continue to wait until there was time in the project for
15 that to happen, wouldn't we?

16 MS. MATANICH: It doesn't appear to me that that
17 would be the case, Your Honor.

18 MR. BLOCH: You think all the facts would be
19 available to address the concerns that you would be raising.

20 MS. MATANICH: We do.

21 MR. BLOCH: And if the licensee demonstrated that,
22 in fact, they're going to get more detailed information to
23 respond, then at that point we would have to continue the
24 case to wait for that information.

25 MS. MATANICH: No. Any information that would be

1 submitted at this time to the staff would simply result in a
2 post hoc decision. The staff has considered HRI's
3 application, issued the license. The issue now before the
4 Board is whether that application was adequate to support
5 the license that was issued.

6 MR. BLOCH: Certainly.

7 MS. MATANICH: Certainly.

8 MR. BLOCH: I'll add a little bit of time for the
9 interruption.

10 MS. MATANICH: Okay. As I was saying, we believe
11 that the Board's discretion in scheduling is circumscribed
12 in several ways.

13 Case law before the NRC establishes that
14 litigation before the Board must be resolved expeditiously
15 and the Commission has urged presiding officers to use their
16 discretion in a manner that is appropriate to avoid delay.

17 Beyond convenience of the parties, there is a
18 broad public interest in a speedy resolution of litigation.
19 Moreover, the Board's discretion here is limited because we
20 believe HRI's proposal is unlawful.

21 The National Environmental Policy Act requires
22 that for a single project, the EIS must accompany the
23 decision-making process.

24 MR. BLOCH: It's clear that any EIS issues you
25 have will be able to address the current EIS. So even if we

1 were to bifurcate, you would still be free to address
2 questions about the overall environmental acceptability of
3 the project. I don't see any way around that.

4 Your Honor, as we understand it, HRI wishes to
5 separate Section 8 for its hearing. If that portion of the
6 license is separated for hearing and the Board approves
7 mining on Section 8, HRI would be free to develop Section 8,
8 begin mining, and there are very few restrictions on their
9 proceeding to Crown Point Unit 1 and Crown Point mine sites.

10 MR. BLOCH: Well, I made a comment that I'm sure
11 HRI will comment on later, which is that the EIS issues
12 relate to the EIS for this case and there is no way we could
13 bifurcate that. But we will have to find out from HRI later
14 if they disagree with that.

15 MS. MATANICH: May I have a moment to confer with
16 counsel?

17 Your Honor, since what it appears you have said is
18 that you agree that NEPA requires all the impacts to be
19 considered in this proceeding and the EIS must be reviewed
20 in entirety.

21 MR. BLOCH: I think the staff filing said the same
22 thing, too.

23 MS. MATANICH: Given that, we believe that under
24 this principal, none of the issues can be separated as HRI
25 has proposed.

1 There will be nothing left to separate from
2 Section 8. All of the cumulative impacts need to be
3 considered at this time. All the cost-benefit analyses need
4 to be evaluated. And if HRI proceeded, there would be
5 irretrievable commitment of resources if they began
6 construction before there was a complete review of the
7 license.

8 Therefore, we don't believe any of the issues can
9 be separated and, in fact, given our schedule, we could
10 complete review of all issues before HRI is even scheduled
11 to begin construction at Section 8.

12 In their response, in Mark Pelizza's affidavit, he
13 set forth that HRI does not anticipate beginning work at
14 Section 8 until the year 2000. With our schedule, we will
15 be complete at that time and this matter can be resolved,
16 which is important for the intervenors, so that we will not
17 lose the momentum we have gained and we will not be short of
18 resources during the hearing.

19 It's important for the community. As you've
20 heard, this is a community that is very concerned about the
21 future of this project and they need to know where it's
22 going now. The community needs to know what its economic
23 future is going to be, what its environmental future is
24 going to be, and then they will need time to heal.

25 To separate Section 8 just doesn't make sense

1 given our proposal. If you look at our areas of concern,
2 they don't differentiate among the project sites and it
3 would be much too onerous to split them up now.

4 We have a concern that if this project is delayed
5 too long, issues may be separated so that HRI can begin
6 Section 8 and if it proceeds on to Crown Point without
7 further hearing, that would become a licensing enforcement
8 issue that wouldn't be within the Board.

9 MR. BLOCH: I think that is enough time for you,
10 unless you have a time-sharing agreement with the other
11 intervenor.

12 MR. VENTURA: No.

13 MS. MATANICH: No, we don't.

14 MR. BLOCH: Mr. Ventura.

15 STATEMENT BY RODERICK VENTURA

16 MR. VENTURA: Thank you, Your Honor. Once again,
17 for the record, my name is Roderick Ventura, with DNE Legal
18 Services.

19 I am representing two individuals, Marilyn Morris
20 and Grace Sam, who are individuals and intervenors in this
21 action. Marilyn Morris and Grace Sam both live on a piece
22 of allotted land in Pinedale, New Mexico, which is about five
23 miles away from Section 8, and they have addressed their
24 concerns in the letter to the Commission, marked December
25 14.

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1 To get to the point of our general position, which
2 is what I should be talking about, we're here and we're
3 opposed to this materials license that was issued to HRI
4 from NRC. This is a little bit unusual in that this license
5 has already been issued. We are not discussing here an
6 application on a license.

7 Their concerns about this license is in regards to
8 whether there was adequate information and it was adequately
9 issued or it was properly issued.

10 According to law and according to the
11 regulations, they have to make sure that they show that
12 their equipment facilities procedures are adequate to
13 protect health and minimize danger to life and property.

14 As HRI mentioned before, when we do our written
15 presentations, we hope to show that and to point out the
16 sections in the record which reveal that that was not
17 properly done.

18 I want to address quickly -- we have a -- this
19 hearing is talking about a couple of things and one of the
20 things, one of the big things it seems like we're talking
21 about is bifurcation and it's been discussed by both parties
22 already, and it seems like it's going to be a relatively big
23 issue today.

24 We believe that this case should not be bifurcated
25 because we are worried that it is going to harm Grace Sam

1 and Marilyn Morris. We also believe, as ENDAUM and SRIC
2 believe, that under NEPA, it can't be done; but maybe more
3 importantly, I'd like to emphasize what kind of harm it may
4 cause to my clients, Marilyn Morris and Grace Sam.

5 As I understand the way HRI is defining
6 bifurcation in this case, they want to decide this materials
7 license, whether it was valid in regards to Section 8, first
8 off. It's unclear to me, and this is maybe where a lot of
9 our concern comes in, what is going to happen with Section
10 17, Unit 1 in Churchrock.

11 They are all part of the same license. We're
12 worried that if we bifurcate this issue, we are going to
13 lose the ability to challenge this license in its entirety
14 as it exists today; instead, taking it one little step at a
15 time.

16 Because we're not, in particular, challenging --

17 MR. BLOCH: I'm not sure I understand that.

18 Assuming we go ahead with some kind of scheduling where
19 eight is taken up first, where issues related to eight are
20 taken up first, I would not think it would be appropriate to
21 renounce jurisdiction while the license was still granted
22 with respect to the other parts.

23 So I don't see what you would lose.

24 MR. VENTURA: Thank you. That kind of leads into
25 the second part of what I am concerned about here and the

1 harm that we're concerned about, and that's going to be some
2 kind of delay. First of all, thank you for clarifying it.
3 It was not very clear whether we have extra hearings in
4 regards to those other sections or when they would occur.

5 MR. BLOCH: That I still can't assure you, but
6 what I think is appropriate, given that the license covers
7 all of it, is that I retain jurisdiction until all of it is
8 finished. That is either because they have withdrawn their
9 application or because we have decided all of it.

10 MR. VENTURA: Then I have a couple of other
11 concerns that kind of come out of that, as well.

12 One is the question of delay, and that has been
13 already addressed before. We have submitted a scheduling or
14 attempted to submit an adequate scheduling to you and tried
15 to break down the issues into pieces that we can deal with
16 adequately one at a time.

17 I know it's said by other parties in their briefs
18 that they're concerned that it's kind of long. It goes into
19 October '99, ours anyway, and it could go longer.

20 The worry is, if we bifurcate it, it will go even
21 longer than that. We're trying to get everything done as
22 efficiently and as fairly as possible. The concern is if we
23 bifurcate this, it will go on for even longer.

24 That's going to be hurting a lot of --

25 MR. BLOCH: Suppose what we did was just to hold

1 off the issues other than Section 8 and we began immediately
2 after we finish with Section 8 on the other issues? Would
3 that interfere with your plans?

4 Suppose we didn't hold it over, we still acted as
5 efficiently, but we just pressed ahead first on the Section
6 8 issues?

7 MR. VENTURA: The way I guess -- if we press ahead
8 on the Section 8 issues, say, for example, we accept the
9 scheduling as we have submitted it, would that mean then
10 that we would have to do the scheduling again for Section 17
11 if we continued on that way and for Unit 1 and Crown Point?

12 MR. BLOCH: No. I would just issue a schedule for
13 the whole thing after we were done today.

14 MR. VENTURA: I'm sure -- I don't think I'm very
15 clear now on what you're saying.

16 MR. BLOCH: I've never been exactly clear what
17 people mean by bifurcation. That's why I'm raising specific
18 questions about what jurisdiction I would retain and when
19 the scheduling would take place.

20 MR. VENTURA: I think that's kind of exactly what
21 my concern is, where is the --

22 MR. BLOCH: I know what SRIC and ENDAUM are
23 concerned about, which is that even if you just press ahead
24 first on Section 8 cases, you may not be looking at the
25 whole environmental balance.

1 MR. VENTURA: Yes.

2 MR. BLOCH: Assuming that we can somehow handle
3 that, there may be some issues that have to be handled first
4 because of Section 8.

5 MR. VENTURA: Okay. I'm not sure I completely
6 understand yet still. But I think it still doesn't do away
7 with another concern that we have, that given the way that
8 we have analyzed these issues and the way we want to analyze
9 these issues, some of these issues cannot be separated by
10 geography or just cannot be done that way.

11 Others, it doesn't seem very efficient to separate
12 them by geography. It would be better to take them by parts
13 of the record or by factual issues or by the way experts
14 will see them. Just to do it by geography, it seems almost
15 repetitive and it doesn't make sense given the entirety of
16 the materials license.

17 MR. BLOCH: Okay. You have about 15 seconds more.

18 MR. VENTURA: Oh, boy.

19 MR. BLOCH: Maybe a half a minute, if you take the
20 interruptions into account.

21 MR. VENTURA: I wanted to address real quikcly the
22 other things that you mentioned in your agenda, formal
23 requirements for filing. I'll take them two at a time and
24 see if I can hurry up about it.

25 You're asking should the first section of each

1 written filing be required to demonstrate a genuine issue of
2 fact and also regarding length limitations. The concern we
3 have regarding both of those is we're not sure it would lead
4 to fair and efficient proceeding of this case.

5 If you want to explain that -- or if it gets
6 explained today a little bit more as to what we're meaning
7 by that, and you tried to explain length limitation a little
8 before, also, as well, our concern is that it won't make
9 things more efficient. It will just cut short thorough
10 discussion of the issues.

11 And as we know, the record is pretty darn long and
12 it needs to be discussed fully and we hope that we will get
13 the full opportunity.

14 MR. BLOCH: What I'm looking for is a limited
15 number of pages I can look at and understand everything
16 you're saying and then follow it through to the attachments
17 to find out whether you substantiated what you've said.

18 It seems to me it is easier to analyze a limited
19 number of pages, where you've tightly set forth what your
20 arguments are, than a ramblign presentation. And I would
21 not plan on limmiting the attachments, so that you could
22 give subtleties and other things of that sort.

23 MR. VENTURA: Right. And I think the problem is
24 that I'm assuming that we don't want to write rambling
25 written prsentations or rambling arguments and we don't want

1 to put something together that's not concise and not
2 complete, and I think that's essentially what we need to do.

3 So I am not exactly sure why we need to go through
4 those formalities.

5 MR. BLOCH: So even without the limitations, I
6 would get concise presentations.

7 MR. VENTURA: We would hope.

8 MR. BLOCH: Okay. Later, I would like the
9 licensee to comment, during some of its time, on what its
10 needs are for the conclusion of the case prior to the
11 constructoin -- to the beginning of its work on Section 8,
12 if there is a need for that. But I think it's appropriate
13 to wait for your time.

14 Staff has time now.

15 STATEMENT BY JOHN HULL

16 MR. HULL: Thank you, Your Honor. Once again, for
17 the record, I'm John Hull, representing the NRC staff. Your
18 Honor, you had raised a question about whether the Board
19 would retain jurisdiction. I certainly think the Board
20 would retain jurisdiction even if the proceeding was
21 bifurcated.

22 If there were indications to the contrary in the
23 Auguts 31 filing the staff made, then that was
24 misinterpreted.

25 I was going to wait until later to talk about

1 bifurcation, but I'll just address one point now, because I
2 think it does relate to this jurisdictional issue.

3 Bifurcation is simply a procedural device to try
4 to promote the efficient handling of this case. I don't see
5 -- again, I don't see bifurcation as affecting the Board's
6 retaining jurisdiction over the entire project.

7 MR. BLOCH: Can we bifurcate the environmental
8 issues? Is there a way to do that?

9 MR. HULL: Your Honor, one of the statements was
10 made this morning that I would take issue with is that the
11 idea that if we just focused on Section 8, that there would
12 be a whole bunch of other issue in abeyance that would not
13 be considered.

14 If you look at the analysis of issue rightness
15 that was attached to Mark Pelizza's September 9 affidavit,
16 there are certainly a great number of issues which can be
17 addressed in the proposed phase one of this proceeding.

18 It is not accurate to imply that there are only a
19 certain limited number of issues only related to Section 8
20 which would be handled. There are a number of issues which
21 would be of generic application across all three sites and
22 those issues could certainly be adjudicated in a proposed
23 phase one of the proceeding.

24 MR. BLOCH: If we were to accept the HRI
25 suggestion in its attachment, is there, in the EIS, a

1 separate conclusion reached concerning just Section 8?

2 MR. HULL: I think the way the EIS was set up, it
3 evaluated Churchrock, the Churchrock property as a whole.
4 So that would have encompassed both Sections 8 and 17. Of
5 course, the EIS was written at a time before this
6 bifurcation proposal had been made.

7 MR. BLOCH: But are there appropriate
8 environmental findings with respect to just Section 8?

9 MR. HULL: I'm not quite sure what you mean by
10 environmental findings.

11 MR. BLOCH: I believe NEPA requires a conclusion
12 as to a project and if we're going to say this project is
13 Section 8, we may be able to work out some way of inferring
14 that Section 8 by itself is acceptable. I'm not certain
15 that the EIS said that.

16 MR. HULL: No, the EIS would not have broken out
17 Section 8 apart from Section 17 at Churchrock. At the time,
18 the proposal was to consider both Sections 8 and 17 as a
19 whole.

20 MR. BLOCH: Now, if we were to just consider
21 Churchrock separately, is there a conclusion in the EIS that
22 says that the environmental factors involved in Churchrock
23 alone, without looking at Crown Point, is appropriate?

24 MR. HULL: I believe there is, Your Honor, but I
25 would have to look at the EIS to be sure about that.

1 MR. BLOCH: Okay. We may want to try to check
2 that before we reach a conclusion as to what we can separate
3 out. Continue.

4 MR. HULL: Let me get back to more of the
5 introductory remarks. The staff's decision to issue a
6 license to HRI in January of 1998 was the culmination of
7 several years of effort. I believe the initial application
8 had been submitted by HRI back in 1988. The staff went
9 through a long process whereby a draft environmental impact
10 statement was prepared, comments were received on the draft
11 EIS, and then a final environmental impact statement was
12 issued in February of 1997.

13 The staff then addressed the health and safety
14 issues, apart from the NEPA issues, and, in December of
15 1997, issued its safety evaluation report.

16 In addition to the environmental impact statement
17 and the safety evaluation report, the license issued to HRI
18 in January of this year has a number of very detailed
19 conditions under which HRI must operate, which the staff
20 believes, if those conditions are fulfilled, the ISL mining
21 can be done in a safe and environmentally acceptable manner.

22 At least up until this point, the focus seems to
23 have been only on the environmental impact statement. We've
24 seen very little, if any discussion about the safety
25 evaluation report findings and very little discussion about

1 the conditions in the license that was issued to HRI. So I
2 would certainly hope that those issues would not be ignored.

3 As to the format requirements for filings --

4 MR. BLOCH: I understand those issues could be
5 more readily scheduled. There would be no reason to not be
6 able to schedule SER issues, if there are fewer SER issues,
7 or the conditions. So we are relating only to the other
8 project.

9 Off the record.

10 [Discussion off the record.]

11 MR. BLOCH: Please continue, for a reasonable
12 time.

13 MR. HULL: Your Honor, during the break here, I
14 was able to briefly glance at the final environmental impact
15 statement, at least in Section 2.2, Churchrock, the
16 Churchrock site is discussed separately from the Unit 1 and
17 Crown Point site.

18 So -- and I'm sure there are other places in the
19 EIS where the different sites are broken up in that way.

20 MR. BLOCH: I was more concerned about whether the
21 conclusion was reached with respect to Churchrock only.

22 MR. HULL: Again, I haven't had time to look at
23 the EIS recently, but I am thinking there definitely is a
24 finding in there regarding the environmental impacts of the
25 Churchrock site; that conclusions were reached.

1 MR. BLOCH: A slightly different question. Is
2 there any indication in the environmental report that there
3 is some kind of a combined or cumulative effect between
4 Churchrock and Crown Point?

5 MR. HULL: Again, Your Honor, I'd have to read the
6 EIS again. I haven't looked at it in a while.

7 MR. BLOCH: I was somewhat impressed by the site
8 visit about how far apart they are.

9 MR. HULL: Your Honor, just briefly on -- looking
10 at your agenda, Roman numeral II-B, the format requirements
11 for filings. I think that the parties should be -- have the
12 latitude -- be given the latitude to state their positions
13 in the written presentations in a manner in which they see
14 fit.

15 I was encouraged by your indication today that you
16 were considering putting some sort of page limitation on the
17 written presentations. I think that is a way to promote the
18 efficient resolutoin of the issues that we have to deal
19 with.

20 I'm sorry, one other thing about the proposed
21 schedules. The staff would object to the proposals insofar
22 as they would tend to split this proceeding into as many as
23 eight or ten different parts, the effect of which would be
24 to require continuous litigation up utnil the year 2000.
25 That runs directly contrary to the purposes of subpart L,

1 under which we're operating, which, in materials cases, the
2 idea was that you would not have the type of -- trial type
3 adjudications that are available for when power reactors are
4 being addressed, for example.

5 So I see their proposals, as far as --

6 MR. BLOCH: Well, they haven't scheduled trial
7 time and I assure you that there won't be oral argument
8 unless I find it necessary on the record. But they have
9 argued that the case is complex enough, that even though
10 it's not a reactor, that they need a lot of time.

11 What do you see as the major disadvantages of
12 allowing at least some of that latitude that they're asking
13 for?

14 MR. HULL: I would just foresee a situation where
15 if parties disagreed with your findings, say, on one part of
16 the -- one of the germane concerns, that appeals would then
17 be taken to the Commission. At the same time, we would be
18 required to submit filings to you regarding germane concern
19 number two and it would just -- the litigation would just
20 become quite onerous and continuous and, again, it would
21 just run contrary to what the Commission envisioned for
22 these --

23 MR. BLOCH: How would you feel about accepting
24 their suggestion about the two groupings as opposed to the
25 more finer division they have suggested?

1 MR. HULL: You'll have to remind me about what
2 your two groupings were.

3 MR. BLOCH: They are their groupings. ENDAUM and
4 SRIC had grouped their issues into two subjects. If they
5 have their document in front of them, they can help me.

6 In the text, you also had names for these groups.

7 MS. CURRAN: Group one and group two I think is as
8 fancy as we got. We described what the groupings were based
9 on.

10 MR. BLOCH: The description is what?

11 MR. HULL: Your Honor, I was just handed the two
12 groups that they had proposed and that would not allay my
13 concerns.

14 If you look at their filing, they're calling for
15 written presentations regarding -- just looking at group one
16 --

17 MR. BLOCH: Just for the record, we're referring
18 to page 32 of ENDAUM and SRIC's schedule and conference
19 brief of September 2.

20 MR. HULL: If you just look at group one, Your
21 Honor, there are four different written presentations that
22 would be due running from October 30 this year --

23 MR. BLOCH: I'm suggesting that we have only two,
24 one for the first group and one for the second group. I
25 haven't yet said what the timing would be. And I haven't

1 said I'm doing it. I'm just asking for your comment about
2 it.

3 MR. HULL: Well, my comment, Your Honor, would be
4 that, at least at this point, the staff would adhere to the
5 position it stated in its September 9 filing, that there
6 should be just one written presentation for phase one of
7 this proceeding, which, again, if the bifurcation request is
8 granted, it would still encompass a number of issues, but
9 issues that related only to mining at Unit 1 and/or mining
10 at Crown Point would not be considered.

11 MR. BLOCH: I'm thinking about the importance of
12 when we conclude the case as being more important than when
13 the filings occur and I'm thinking that if I have some
14 things to work on while people are continuing to work on
15 other things, that we're going to be more efficiently
16 concluding the proceeding than if we require all the filings
17 and I have to wait until that date before I begin working.

18 MR. HULL: I still see it as just promoting
19 piecemeal litigation. That would not help the efficient
20 resolution of this case.

21 MR. BLOCH: Thank you. Would licensee like to
22 begin its 15 minutes? Excuse me, sir. Would licensee like
23 to begin its 15 minutes now on Roman Numeral III?

24 STATEMENT BY ANTHONY THOMPSON

25 MR. THOMPSON: Your Honor, we believe that you

1 have the authority to bifurcate the proceeding; that
2 bifurcation makes perfectly good sense with respect to
3 allocating resources.

4 MR. BLOCH: Could you explain in more detail what
5 you mean by bifurcation? Does that mean that I give up
6 jurisdiction after the first --

7 MR. THOMPSON: No, absolutely not.

8 MR. BLOCH: Okay.

9 MR. THOMPSON: We assume that the Board would
10 retain jurisdiction and would set aside particularly the
11 site-specific issues that related to Crown Point or Unit 1,
12 particularly where those are not relevant and may never be
13 relevant, there is no point in litigating those issues at
14 this point in time.

15 So we would assume you would retain jurisdiction.

16 MR. BLOCH: Okay.

17 MR. THOMPSON: And we've said that from the
18 beginning, as far as I know.

19 We would agree with the staff that, in effect, the
20 proposal from ENDAUM and SRIC is not bifurcating. It's -- I
21 don't know what the word is. It's breaking this hearing
22 down into eight or ten different separate proceedings. So I
23 don't know why bifurcation poses a problem for them because
24 it's certainly consistent with what they proposed.

25 MR. BLOCH: If we were to work with their groups,

1 given that they may have some argument that they should be
2 able to control the order of their presentation, is there a
3 way to restrict their groupings, their filings to serve your
4 purposes in bifurcating?

5 What would we be prohibiting them from filing
6 early in their group one, for example?

7 MR. THOMPSON: Well, I am better able to address
8 the issues that we think should be addressed in a Section 8
9 hearing, in looking at what we have proposed. We would
10 stand by what we have proposed as issues that are relevant
11 to Section 8 and issues that are relevant to all of the
12 various facilities.

13 Many of them are purely technical issues,
14 questions about pump tests and things of that nature. They
15 are very straightforward issues, many of them, but they are
16 applicable to all of the sites. So we would see that
17 addressing those issues.

18 Once you satisfy those issues, then the question
19 about what you litigate with respect to Section 17 and Unit
20 1 and Crown Point is much more limited.

21 Again, I come back to the license and the EIS and
22 the SER clearly recognize that there are --

23 MR. BLOCH: Mr. Thompson, I understand what you
24 said. My problem is I do want to give the parties some
25 latitude as to how they organize their case. If we were able

1 to start with what they proposed and show what must be
2 excluded, I think it would be a little easier for me to
3 understand the consequence of bifurcation on their
4 arguments.

5 MR. THOMPSON: I can't do that for you right now.

6 MR. BLOCH: Would it be possible? Would it take a
7 long time if we were to reach that?

8 MR. THOMPSON: I think we wouldn't be able to do
9 that right here today.

10 MR. BLOCH: I'm not saying I've decided to do
11 that, but it's something that occurs to me, that there is --
12 you have an interest in delaying the consideration of
13 certain issues, but it may be I can go back and decide which
14 issues could be excluded from their filings and do it in
15 their order.

16 MR. THOMPSON: I guess that we feel that there is
17 a natural order to the proceeding, which is laid out in the
18 license, and the EIS basically states that there will be no
19 cumulative impacts, no significant cumulative impacts, if
20 the license conditions are satisfied.

21 MR. BLOCH: And the citation on that, about no
22 significant cumulative impacts?

23 MR. THOMPSON: It's page 4-127, 4.13.12. It
24 references environmental justice there, but essentially said
25 there is no environmental justice problem because if the

1 license conditions are met --

2 MR. BLOCH: But I wanted the support for what you
3 said before, not environmental justice.

4 MR. THOMPSON: Let me just finish, Your Honor.
5 What it says is there is not an environmental justice
6 problem if the -- because there will be no cumulative
7 impacts if the license conditions are satisfied.

8 As it discusses the various potential cumulative
9 impacts, it concludes in each case that cumulative impacts
10 will not be significant and where there are specific license
11 conditions such as with respect to moving the Crown Point
12 water wells, those are addressed.

13 And the restoration, for example, with respect to
14 ground water impacts, restoration is a mitigating factor and
15 reduces the potential impact.

16 MR. BLOCH: So it follows that if there are no
17 significant impacts, there can be no significant cumulative
18 impacts.

19 MR. THOMPSON: That's right. Also, if you can't
20 demonstrate that there are any significant impacts
21 associated with -- yes -- with Section 8, for example, then
22 it's going to be much harder to show that there are
23 cumulative impacts, certainly for Unit 1 and Crown Point.
24 It's pretty hard to show that there is any particular
25 relationship between them given the distance between them.

1 The only issue there that really ties the two
2 together is the processing facility and we said that that is
3 an issue that is right to be considered at the time you
4 consider Section 8 and the only other -- and the only issue
5 for transportation is the transportation from Churchrock to
6 Crown Point for processing. Transportation is not a problem
7 with respect to Unit 1 and Crown Point.

8 Once the yellow cake is transferred to a licensed
9 carrier, it is no longer a transportation issue subject to
10 this proceeding. It's a different licensee.

11 MR. BLOCH: Continue.

12 MR. THOMPSON: Our view is that if you follow the
13 license, there is a natural progression to the issues. There
14 has been an EIS for the entire project and the fact that you
15 then move forward in phases is, I believe, inherent in the
16 license and in the entire package of materials, the SER and
17 the EIS.

18 Each site is considered separately in the EIS.

19 MR. BLOCH: While you're breaking -- I do permit
20 the press to take pictures when they want, but if a party
21 ever feels that it's in the way of the proceeding, they can
22 let me know that.

23 MR. THOMPSON: Our view is that the Commission's
24 Part 51 preamble points out that an EIS does not have to
25 consider or find every single potential issue or even if

1 there are some impacts, that doesn't negate the value of the
2 EIS and that the EIS has to be tailored to the circumstances
3 in question.

4 There is -- NEPA was not meant to require detailed
5 discussion of environmental effects of alternatives put
6 forward in comments when these effects cannot readily be
7 ascertained; alternatives are deemed only remote
8 possibilities in the future. It doesn't -- you don't have
9 to find every single potential problem and the EIS here is
10 dealing with a low risk, well understood mining process,
11 regulated by the NRC.

12 In essence, many of the challenges raised by
13 ENDAUM and SRIC are to the NRC licensing process itself that
14 has been going on with either -- at NRC or in agreement
15 states with respect to these facilities for a long time.

16 MR. BLOCH: How does their argument come to that?
17 I don't understand.

18 MR. THOMPSON: They're questoining the way in
19 which the staff has said you can do this and that's adequate
20 to show -- we have adequate information to issue a license,
21 you go forward when you're beginning to go and look at
22 developing your well field, that's when you get the
23 different information, but you can't inject the Lexsivian
24 until we're satisfied that you've provided us with the
25 adequate information.

1 That's the way the staff has licensed these and
2 that's the way the agreement states have licensed them.

3 They're challenging that, in essence. That is
4 specifically being challenged, if you will, here in this
5 group one, the second issue there that says the
6 performance-based licensing and related concerns.

7 They're essentially challenging the fact that NRC
8 says you can do this when you get to a certain point in the
9 process, then you come and bring us the information and if
10 it satisfies us, then we go forward.

11 MR. BLOCH: I have been thinking about this
12 problem. If I were to go for a driver's license and I was
13 told that I'm giving you the license, but before you drive,
14 you're going to have to take a test, and they stamped it
15 issued, I wouldn't consider that I'd have a driver's
16 license.

17 It seems to me that we're using words in a funny
18 way here. You can do only stuff in Section 8 right now.

19 MR. THOMPSON: That's correct.

20 MR. BLOCH: And therefore, in a sense, although
21 they say they issued a license for the other section, I'm
22 not sure they really have issued a license for the other
23 section.

24 I'm not sure that it matters either, but waht I
25 hear the intervenors syaing is that what they've done

1 already, even though it doesn't actually license anything in
2 Crown Point, what they've done already doesn't have enough
3 foundation. That's how I hear what they're saying.

4 I don't know that they can show that, but I think
5 that's what their argument is.

6 MR. THOMPSON: I agree with that and I agree with
7 what you just said. That's why I keep coming back to the
8 phasing of the license. We can only go to Section 8 right
9 now. We can only go to Section 8 right now because we have
10 an aquifer exemption for Section 8 and a UIC permit.

11 We can't go to Section 17, even if we had
12 concluded this hearing right now and said, okay, what you've
13 done, NRC and staff, is okay for Section 17, we can't go to
14 Section 17 because we'd have to first do the showing for
15 bonding purposes of restoration on a scale that satisfies
16 NRC as to what the right bonding number is for restoration
17 of well fields.

18 We have to get a UIC permit and an aquifer
19 exemption.

20 MR. BLOCH: Now, if we finished the issues for
21 eight, suppose we finished all those issues.

22 MR. THOMPSON: Yes.

23 MR. BLOCH: And let's assume that you still have
24 the license at that point.

25 MR. THOMPSON: Right.

1 MR. BLOCH: Because if you don't have it, we're
2 apparently not going anywhere.

3 MR. THOMPSON: Right.

4 MR. BLOCH: But assuming that you have the license
5 for Section 8, would we stop the hearing at that point or
6 would we continue with the other part of the license?

7 MR. THOMPSON: I would assume that we would stop
8 the hearing at that point because there is no point in
9 assessing the cumulative impacts of Unit 1 and Crown Point
10 other than the processing part if they're ten years down the
11 road. And a lot of the -- unless perhaps the finding was
12 that the level of information submitted and upon which the
13 staff relied is adequate, in which case it seems to me that
14 disposes of the case.

15 MR. BLOCH: So if they were only challenging the
16 remainder of the license based on the staff's current
17 findings, would there be any problem proceeding with that
18 argument?

19 MR. THOMPSON: Well, there are issues that have
20 site-specific components to it that I think would be a
21 problem to go to. Those issues we have tried to identify.
22 Issues that are common to all of the sites, that would
23 affect Crown Point or Unit 1, pump tests.

24 MR. BLOCH: Obviously we can't try the issues that
25 depend on information you haven't collected yet and I don't

1 see any way that we could require that you conduct your
2 project so that we can have our licensing proceeding the way
3 we want it. It doesn't seem to me that makes much sense.

4 MR. THOMPSON: That's essentially what I'm saying.

5 MR. BLOCH: So if they can complete litigation
6 about other issues without going into the questions that you
7 still don't have information on, then you don't object to
8 that.

9 MR. THOMPSON: I think that's pretty much what
10 we've laid out. I believe that our table essentially
11 reflects our belief that that's correct.

12 We understand that if you're challenging the
13 weight --

14 MR. BLOCH: Hold on a second. Mark wants to say
15 something?

16 MR. THOMPSON: Essentially, we recognize and we
17 have listed in our attachment a number of issues that are
18 clearly relevant to all of the sites. For example, let's
19 just take pump tests. If you decide that based on the
20 information in the record now or as submitted that pump
21 tests, as discussed in the relevant documents, are adequate
22 to do what they're supposed to do and when they're supposed
23 to be done, that issue then, it seems to me, is decided for
24 Section 17, for Unit 1, and for Crown Point.

25 MR. BLOCH: So some of the issues that are raised

1 with respect to Section 8 actually will have collateral
2 estoppel effect.

3 MR. THOMPSON: That is exactly our point. And it
4 would narrow -- it would pretty much narrow the issues that
5 we'd be retianing for the site-specific factors and would
6 really resolve a significant portion of the case.

7 MR. BLOCH: Do you have anything further on this
8 argument?

9 MR. THOMPSON: I would just say that we object, as
10 the NRC staff has, to the proposed outline of the litigation
11 schedule.

12 MR. BLOCH: I wanted to hear what the harm to you
13 was in terms of the length of that schedule.

14 MR. THOMPSON: I think that their goal, to be
15 candid, is to drag this out as long as they can drag it out.

16 MR. BLOCH: I'm not interested in their goal. I
17 want to know how it's going to hurt you.

18 MR. THOMPSON: It's going to take time and
19 resources and it's going to have an adverse impact on the
20 company's ability to attract other investors, because this
21 thing is hanging out there. They've already demonstrated
22 that they will file lots of paper and this thing is going to
23 be ten feet tall if we let them drag this thing out to 2000.

24 It impacts us. We don't know what the value of
25 this license is. The market doesn't know what the value of

1 the license is in terms of attracting additional capital.

2 As Mr. Clement's affidavit early in the proceeding
3 indicated, when you get your license, then you have to
4 follow other steps. You have to go out and get data, you
5 have to raise money.

6 MR. BLOCH: Hypothetically, though, assuming that
7 they file in six months or seven months, you haven't had to
8 do any substantial legal work between now and the time they
9 file. I assume that if they filed a weighty brief, which
10 has important substantive problems, it's going to be
11 expensive to answer it.

12 MR. THOMPSON: Yes.

13 MR. BLOCH: But if it's not weighty, I don't know
14 if the extra months is going to cost you a lot of extra
15 money.

16 MR. THOMPSON: I'm not sure I understand what
17 time-frame you're talking.

18 MR. BLOCH: Isn't it really the quality of that
19 brief that affects your costs much more than the amount of
20 time it takes before they file it?

21 MR. THOMPSON: Well, I would say both. I mean, I
22 would say both. I mean, we have to be ready. We have to be
23 looking at what we think is in the record and bring things
24 together. But the way I see them having the schedule,
25 they're scheduling bifurcating this thing into eight or ten

1 different proceedings that go out for two years.

2 MR. BLOCH: I'm not willing to have so many
3 different filing dates. I might be willing to have more
4 than one. But there is another question, which is how many
5 months we allow them to work on what they're doing. We
6 still haven't heard the specific reasons it will take that
7 much time for them, but --

8 MR. THOMPSON: I just thing that -- you know, they
9 filed I don't know how many hundreds of pages addressing
10 every issue that they've got on their list, last August.
11 And we're not talking about bringing expert witnesses to new
12 hearings.

13 All we're talking about is attaching affidavits or
14 other scientific studies or other information in the record,
15 put in the record to argue their point. It seems to me
16 there is absolutely no basis to give them six months to file
17 a pleading. I think the NRC staff's proposal makes sense.

18 MR. BLOCH: Thank you. Are you going to continue?

19 MS. MATANICH: Yes.

20 MR. BLOCH: Please.

21 STATEMENT BY JOHANNA MATANICH

22 MS. MATANICH: Your Honor, first, I want to
23 clarify one point. I was relieved to hear you say that you
24 intend to have all of the issues set forth in a definite
25 schedule after today, and that would -- I was happy to hear

1 that because we've had a lot of lingering concerns here that
2 if HRI's proposal is accepted, we would do Section 8, and
3 then we would wait around until whenever HRI is ready to
4 start mining to do other sections.

5 MR. BLOCH: Now, we developed one refinement to
6 that in my discussion with HRI, and that is that's provided
7 that what you're going to raise are issues that are able to
8 be addressed with the information already available.

9 If you're going to raise questions that are going
10 to be answered by the pump tests and other data collection
11 that have to be completed before HRI is permitted to start
12 drilling, they don't have that data and I don't see any
13 reason that I could require them to get it now rather than
14 waiting for their operational requirements.

15 MS. MATANICH: Then, Your Honor, our position
16 would be that their proposal is complete with that --

17 MR. BLOCH: Speak more into the mic, thank you.

18 MS. MATANICH: That their proposal is completely
19 unacceptable. Leaving any issues after this hearing in
20 limbo is going to violate your duties under the Commissoin
21 regulations and under NEPA, under the AEA and ATA.

22 MR. BLOCH: Which regulation are you referring to?
23 I'll tell you that I'm used to having proceedings relating
24 to nuclear power plants where they divide construction
25 permits from operating permits and we don't require people

1 to design the entire plant before they're allowed to start
2 building a nuclear power plant. They don't have to have the
3 data on each system.

4 Why am I going to require HRI to have all the data
5 on the details of their drilling before they start, when
6 that's not the natural way of doing it operations?

7 MS. MATANICH: Well, the actual way in power
8 plants is much different than the natural way in the
9 material license. There are two licenses required for a
10 power plant, a construction permit and an operating permit.

11 MR. BLOCH: Under the staff's requirements,
12 though, there are actually two stages to getting a full
13 license in this case. Then you have to show me that the
14 staff's conditions are illegal. But the staff's conditions
15 require that there will be further information collected at
16 a later date and if that condition is legal, then I have no
17 reason to require that that information be furnished now.

18 MS. MATANICH: We haven't gotten into the
19 litigation of whether that requirement is legal.

20 MR. BLOCH: Obviously, litigating whether that
21 requirement is legal can be done now, because that doesn't
22 require that the other information be collected.

23 MS. MATANICH: Yes. We believe that once we
24 litigate it, that it will be clear that this case cannot be
25 delayed for additional information to be collected.

1 Section 8 can't be brought forward in the
2 scheduling primarily because of the National Environmental
3 Policy Act. NEPA requires that for a single project, you
4 need comprehensive review.

5 MR. BLOCH: What's the test of whether it's a
6 single project under the -- what's the harm of treating
7 something as two projects under the precedent?

8 MS. MATANICH: When you have a project and a plan
9 for developing a certain area, and, here, HRI has made it
10 definitely clear that they intend to develop or they have
11 plans for developing, by investing a lot of resources in
12 their license, in their application and in their acquiring
13 the properties, Section 8, Unit 1, Crown Point, and Section
14 17. That is a single project.

15 Once you have that project --

16 MR. BLOCH: But does the precedent establish that
17 just when something is thought of as a single project, it
18 must have an environmental statement, regardless of whether
19 there are environmental overlaps among parts of the project?
20 Is that what the precedent supports? If it does, I want to
21 know which precedent, because I'm going to look at that one
22 very carefully.

23 MS. MATANICH: I suggest that you look at Cady v.
24 Morton.

25 MR. BLOCH: Katie, K-a-t-i-e?

1 MS. MATANICH: C-a-d-y.

2 MR. BLOCH: C-a-d-y v. Morton. And is that the
3 only case that supports that proposition?

4 MS. MATANICH: No, Your Honor. I believe Kleppe
5 v. Sierra Club is also supportive. That's K-l-e-p-p-e.

6 MR. BLOCH: Would you like to tell me a little bit
7 about the holding in those cases, so that I will know that
8 at least you understand the relationship between the facts
9 of those cases and what you've just told me?

10 MS. MATANICH: Certainly. Actually, I don't have
11 a copy of Cady here before me.

12 MR. HULL: Your Honor, this is covered in the
13 briefs.

14 MR. BLOCH: As to what the holding of that case is
15 and why --

16 MR. HULL: I konw they cited Cady v. Morton in
17 their --

18 MR. BLOCH: I want to have a discussion of how it
19 controls here. I know they're citing a lot of cases, but I
20 didn't see how they controlled.

21 MS. MATANICH: While we're looking it up, let me
22 tell you what I believe a policy behind requiring a
23 comprehensive review of a single project is.

24 It's the very foundation of NEPA that you can't
25 take a piecemeal look at a project, because it will just

1 lead to the irretrievable commitment of resources.

2 MR. BLOCH: I agree that if we call it a project,
3 you've got to look at it in one piece.

4 MS. MATANICH: Right.

5 MR. BLOCH: What is the precedent as to what you
6 have to call a project as opposed to allowing it to be two
7 projects?

8 MS. MATANICH: Once the agency has formulated --

9 MR. BLOCH: One second.

10 [Discussion off the record.]

11 MR. BLOCH: I'm sorry. If you could, I'm just
12 wanting some help in knowing the relationship between the
13 holdings and what I must consider to be a single project for
14 this case.

15 MS. MATANICH: Okay. What I would like to direct
16 you to actually is the CEQ regulations on NEPA;
17 specifically, 40 CFR 1508.25, which defines the scope that
18 an EIS must encompass.

19 MR. BLOCH: And it says what?

20 MS. MATANICH: It says the scope consists of the
21 range of actions, alternatives and impacts to be considered
22 in the environmental impact statement. The scope of a
23 statement depends on its relationship to other actions. To
24 determine scope, agencies need to consider three types of
25 actions, three types of alternatives, and three types of

1 impacts.

2 Actoins other than unconnected single actions
3 must be considered. There may be connected actoins, which
4 means they are closely related and, therefore, should be
5 discussed in the same impact statement. Those actions are
6 connected if they automatically trigger other actions which
7 may require EIS, cannot or will not proceed unless other
8 actions are taken previously or simultaneously.

9 They are connected if they are interdependent
10 parts of a larger action and depend on the larger action for
11 their justification.

12 Finally, if they are cumulative actoins, which,
13 when viewed with other proposed actoins, have cumulative
14 significant impacts, they should be discussed in the same
15 impact statement.

16 And finally -- I got to the bottom of the page and
17 thought I was through. There is another one at the top.
18 All similar actions which one viewed with other reasonably
19 foreseeable or proposed agency actoins have similarities
20 that provdie a basis for evaluating their environment
21 consequences together, such as common timing or geogrphay.

22 Here, I think it's clear that Crown Point and Unit
23 1 are forseable actions for HRI to take and they must be
24 considered together wth Section 8 and the processing plant.

25 MR. BLOCH: Okay. That was clear to me until you

1 said common timing and geography. We're not having the same
2 timing under the present proposal and the geography is
3 certainly separate.

4 We'll have to look at the whole sectoin. It
5 occurs to me, as I heard that phrase, it mitigates the rest
6 of what yo've read.

7 MS. MATANICH: Those are examples of connecting
8 factors and what makes other actoins forseable. Certainly,
9 if there was -- given the fact that there are large uranium
10 deposits in norhtern New Mexico, it might be reasonable for
11 the NRC to do a regional management plan for uranium because
12 of the similar geography.

13 MR. BLOCH: I guess your argument is that, in
14 fact, the NRC should be planning now for all possible
15 projects in this region.

16 MS. MATANICH: Well --

17 MR. BLOCH: And that to do so actually is a
18 violatoin of the CEQ regulations, right?

19 MS. MATANICH: Actually, I think it's a practice
20 commonly adopted by other agencies, such as the Forest
21 Service will do a reasonable plan for the management of one
22 area and then do specific sales.

23 MR. BLOCH: Is that the conclusoin of your
24 argument on this?

25 MS. MATANICH: Actually, if I could have some more

1 time, I would appreciate it.

2 Beyond looking at comprehensive review of single
3 projects, I want to make the point that it's clear we're
4 still in the middle of the agency decision-making process.
5 The staff did its job with the EIS, but the NEPA analysis is
6 still incomplete. There has not been a record of decision
7 created by the agency.

8 The record of decision is the document that
9 evaluates the alternatives and explains why most
10 environmentally protective alternatives have been rejected
11 and the basis for the decision on the alternatives.

12 MR. BLOCH: Is that one of the area concerns
13 already admitted?

14 MS. MATANICH: No, but I believe the staff has
15 attempted to argue against our NEPA claim by saying the
16 decision-making process is complete.

17 MR. BLOCH: You're saying the EIS is not complete
18 because it's missing a fundamental component.

19 MS. MATANICH: No. I'm saying the NEPA process is
20 more than the EIS and it's, therefore, incomplete.

21 MR. BLOCH: Are you sure that the complete record
22 doesn't include things like this proceeding? Is it
23 something separate that they have to do?

24 MS. MATANICH: Actually, I believe it includes
25 this proceeding. Once this proceeding is complete, your

1 findings or the staff may make separate findings to close
2 the record.

3 MR. BLOCH: They don't make separate findings on
4 the facts before me.

5 MS. MATANICH: No. But what a record of decision
6 is, it's in 10 CFR --

7 MR. BLOCH: But that's not a circular. If we
8 can't have finished the agency record until this proceeding
9 is over, then there is nothing to contend about that, is
10 there?

11 MS. MATANICH: What I just want to make clear is
12 that the proceeding is still going on. The record will be
13 -- it's a technical term as a single document, the record of
14 decision, ROD, and that closes the NEPA process.

15 MR. BLOCH: Does that conclude your argument on
16 this point?

17 MS. MATANICH: Can I have some more time, Your
18 Honor?

19 MR. BLOCH: How much more time would you like?

20 MS. MATANICH: Just three minutes.

21 MR. BLOCH: Let's stick to three minutes, if we
22 can. I did interrupt a lot, so it's hard to know what the
23 fair amount is.

24 MS. MATANICH: I appreciate it. I'd like to
25 highlight what the impacts are going to be and what the harm

1 is to the parties under NEPA here. Mr. Thompson said
2 earlier that there is no relationship between Churchrock
3 Section 8 and the Crown Point site, just because they are
4 geographically distant.

5 In fact, there is quite a degree of relationship
6 between the sites because they have been proposed as the
7 same project.

8 Once Section 8 and the processing plant begins,
9 there is an irretrievable commitment of resources there that
10 will only serve to hamper the Board from making reasonable
11 decisions on the other sites.

12 Section 8 goes through -- it's easy to believe
13 that there is no reason to stop the other sites from going
14 through. Moreover --

15 MR. BLOCH: I did read those precedents and I
16 assure you it doesn't describe my mental functioning, but --

17 MS. MATANICH: I understand, but the threat is
18 there and if this case delays for an extensive amount of
19 time, we may not be before you, Your Honor, the next time
20 we're here.

21 NEPA requires alternative consideration and we
22 haven't pulled our alternatives arguments out of the blue.
23 The EIS has alternatives, such as processing in Texas, which
24 is within its analysis. And if you change what you're
25 looking at to just Section 8, it's a different alternative

1 analysis.

2 Are there better alternatives to mining at eight
3 and processing in Crown Point? Those alternatives may be
4 quite different and you may choose to favor a different
5 decision than Section 8 processing and four mines being
6 processed at Crown Point than just eight being processed in
7 Crown Point.

8 Other alternatives may make much more sense if
9 you're going to break it up, which is why it properly should
10 be looked at together.

11 I want to mention that Diane Curran will explain
12 our schedule a little more comprehensively in the next
13 session, explain our reasons for it.

14 MR. BLOCH: When we get to the next portion.

15 MS. MATANICH: Yes.

16 MR. BLOCH: Mr. Ventura.

17 STATEMENT BY RODERICK VENTURA

18 MR. VENTURA: Thank you, Your Honor. A lot of
19 what I have to say I think has been said by ENDAUM and SRIC,
20 so I may not take the whole amount of time.

21 MR. BLOCH: Feel free to add additional precedent
22 to this, the CEQ regulatoins.

23 MR. VENTURA: I kind of wanted to address that
24 issue actually a little bit. There are a couple of cases
25 that we mentioned in our brief.

1 MR. BLOCH: But what I would like, if you're going
2 to rely on them in oral argument, is to know what the
3 holding of the case is and how it applies here.

4 MR. VENTURA: I'll try to give that a shot. The
5 first one that I want to mention is Town of Hunchadine v.
6 Marsh, and I'll give you the cite. It's 859 Fed. 2nd 1134,
7 decided in the 2nd Circuit, 1988.

8 The issue that the holding of the case that I
9 wanted to talk about was regarding the definition of a
10 comprehensive or a single project.

11 In that case, the question was regarding dumping
12 in the Long Island Sound and the court in that case held
13 that you couldn't take the cumulative effects of disposal
14 and you couldn't analyze them on a case-by-case basis; that
15 you had to take all comprehensive type dumping into effect.

16 That case I think compared to this case shows that
17 this case in many ways is even more a single project than a
18 comprehensive type of project. They were talking about
19 individual dumping situations. Here we were talking about
20 something stated by the HRI, it's a single project, in the
21 EIS or in their COP and in the SER.

22 MR. BLOCH: But if they put a lot of waste into
23 the same body of water, that's going to accumulate. Is
24 there some way in which these different projects working
25 together will cumulate?

1 MR. VENTURA: Yes. I think so. And it's hard for
2 me to speak offhand without looking at my notes and looking
3 at the --

4 MR. BLOCH: Look at your notes. But that's the
5 question I have to face.

6 MR. VENTURA: I would say right offhand, one of
7 the issues would be, for example, transportation issues that
8 were raised by our clients.

9 If you have more than one mine site,
10 transportation to and from different sites would have a
11 cumulative effect, for example.

12 Another case that I'm going to refer to is
13 Susquehanna Alliance v. Three Mile Island, and the cite I
14 have for that is 619 Fed. 2nd 231, in 1980, decided in the
15 3rd Circuit of the Court of Appeals.

16 What that case -- what was at issue in that case
17 was -- excuse me. I'm going to refer to my notes, so I can
18 make sure I don't misstate it.

19 MR. BLOCH: No problem.

20 MR. VENTURA: In that case, it was the NRC that
21 approved a plan to treat a portion of contaminated water at
22 Three Mile Island without preparing an environmental impact
23 statement for the entire cleanup project.

24 In many ways, I think that, taken in conjunction
25 with the other case that I just cited, Town of Hunchadine v.

1 Marsh, and compared with this case, once again, shows that
2 this is -- I think this is clearly a single project that you
3 --

4 MR. BLOCH: In the Susquehanna Alliance, there was
5 a plan to evaporate water.

6 MR. VENTURA: I believe that was part of it.

7 MR. BLOCH: And the court held that you one could
8 not look at one thing separately from the others.

9 MR. VENTURA: That's right, because there were two
10 different parts of the cleanup action. They wanted to
11 consider one at a time.

12 MR. BLOCH: Did they all involve liquid waste?

13 MR. VENTURA: I don't believe so. How much
14 patience do you want to give me to read this case?

15 MR. BLOCH: Why don't we continue with this?

16 MR. VENTURA: Yes, why don't we just go on then.
17 The argument that we're making here --

18 MR. BLOCH: I would urge that when cases are
19 cited, that they be cited together with their holding,
20 because if you don't, I have to do it anyway, and it merely
21 helps in analyzing the legal briefs to know that.

22 MR. VENTURA: Your Honor, we believe that this
23 issue -- this site is a single site and we also believe that
24 it would violate NEPA to bifurcate this case in this regard
25 with doing Section 8 first.

1 MR. BLOCH: Now, what we're talking about is
2 setting the schedule for the trial of the case so that that
3 part of the case is argued first. Not stopping the case.
4 It all gets considered.

5 I have another thought that you could respond to
6 at the same time, which is what might be left over for later
7 would be information about the license conditions which
8 require that the company show that it won't have any
9 substantial impact on the environment or else it can't go
10 ahead with the injection.

11 Can you leave over something like that where you
12 can only go forward if there is a determination that there
13 is no substantial impact on the environment?

14 MR. VENTURA: I'm sorry. I'm not sure I
15 understand the second part of the question there.

16 MR. BLOCH: If the license conditions require that
17 before injection begins, the company would have to do tests
18 that are then analyzed by the staff to show that there would
19 be no substantial impact on public health or the
20 environment, those are the only issues that could be left
21 over, and if those were still part of this case and you
22 could contest that the staff was incorrect about that, it
23 seems to me that you would be able to adjudicate whether
24 there was a substantial impact that should have been
25 considered in the EIS.

1 MR. VENTURA: I think that's one of the things
2 that we want to discuss when we get into this thing. I'm
3 not exactly sure, Your Honor, how that is connected to the
4 bifurcation of Section 8 or deciding that.

5 MR. BLOCH: Suppose I decided to bifurcate
6 something and the only thing I bifurcated was the issue of
7 whether certain things have no substantial impact on the
8 environment or on human health, why would that be a problem
9 for NEPA?

10 MR. VENTURA: From the way you're phrasing it, it
11 doesn't seem like the type of bifurcation that HRI is
12 proposing.

13 MR. BLOCH: They've said that we can try every
14 issue that can be tried on the current information now. The
15 only things they really want to wait on is stuff that
16 depends on fulfilling the license conditions, which require
17 that they show, through technical information, that they
18 won't have any impact on the environment or on the public
19 health.

20 Here we have a chance at that time, whenever that
21 is, to come in and say, hey, they're wrong, it has a
22 substantial impact and the only time that that latter part
23 would go forward is if the proceeding determines that there
24 was no substantial impact from the stuff that was left to
25 determine.

1 MR. VENTURA: I think that part of the thing --
2 the problem we have with that is it's kind of what ENDAUM
3 and SRIC had said already. One of the problems that we're
4 having with this is whether that -- the way that license was
5 done.

6 MR. BLOCH: You would be able to adjudicate that
7 right now. If you can show that the license conditions are
8 legal, that could be adjudicated right away. So it would be
9 part of the early part of the proceeding.

10 So there are two issues. One is the order in
11 which we try things and the other is the order in which we
12 defer certain issues, but only issues related to the
13 license. You can challenge the illegality of the conditions
14 right now.

15 So where is the harm in this form of scheduling?
16 Whether or not we call it bifurcation.

17 MR. VENTURA: I think the harm would be because --
18 and this kind of gets back to the discussoin we've had
19 before that NEPA -- we believe that NEPA requires a
20 copmhrensive review of this before, and we're not talking
21 that that's going to stop at basically the FEIS that has
22 been issued.

23 By the own regulations of NRC, they need to take
24 into account the entire FEIS and it needs to take into
25 account the comprehensive environmental impacts of the

1 entire project. That's the -- I think that would be the
2 problem if we were doing it that way because we would not be
3 able to take everything into account. We are looking for
4 later information and that would be against NEPA.

5 MR. BLOCH: I'm sorry. I don't understand. I
6 thought you said earlier that you were going to challenge
7 the license condition that allows the later information to
8 be filed. That you can do.

9 MR. VENTURA: Right.

10 MR. BLOCH: What later information are you looking
11 for that you just referred to?

12 MR. VENTURA: I was referring to something that
13 you had mentioned before.

14 MR. BLOCH: Which was what?

15 MR. VENTURA: You had mentoined -- I think we're
16 talking different languages.

17 MR. BLOCH: I sometimes have that impression also,
18 but I -- we're trying very hard to speak English, but
19 sometimes this stuff swims a bit.

20 MR. VENTURA: Yes. Let me tell you what I thought
21 that -- what I understand from what you said. If we discuss
22 the issues -- basically, what I said before -- of the
23 licensing and then we have items that are left over that are
24 baesd on further information that you cannot ask them to get
25 now, that they are going to get later.

1 MR. BLOCH: Yes, but only if the conditions are
2 legal, obviously. If the license conditions are illegal,
3 that wouldn't be appropriate.

4 MR. VENTURA: Right.

5 MS. MATANICH: Your Honor, if I may interject a
6 comment.

7 MR. BLOCH: Yes, Ms. Matanich, please, because I
8 know you handed something down there.

9 MS. MATANICH: Allowing HRI to go out and gather
10 information is going down the road that NEPA was meant to
11 block, allowing them to drill wells, do tests, is an
12 investment that will lead to a commitment to this project
13 that the Board should not allow until the Board has
14 completed its environmental review.

15 The license is supposed to be a license that
16 protects health and safety and that should be decided in
17 this proceeding. We shouldn't let HRI to go test drive the
18 license to then find out if it protects health and safety.

19 MR. BLOCH: So that's an argument about the
20 illegality of the license condition.

21 MS. MATANICH: It's a NEPA argument and a license
22 condition argument.

23 MR. BLOCH: Do you want to conclude, Mr. Ventura?

24 MR. VENTURA: Sure, and I'm almost at the end
25 there. Basically, the way we see the regs that are issued

1 by the NRC is that this adjudication has got to follow NEPA
2 and in order to do that, we need to take this
3 comprehensively.

4 MR. BLOCH: Thank you. Mr. Hull.

5 MR. HULL: Thank you, Your Honor. As I think the
6 staff has indicated in its August 31 filing and also the
7 September 9 response filing, the staff continues to support
8 HRI's request that this proceeding be bifurcated, that the
9 issues regarding Section 8 and the generic issues that apply
10 equally to all three sites should be ocnsidered now, and
11 that any issues that deal only with the mining or the
12 proposed mining at either Unit 1 or Crown Point be deferred.

13 MR. BLOCH: Do you see any relevance to the CEQ
14 regulation on this?

15 MR. HULL: The CEQ regulations that were cited to
16 us today and have also been cited in the various briefs
17 intervenors have filed deal with the adequacy of an
18 environmental impact statement. We have an environmental
19 ipmact statement that was issued in February of 1997 and
20 among other things, it contains seven pages of analysis on
21 cumulative impacts at Section 4.13 of the EIS.

22 So I don't view the CEQ regulations, even if we
23 assumed that they had -- that the NRC must adhere to those
24 regulations, those regulations are guidance to the NRC, but
25 they are not -- NRC does not have to adhere to those

1 regulations.

2 MR. BLOCH: If the intervenors challenge the
3 cumulative impacts in the environmental impact statement,
4 would that be prohibitive to them or permitting to them
5 under a bifurcation?

6 MR. HULL: I would think it would be permitted,
7 Your Honor, but their reliance on the CEQ regulations as an
8 argument against bifurcating this proceeding have no merit.

9 MR. BLOCH: So even under bifurcation, they could
10 challenge anything that represents a combined impact of the
11 project at Crown Point and the project at Churchrock.

12 MR. HULL: If there are issues that are generic to
13 all three sites, those would be -- could be litigated in
14 phase one. If they are generic issues that would apply
15 equally to mining at Churchrock, Unit 1 or Crown Point.

16 MR. BLOCH: What if it wasn't generic from all
17 sites, but that somehow they were alleging a cumulative
18 impact as a result of something that happened only at Crown
19 Point?

20 MR. HULL: We're doing hypotheticals at this
21 point, because I have no idea what impacts that would fall
22 into that category.

23 MR. BLOCH: If they came up with that, something
24 that was related to the environmental impact statement,
25 because it related to a cumulative impact, could I

1 legitimately restrict them from challenging the
2 environmental impact statement with that kind of an
3 argument?

4 MR. HULL: In my mind, Your Honor, a cumulative
5 impact necessarily implies that it's going to be one of
6 these generic issues which apply to all three sites and
7 we're saying that that's the type of issue that can be
8 adjudicated in phase one.

9 What we're urging you to rule is that with respect
10 to issues that would apply only if mining took place at
11 Crown Point or only if mining took place at Unit 1, those
12 are the issues which we're urging you to defer consideration
13 of, because mining may never take place at those sites.

14 The cases that have been cited, again, the cases
15 cited this morning orally are the same ones that have been
16 cited in their briefs. Again --

17 MR. BLOCH: I want to ask a specific question so
18 we can make it a little bit more tangible. What specific
19 environmental question do you want to raise that is not
20 generic to all three sites, but that relates to cumulative
21 impacts? Do you have such an issue?

22 MS. MATANICH: Your Honor, our cumulative impact
23 argument is raised at pages 143 to 146 in our statement of
24 concerns and it sets forth our concerns about all the
25 cumulative impacts; not just from the total project, but

1 from the region.

2 MR. HULL: I'm sorry. What filing are you
3 referring to?

4 MR. BLOCH: This is the areas of concern, I
5 assume.

6 MS. MATANICH: The areas of concern.

7 MR. BLOCH: The amended --

8 MR. HULL: The August '97 filing?

9 MR. BLOCH: Yes.

10 MS. MATANICH: Yes. The cumulative impacts need
11 to encompass all past and future projects of HRI.

12 MR. BLOCH: All future projects of HRI?

13 MR. MATANICH: There are a number that have been
14 identified. They hold other properties in the area.

15 MR. HULL: They don't have a license for all of
16 these other projects that you're apparently referring to.

17 MR. BLOCH: You interpret one of the areas of
18 concern as expanding to projects that are not part of this
19 license, but that are planned by HRI. Is that one of the
20 areas of concern you already have?

21 MS. MATANICH: Yes. Those impacts need to be
22 considered in the EIS. Not necessarily licensed, but they
23 need to be evaluated.

24 MR. HULL: Our position on that would be that the
25 Board would lack jurisdiction to consider impacts on sites

1 that aren't part of the license.

2 MR. BLOCH: I know it's unusual, but I'm not a
3 board in this case.

4 MR. HULL: As my co-counsel reminded me, I should
5 be addressing the Presiding Officer.

6 MR. BLOCH: Could you continue? I don't think
7 your time has expired yet.

8 MR. HULL: I was going to say that the cases that
9 have been cited to us this morning are the same ones that
10 they have relied on in the past in their briefs. Again,
11 similar to the CEQ reuglations, they all deal with the
12 adequacy of an environmental impact statement.

13 They make vague references to the NEPA process or
14 violations of NEPA, but we have been cited to no case law
15 which would support their argument that this proceeding
16 would be somehow a continuation of the EIS process.

17 Additionally, Your Honor --

18 MR. BLOCH: Mr. Hull, I wonder if might be -- I
19 was thinking of having a break and then having brief
20 rebuttals, but it may be good to take a break in between now
21 to see if you can examine the cited sections of the amended
22 filing, page 143 through 146.

23 MR. HULL: I'm not sure I have that filing here,
24 Your Honor.

25 MR. BLOCH: They must.

1 MS. MATANICH: We do. We didn't provide it.

2 MR. BLOCH: So we will take a ten-minute recess
3 now and then continue with the staff's time when we get
4 back. I have 10:50. We will begin at 11:00.

5 [Recess.]

6 MR. BLOCH: Just a comment before I want Mr. Hull
7 to start. It occurred to me that it was possible that we
8 could permit filings that rate to true cumulative impacts
9 and then if the filing did not relate to a true cumulative
10 impact, it would be subject to a motion to strike. I just
11 want you to consider that as a possibility that might be
12 acceptable to all the parties.

13 Whenever you're ready, Mr. Hull.

14 MR. HULL: Thank you, Your Honor. During the
15 break, I reviewed, at your request, pages 143 to 146 of the
16 ENDAUM and SRIC August 1997 filing. Basically, there, Your
17 Honor, I found that the same CEQ regulations and the same
18 cases were cited there, as well. They seemed to be saying
19 there that the EIS should also have considered other
20 potential properties in this area where HRI may in the
21 future choose to seek an NRC license to mine.

22 I guess my response to that is I don't believe
23 that NEPA requires a crystal ball inquiry into matters which
24 cannot be known with any degree of certainty at this time.
25 We don't know or we do not have sufficinetly detailed

1 information from HRI describing where these other
2 propertiies are exactly, what reserves may exist at those
3 sites.

4 So it really would have been impossible for the
5 EIS to have analyzed cumulative impacts based on data that
6 we didn't have and was not part of the license application
7 which the EIS was considering.

8 The argument there also made reference to the
9 preexisting contamination that exists in this area, produced
10 by the traditonal uranium mining. There was no showing how
11 or if ISL mining would add to those preexisting impacts.
12 So, again, I don't think their argument there has any
13 validity.

14 Going back to what I was going to address earlier,
15 Your Honor, the intervenors have not responded to or given
16 any indication that disagree with the case law that the
17 staff cited in its June 26, 1998 filing, where the staff
18 supported HRI's bifurcation motoin.

19 The cases cited at page 14 there, taxpayers,
20 Watchdog v. Stanley, Cronin v. Department of Agriculture,
21 Morris v. Oregon Natural Resources, those cases clearly hold
22 that once an adequate EIS covering the entire project is
23 issued, and the staff contends that its February '97 EIS is
24 such an impact statement, once that EIS is issued, the
25 project may be completed in stages.

1 We're hearing cases cited that pre-date these
2 decisions, but no indication as to why those decisions would
3 not apply here.

4 MS. MATANICH: Your Honor, could I interrupt to
5 speak to that?

6 MR. BLOCH: Would you like to save your time, Mr.
7 Hull?

8 MR. HULL: Excuse me?

9 MR. BLOCH: Do you want to save your time?

10 MR. HULL: Sure.

11 MS. MATANICH: We didn't respond to those cases
12 because they're not on point. In those cases, there was an
13 EIS issued, but there was also a record of decision issued
14 in each of those cases and they involve completely different
15 animals, again, where regional plans were developed, EISs
16 were done, and a record decision issued.

17 Then subsequently small parcels were broken out
18 for, I believe, timber sales in those cases. EAs were done
19 again in each of those cases and the courts determined that
20 an overall new EIS would be repetitive.

21 It seems completely inapplicable to this
22 situation, where there is no record or decision. We're not
23 talking about doing an EA for Churchrock.

24 MR. BLOCH: I was going to ask for some comment on
25 this record of decision.

1 MR. HULL: Your Honor, let me get first to her
2 comment there. I mean, we cited these cases back in June of
3 this year and the intervenors chose not to say anything
4 about them either in the September 2 filing or the September
5 9 filing. Instead, I am, in effect, ambushed by these
6 comments here today.

7 I thought one of the purposes of your requiring
8 the parties to file briefs in preparation for this schedule
9 conference was so that these issues could be considered
10 ahead of time rather than at the last minute like this.

11 MR. BLOCH: Do you want some kind of redress where
12 you can establish that case?

13 MR. HULL: Your Honor, unless you're going to
14 require some sort of further legal filing in connection with
15 the proceedings here today, I would not. Certainly there
16 have been more than enough briefs filed already. I'm not
17 seeking an opportunity to file anymore certainly.

18 MR. BLOCH: Would you comment briefly on this
19 requirement of a record of decision.

20 MR. HULL: Let me confer with co-counsel for a
21 minute.

22 There was a reference made, Your Honor, to an NRC
23 regulation, but we didn't get any cite as to how that might
24 regard this record of decision issue.

25 MS. MATANICH: That would be 10 CFR 51.102, 51.94,

1 and if I could just check the book, there are several. 10
2 CFR 51.102 describes how a record of decision should be
3 prepared. 51.103 describes what a record of decision is and
4 gives a definition.

5 MR. HULL: When we're looking at these 10 CFR 51
6 regs, they just seem to say that when there is a hearing, as
7 there is in this case, any findings that you make with
8 respect to the EIS, you have the authority to modify the EIS
9 as you see fit, and that becomes the record of decision.

10 MR. BLOCH: That's submitted along with the EIS if
11 it's challenged, I take it. That's how I read it also.

12 Is there some other way we should be reading that?
13 It just seems to me, if there is a hearing, then the results
14 of that hearing have to be submitted along with the EIS.

15 MS. MATANICH: And what seems clear to me from
16 these records is that before the record of decision is made,
17 the EIS must accompany the decision and all impacts
18 evaluated.

19 MR. BLOCH: And if we require that you be
20 permitted to file concerning cumulative impacts, but only
21 cumulative impacts related to the other portions of the
22 project, would that meet your requirements?

23 MS. MATANICH: No, Your Honor, it wouldn't. The
24 entire environmental analysis must be involved in your
25 decision. By having the EIS accompany your analysis, and

1 all of the impacts, alternatives, cost-benefit analysis that
2 is included in the EIS must be considered before anything
3 can be defined more narrowly.

4 If you look at Calvert Cliffs coordinating
5 committee, it outlines the necessity of using the EIS and
6 making it of value in the hearing decision.

7 So in order to include all of those issues,
8 cumulative impacts, cost-benefit analysis, irretrievable
9 commitment of resources, everything in the EIS must be
10 involved in your decision.

11 MR. BLOCH: Mr. Hull.

12 MR. HULL: On that point, I believe that the
13 Calvert Cliffs decision was issued in 1972 or thereabouts
14 and, again, the case law that's been developed since then,
15 which we have cited in our June brief, I would think
16 certainly modifies any effect that the Calvert Cliffs
17 decision once had.

18 MR. BLOCH: I would like to permit brief rebuttal
19 by the parties. Are the parties prepared to proceed on
20 about five minutes of rebuttal? Beginning with licensee.

21 MR. THOMPSON: Your Honor, as I read 51.102, it
22 says except as provided in the paragraph C. The record
23 decision will be prepared by the NRC staff director
24 authorized to take the action. In this case, that authority
25 has been delegated to the chief uranium recovery branch.

1 It then says when a hearing is held on the
2 proposed action, under regulations of subpart G of this
3 chapter, or when the action can only be taken by the
4 Commissioners acting as a collegial body, the initial
5 decision of the Presiding Officer and the final decision of
6 the Atomic Safety and Licensing Appeal Board or the final
7 decision of the Commissioners acting as a collegial body will
8 constitute the record of decision.

9 I will also call your attention, Your Honor, to --

10 MR. BLOCH: So they're arguing that that means
11 that I have to consider the whole environmental thing and
12 that I can't limit it to a portion of the project. Do you
13 agree with that?

14 MR. THOMPSON: No.

15 MR. BLOCH: Explain to me --

16 MR. THOMPSON: Again, I go back to the fact that
17 the license was phased. I stand by the analysis Mr. Hull
18 has presented with respect to the cases.

19 The second thing is I would call your attention to
20 Federal Register Volume No. 48, pages 9355 and 9356. The
21 petitioners are attempting to have NEPA change, modify and
22 drive the NRC's regulatory process and that they cannot do.
23 The NRC's regulatory process is based on, for example,
24 either denying an application, accepting an application or
25 accepting it with conditions.

1 So, for example, the NRC doesn't have the
2 authority to say to HRI take this to Texas.

3 MR. BLOCH: I don't anyway because I'm limited to
4 the notice of hearing.

5 MR. THOMPSON: Yes. But they're raising --
6 they're trying to make NEPA into something that modifies the
7 Commission's processes and the Commission itself says with
8 respect to CEQ regulations, NRC is not bound by those
9 portions of CEQ's NEPA regulations which have a substantive
10 impact on the way in which the Commission performs its
11 regulatory function.

12 It further states that the form of environmental
13 analysis required in any given case are matters left to
14 discretion of the agency involved. This must be
15 particularly true where the determinations respecting the
16 nature and form of that environmental analysis involves
17 consideration of complex technical questions, particularly
18 within the competence of the agency to evaluate these
19 circumstances, the judgment of NRC as an agency, with
20 requisite technical expertise, should govern.

21 As I mentioned earlier, this same document points
22 out that the -- an environmental impact statement does not
23 have to document every particle of knowledge that an agency
24 might compile in considering the proposed action.

25 Certain environmental -- the fact that certain

1 environmental impacts are not known does not necessarily
2 undermine the adequacy of the statement.

3 Good faith objectivity has taken a sufficient look
4 at the environmental consequences of a proposed action and
5 have alternatives to the action is what is required. The
6 information has been considered sufficient if it permits a
7 reasoned choice to be made among agency -- by the agency
8 among different courses of action and if it provides enough
9 detail to enable those who do not have a part in compiling
10 the information to understand and serve meaningfully the
11 pertinent environmental influences involved.

12 The agency's information-gathering obligations
13 under NEPA are informed by a rule of reason.

14 So the idea that we would hve to consider the
15 potential impacts on properties that perhaps were not even
16 purchased prior to the completion of the environmental
17 impact statement and that may or may not ever be considered
18 is simply way beyond the realm of what NEPA requires. And a
19 rod, as such, in the way that EPA does it, is not the same
20 -- it's not the same way NRC functions. They can't force
21 NRC's regulations to do it the way EPA does it.

22 MR. BLOCH: And if we try the Section 8 issues
23 first, we must have true interrelationships to be raised
24 during that phase.

25 MR. THOMPSON: I think that we have stated where

1 there are issues that are common to all of the sites, if you
2 could show that there was a cumulative impact for a specific
3 issue, that that would be an issue that would fairly get
4 joined.

5 MR. BLOCH: If it were not a cumulative impact,
6 then it could be struck in a phased system and going through
7 things.

8 MR. THOMPSON: Yes.

9 MR. BLOCH: Ms. Matanich, for five minutes.

10 MS. MATANICH: Your Honor, I believe HRI is trying
11 to take us down the road of trying the issue of the
12 cumulative impact arguments we have raised. We will support
13 our area of concern when we present our evidence in the
14 written filings.

15 What is important now is that we realize that that
16 issue and the impacts and the other considerations raised
17 for the EIS be considered in toto.

18 The Section 3.3.1.1 of the EIS points out that
19 we're dealing with a regional aquifer. This is an aquifer
20 that provides two valuable resources, uranium ore and high
21 quality ground water. The ground water in the west water
22 canyon provides drinking water and is a limited source of
23 drinking water to this area.

24 Before we begin mining at Section 8, we need to
25 look at what impacts this project, Section 8 and Crown Point

1 Unit 1, are going to have on this region. Cumulative
2 impacts doesn't mean just looking at Section 8's impacts,
3 Unit 1 and Crown Point's impacts.

4 The section I cited earlier, 40 CFR 1508.25(c)
5 defines a cumulative impact as the impact of the action when
6 it's added to past, present and reasonable foreseeable
7 actions of the agency.

8 We can't ignore those impacts before we allow
9 Section 8 to go through.

10 Another point I would like to respond to. HRI has
11 been talking about the UIC permit. As the Commission
12 decision that you showed us this morning from yesterday
13 points out, other agency decisions are not applicable to
14 this proceeding. They're irrelevant and whether or not
15 HRI's UIC permit for 17, Crown Point or Unit 1 doesn't apply
16 to this proceeding.

17 And another thing I would like to point out on the
18 cumulative impacts. The staff has complained that they
19 didn't get any information from HRI on what their future
20 plans might be, and I'd like to point out that maybe they
21 should have asked when they were preparing the impact
22 statement.

23 I can't think of anything further to respond to.
24 Thank you, Your Honor.

25 MR. BLOCH: Thank you. Mr. Ventura.

1 MR. VENTURA: Thank you. I just want to make a
2 comment that -- towards something that was presented by Mr.
3 Hull, that NEPA is a part of this proceeding and is within
4 the scope, and I'm referring to 10 CFR Section 51.104, Part
5 3, which says, in the proceeding, the Presiding Officer will
6 decide those matters in controversy among the parties within
7 the scope of NEPA and its subparts.

8 Basically, the concern that we have is that we be
9 able to present our NEPA concerns up front and as a whole.

10 Thank you.

11 MR. BLOCH: Mr. Hull.

12 MR. HULL: The only thing I need to add, Your
13 Honor, as to the statement regarding the effect of the
14 recent Commission decision. Certainly it's not saying that
15 the NRC cannot rely on the findings of other agencies.
16 Certainly the NRC can rely, for instance, on any aquifer
17 exemptions that EPA might grant to HRI.

18 To say that we can't rely here in this proceeding
19 on an aquifer exemption is not correct. That's the only
20 thing I have.

21 MR. BLOCH: I agree we can do that. Are you
22 planning to rely on that in some way? I don't know how it
23 applies here.

24 MR. HULL: It's my understanding, and HRI would
25 know better than me, but it's my understanding that there is

1 an aquifer exemption that was granted to HRI regarding
2 Section 8 at Churchrock.

3 MR. BLOCH: But the question is how does it affect
4 the issues pending in this case.

5 MR. HULL: It certainly wouldn't prevent HRI from
6 going forward.

7 MR. BLOCH: I agree with that. But that's not
8 affecting the case. That means it has no effect.

9 Thank you. Are you finished?

10 MR. HULL: Yes, Your Honor.

11 MR. BLOCH: Then we can go on to the next part of
12 the agenda.

13 MR. MEIKLEJOHN: I beg your pardon. I'm Douglas
14 Meiklejohn, one of the attorneys for ENDAUM and SRIC.

15 I just wanted to introduce for the record Lila
16 Byrd, an attorney with our office, who is also counsel for
17 ENDAUM and SRIC.

18 MR. BLOCH: Thank you. The next part of the
19 agenda is the combined items four through seven. It seems
20 to me that it's best to begin with the intervenors for this
21 portion of our discussion. Is there an objection to doing
22 it that way?

23 MS. CURRAN: Again, it's our view that the
24 proposal to bifurcate this proceeding along the lines of
25 doing Section 8 first and other issues later, which seems to

1 be the focus here today, is HRI's proposal. So we believe
2 it would be appropriate for HRI to go first.

3 MR. BLOCH: This portion of the proceeding is to
4 focus on each party's proposals for how we're supposed to
5 proceed. This is not just a bifurcation discussion. We've
6 finished the bifurcator discussion.

7 MS. CURRAN: Well, our interpretation of the
8 second part of your outline was that you were seriously
9 considering litigating Churchrock related issues separate
10 from the other issues.

11 MR. BLOCH: But the reason we combined all four of
12 these was your argument that you wanted to be able to
13 present another way of looking at it.

14 MS. CURRAN: All right, well.

15 MR. BLOCH: If HRI wants to go first, it looks
16 like they'd like you to, I'd have no problem with that.

17 MR. THOMPSON: We don't have a problem with going
18 first.

19 MR. BLOCH: In that case. What I am going to
20 suggest, though, is that there is a total of -- well, why
21 don't we round it off and say 30 minutes. I would like to
22 suggest that the parties reserve some of their time for
23 rebuttal.

24 MR. THOMPSON: Your Honor, we have presented, with
25 Mr. Pelizza's affidavit, and we have here on a large pad or

1 poster delineated the issues we feel are relevant
2 specifically to Churchrock, Section 8, and those which we
3 think are common to all of the other sets.

4 MR. BLOCH: Yes, I have it in front of me. I am
5 aware of it and it is a helpful presentation for your point
6 of view, that's right.

7 MR. THOMPSON: Basically, I don't have a whole lot
8 to offer. I mean, that pretty much says where we think it
9 ought to go and what issues ought to be litigated. I would
10 be happy to -- if you have questions about any of those
11 issues or anybody does -- to have Mr. Pelizza explain why he
12 believes it is only relevant to Churchrock or why he
13 believes it's relevant to all three sites.

14 MR. BLOCH: I would just request that when
15 intervenors speak on this issue, that they address which of
16 the items in the CP-only column they feel that they must
17 address and why. I'm talking about initially. You don't
18 mind if I don't put that in the record.

19 MR. THOMPSON: Your Honor, we will provide that
20 posterboard merely for purposes of discussion here today. We
21 do not request that it be put in the record, as it already
22 contained in the record as attached to Mr. Pelizza's
23 affidavit.

24 MR. BLOCH: I'd jsut note that you've put it in a
25 convenient place and its location close to me doesn't mean

1 that it's my opinion at this point.

2 Diane, do you want to start?

3 MS. CURRAN: Sure. It appears that the Board is
4 distilling some ideas here about the process for this
5 hearing and I would like to address those.

6 One concept that's been discussed here is whether
7 there are some NEPA issues that could be litigated first.
8 Well, first, Churchrock only issues, NEPA issues, and are
9 there issues that are general in nature that could be
10 litigated first.

11 Our position is that because of the requirements
12 of NEPA and because of the practicalities of the litigation,
13 that the concept of dividing up issues in that way is not
14 legal and it's just not practical.

15 We discussd NEPA before and I won't go over
16 ground that's already been plowed. But it's our view that
17 cumulative impacts are not the only overall issues that have
18 to be lived out up front before any mining activity can take
19 place at the site.

20 There are the total impacts of the project, the
21 costs and benefits, the overall costs and benefits of the
22 project, and also the alternatives to the project, which
23 there are -- we've raised all of these issues in our
24 pleading, in our statement of concerns, and we're entitld to
25 litigate those fully, because there is just one impact

1 statement for one project.

2 But let's just -- let's just talk about the
3 practicalities of trying to separate out some part of the
4 impact analysis and litigate it up front in relation to
5 Churchrock.

6 If you're going to talk about cumulative impacts,
7 the process involves setting forth the significant adverse
8 impacts of the proposal, all of them, and then also
9 discussing the impacts of previous mining activities and as
10 we set forth in our statement of concerns, future mining
11 activities.

12 So as a practical matter, we have to make our case
13 to you about the impacts of this entire mine at the
14 beginning of the case in order to litigate cumulative
15 impacts and we're very concerned about duplication of our
16 efforts. ENDAUM and SRIC have limited resources. We have
17 hired experts to help us. We have an expert sitting with us
18 today. We take this case very seriously.

19 We are prepared to put resources in to meet our
20 burden here, but we can't do it over and over again. So as
21 a matter of fairness here, HRI has been issued a license, a
22 bundle of rights, which entitles it to go ahead with
23 activities at this entire project.

24 Now, there are some conditions on this license,
25 but in terms of the legal reality, this company has the

1 authorization to go forward and to require ENDAUM and SRIC
2 to remain vigilant for an indefinite period as to whether
3 these rights are going to be exercised or not is really
4 unfair to them.

5 They have the resources now. They have a schedule
6 which they have carefully prepared based on a sensible
7 organization of the issues, based on the resources that they
8 have, and based on a reasonable time-frame for preparing
9 their testimony.

10 Maybe -- well, before I go -- I would like to go
11 into that in a little more detail, but I'd like to get back
12 to the question of how the process for this hearing might
13 work as envisioned by HRI and the NRC staff.

14 One of the issues that is -- one of the measures
15 that's proposed here is to identify issues that are common
16 to all the areas and litigatæ them up front. An example is
17 performance-based licensing.

18 It underlies all of these -- every single one of
19 these units that's being proposed for mining and let's just
20 look at what would happen if we really had a meaningful
21 opportunity to litigate performance-based licensing up
22 front.

23 It really would not be a meaningful opportunity
24 unless we were allowed to relate the concept of
25 performance-based liclensing to the actual proposed mining

1 and show that it is not safe for each one of these units.

2 We would be deprived of our full opportunity for a
3 hearing if we had to litigate performance-based licensing in
4 a vacuum, in a factual vacuum essentially, or restrict it
5 only to Unit 8 -- Section 8.

6 We need to be able to discuss the concept and how
7 the concept applies to the facts. Now, in the pleadings
8 that have been filed by HRI and the NRC staff, and you may
9 wish to obtain further clarification from them, if we are
10 not able to fully litigate the legality of these license
11 conditions, the performance-based licensing conditions,
12 which basically defer certain issues until after the
13 issuance of the license, in their view, there is nothing
14 left to do.

15 If we don't prevail on those issues, then the
16 fulfillment of the license conditions, the question of
17 whether what HRI does fulfills the licensing conditions
18 becomes an enforcement matter for the NRC staff. In their
19 view, it is not a licensing issue.

20 Let's take, for example, pump testing, which has
21 been a contested issue in this case, whether or -- how the
22 tests that have been performed on whether the aquifer is
23 confining or not should be interpreted and whether they
24 adequately support the issuance of a license.

25 The license has a condition in it requiring HRI to

1 conduct further tests to determine whether the aquifer is
2 confining.

3 Now, if we were to treat that as a general issue
4 and litigate that up front, because I think it is marked as
5 a general ISO issue on HRI's diagram, in our view, we would
6 not have an adequate opportunity to litigate the adequacy of
7 the pump tests if we were unable to address the specific
8 facts related to each one of the units being proposed for
9 mining here.

10 We can't litigate the adequacy of pump testing in
11 a vacuum and it is our understanding of HRI's and the
12 staff's position that if we lose on the issue -- on the
13 general issue of whether the pump tests are adequate, at the
14 point when those pump test results are presented to the NRC
15 staff, there will not be a licensing issue, that is an issue
16 of enforcement for the NRC staff and that is certainly
17 consistent with the way that NRC licenses are interpreted by
18 this agency.

19 MR. BLOCH: If you persuade me that that's an
20 important issue in this case, the record will not be closed
21 until that information becomes available.

22 MS. CURRAN: Again, that information will not
23 become available until HRI chooses to provide it. You, as
24 the Presiding Officer, have no authority to dictate to HRI
25 the schedule on which it will perform those tests and it

1 appears that it may be a matter of years.

2 We do not believe it is fair to ENDAUM and SRIC,
3 once this license has issued, this company has its license,
4 to make them wait for three years, five years, whatever HRI
5 -- whatever time HRI wishes to take, to muster their
6 resources again and raise those issues again.

7 MR. BLOCH: As I understand the bifurcation
8 argument, this issue of performance-based licensing is in
9 common to all of the licenses and you would not be
10 prohibited from dealing with it. Even if you took examples
11 from the other cases, if it was related to the illegality of
12 the license, then it's related to all of the sites.

13 MS. CURRAN: Well, then the hearing, the initial
14 hearing would have to encompass all the sites with respect
15 to the general issue of performance-based licensing.

16 MR. BLOCH: Yes.

17 MS. CURRAN: If that is your understanding.

18 MR. BLOCH: If it's related to all of the sites,
19 if the license is illegal, then they can't go on any of the
20 sites. It just happens that particular argument would
21 affect all the sites. Therefore, it would, as I understand
22 it, be permissible.

23 MS. CURRAN: For every single issue on which HRI
24 has put an X in the column of general ISO on HRI's chart, we
25 believe that all of the sites, eight, 17, Unit 1, Crown

1 Point, have to be addressed if we are to have a meaningful
2 opportunity to litigate those issues.

3 Now, you get to a certain point where the
4 intervenors, especially when these general issues include
5 issues about defining excursions, hydrological testing,
6 baseline water quality caclulations, water restoration
7 standards. At a certain point, we're making our own case --
8 our whole case.

9 We are being -- we are going to have to get the
10 kind of resources that we need to put together the whole
11 case and there is really very little point in leaving
12 something over.

13 MR. BLOCH: I do want to make sure that you get to
14 the reason why you need all the time that you're asking for.

15 MS. CURRAN: All right. Before I do that, I just
16 want to address Sections 17 and 8. In our brief that we
17 filed a couple weeks ago, we attached a third affidavit of
18 Michael Wallace, and this points out that Section 17 and
19 Sectoin 8 are hydrologically connected.

20 I think all the parties and the Presiding Officer
21 have a copy of the potential metric diagram which is taken
22 from the FEIS, which shows that the water flow -- the below
23 ground water flow is from Section 17 to Section 8.

24 We have another diagram which is from the
25 environmental report which shows that in Section 17, there

1 are underground mine workings which could affect or are
2 likely to affect the ground water flow between Section 17
3 and Section 8.

4 If Section 8 goes forawrd and is mined before all
5 the relationship of these two areas is examined, it may
6 affect issues such as the ability to restore Section 8 again
7 after Section 17 has been mined, because contaminated water
8 from 17 may flow to eight. It may affect the amount of the
9 surity that's needed for Section 8 because it may result in
10 a double cleanup requirement.

11 So we don't believe that these two issues can be
12 separated.

13 MR. BLOCH: I don't understand what you just said.
14 What I understood from your argument was that when they
15 start on 17, that the amount of the surity would have to
16 relate also to the possibility of having to clean up eight
17 again. I don't understand why that affects eight.

18 MS. CURRAN: Well, surity is a general issue that,
19 again, we get back to NEPA, that we're looking at an overall
20 project here and that HRI needs to be able to show that it
21 has sufficient surity to clean up as it goes along.

22 There is a NEPA issue with respect to the prudency
23 of creating the risk. It's not -- there is no guarantee
24 that HRI is going to have sufficient resources to clean up
25 this site, especially in light of the uncertainty about

1 restoration of ISO mines. I think you can see from the EIS
2 that there isn't a tremendous amount of information that the
3 NRC has gathered on this.

4 So that it's a NEPA issue whether or not HRI
5 should create additional costs, additional risks that
6 Section 8 can't be cleaned up, by not looking at 17 and
7 eight together.

8 I'd like to on now to our presentation, our plan
9 of analysis. We have divided up the issues into two groups
10 and this is based on a couple of factors. One is the
11 commonality of factual issues.

12 One of the biggest expenses for us and time
13 commitments for us is to have experts look at the evidence,
14 the reams of evidence in this case that concern the ground
15 water characteristics in this project, and all of the issues
16 that we have put in group one relate -- except for the
17 historic preservation issues -- relate in some way to ground
18 water protection or waste water issues.

19 That is -- we think that would be a reasonable
20 grouping not just for us, but also for the Board and the
21 other parties to look at these issues together.

22 We also have made more progress in developing our
23 case on these issues because we address them in our stay
24 motion. We've addressed some of them in our scheduling
25 brief and we are closer to being ready to brief those

1 issues. We have experts that have been retained. We've
2 made more progress in reviewing the record on these
3 particular issues.

4 The time-frame that we chose -- of course, it's
5 impossible to predict how long it's going to take to prepare
6 testimony on a particular issue, but this seemed like a
7 reasonable time-frame that would allow us for each issue a
8 couple of weeks to get into the record, put together -- we
9 have to do both a brief and testimony. We wanted to give
10 the other side a reasonable opportunity to respond and also
11 to leave room for a reply, since we really need to be able
12 to engage the issues here.

13 MR. BLOCH: Ordinarily, replies are not permitted
14 and I would consider allowing replies that went outside of
15 the record. That is, which included additional information
16 that's not already available. But I can't imagine allowing
17 a reply to information that just relies on the available
18 record.

19 MS. CURRAN: It's been our experience that in this
20 case, a lot revolves around the interpretation of the same
21 information and that sometimes -- and, again, this is why we
22 put in some time if the Board wants to ask questions or have
23 an oral argument.

24 MR. BLOCH: What we probably would do, we probably
25 would -- if you were going to have a reply, it would be

1 subject to motion. You have to show some reason at the
2 time. But I wouldn't schedule replies.

3 MS. CURRAN: Okay. But we would ask the Board, in
4 setting a schedule, to leave time so that we have a chance
5 to make that motion, so that we're not into the next thing.
6 We have tried to stagger this so that we don't have an
7 enormous filing burden all at once and for all the parties
8 we think it would be -- we would do a better job if we had a
9 staggered filing schedule, so that we can deal with issues
10 one at a time and make sure that we've really had time to
11 address them.

12 I just want to remind the Board that at the
13 limited appearance sessions the other night, you did say
14 that you are in our hands, that we are responsible to do a
15 careful job of presenting our evidence, and we take that
16 responsibility very seriously and we would like to get a
17 schedule that gives us adequate time to cover the enormous
18 amount of information that's been submitted in this case and
19 present it in a clear and cohesive way that highlights the
20 issues that you have to grapple with.

21 I would like to stop here and reserve some time
22 for rebuttal.

23 MR. BLOCH: Mr. Ventura, if you'd like.

24 MR. VENTURA: Thank you, Your Honor. I would like
25 to start by pointing our plan of analysis that we have

1 submitted in our scheduling conference breif and try to
2 explain how we came up with that plan of analysis and why we
3 are asking for that much time.

4 MR. BLOCH: Could you also tell me how it relates
5 to the other plan? Because I'm unlikely to have one plan
6 for you and one plan for --

7 MR. VENTURA: I think the first thing that you
8 should probably note is that we are pretty flexible with
9 this plan. We do see similarities between our plan and the
10 plan that ENDAUM and SRIC have devised and we wouldn't mind
11 getting together closer with ENDAUM and SRIC and working
12 together on a more cohesive plan.

13 With that said, let me explain how I came up with
14 the plan that we have and explain where we came from.

15 We took the areas of concern that you found
16 germane and we tried to put those into different categories
17 of issues and figure out how they can be best dealt with in
18 the most efficient way and also in a way that we could best
19 perform a written presentation and submit it before you.

20 If you go through the plan of analysis, which
21 starts on page 16 of our scheduling conference brief, we've
22 outlined it into eight different categories. The first
23 one was regarding any legal issues successfully nominated to
24 be decided by legal briefing. That was directly addressing
25 something that was suggested by you.

1 MR. BLOCH: And you're the only one who is
2 interested in doing it that way.

3 MR. VENTURA: Well, we didn't suggest any issues
4 to be nominated to be decided by legal briefing either, but
5 we decided that if any were to come about, that we would
6 want to take care of those first because we wouldn't have to
7 rely on the record.

8 Second, we wanted to deal with performance-based
9 licensing. Third, degradation of the water supply. Fourth,
10 ground water restoration. Fifth, general NEPA arguments
11 regarding the inadequacies of the EIS. Sixth, air emissions
12 control. Seven, waste disposal. Eight was the catch-all
13 miscellaneous category that we included.

14 MR. BLOCH: It seems to parallel the ENDAUM and
15 SRIC outline.

16 MR. VENTURA: It does.

17 MR. BLOCH: With a littel bit less detail.

18 MR. VENTURA: Exactly. That's why we think we may
19 be able to modify this to work together with them.

20 What we did was we put performance-based licensing
21 and degradation of the water supply first up because we
22 thought that those are issues that we wanted to address
23 first and that we are -- well, performance-based licensing
24 we can prepare relatively quickly given what's been done so
25 far. We have gone through the record. We have not yet been

1 able to retain expert witnesses for the other issues, but we
2 are working on that type of thing.

3 It is staggered, the issues that we have done,
4 mostly so we can -- hoping to isolate each issue and to
5 basically give a very thorough and a very clear written
6 presentation on each of the issues, and that's why we
7 staggered it in that style.

8 When I look at the chart that's up there from HRI,
9 I know there are differences in some of the issues. They've
10 gone into a little more detail, as well. But one of the
11 things that I would like to comment on on their analysis of
12 the issues is that if I read this correctly, some of the
13 only issues that deal with the Crown Point project only are
14 up on the top on the upper right-hand part of it, dealing
15 with water well replacement criteria, hydro geological
16 evaluation with regard to water wells.

17 Whereas it seems to me that the other ones are
18 dealing with Crown Point, but they're also dealing with what
19 they call the back end to the processing, which should be
20 ripe for review and should be talked about, we believe, with
21 everything else.

22 Given that that's our plan of analysis, we briefly
23 outlined, according to your agenda, what the answers to some
24 of the questions were and all of these are based on our plan
25 of analysis.

1 We decided that regarding issues that affect
2 Section 8 only, that there really are none; that the
3 majority of the issues fall into the second category of
4 general issues affecting Section 8 and other parts of the
5 project.

6 That would include performance-based licensing,
7 degradation of the water supply, ground water restoratoin,
8 the NEPA argument, the air emissions control and waste
9 disposal.

10 The only issue -- if we jump down to the next
11 category -- general issues not affecting Section 8, but
12 which may be tried currently because they do not depend on
13 the collection of empirical information in the future, would
14 possibly be degradation of the Crown Point water supply.

15 And then in regard to issues that can be finally
16 determined only after the collection of additional empirical
17 information, we had none for that category.

18 That's all I'm going to say.

19 MR. BLOCH: Thank you. Staff?

20 MR. HULL: The staff just does not see as at all
21 workable the proposed schedules. It, in effect, would
22 require --

23 MR. BLOCH: Any of them?

24 MR. HULL: Neither of them. In effect, adopting
25 either one would require continuous litigation well into the

1 year 2000 and I've not heard any persuasive reasons as to
2 why the type of proceeding which is envisioned by the
3 subpart L regulatoins, why that needs to be overridden in
4 this materials licensing case.

5 MR. BLOCH: Subpart L was designed to shorten the
6 trial of cases, that's clear. That means that for a case of
7 any magnitude, it could be done faster. So for example, in
8 this case, if there's a lot of stuff that requires expert
9 opinion, I can get the written filings and decide if I can
10 match them up and choose which of the filings is correct.

11 No matter what the size of the case, the fact that
12 you don't have to have cross examination may be able to
13 result in a faster decision.

14 My problem here is that in any of the statements
15 of the Commissoin asking for efficiency, they have also
16 asked for a balance between fairness and efficiency and not
17 neglecting fiarness.

18 My difficulty is that I have no way -- I have not
19 thought of a way of penetrating the difficulty of preparing
20 this case so that I could decide whether or not the time
21 being asked for is too much or if it's appropriate.

22 Can you suggest to me some way to ask the
23 questions that will allow me to make the balance between
24 fairness and efficiency in a way that respects both?

25 MR. HULL: Let me try to address it this way, Your

1 Honor. The staff, back in mid-June of this year, submitted
2 a very voluminous hearing file and the written presentations
3 are supposed to be based on that hearing file.

4 The parties have now had several months in which
5 to evaluate that mass of material and I don't see it
6 impinging at all on any fairness interests to -- the
7 intervenors are certainly represented by competent counsel.
8 I don't see any unfairness in requiring them to submit a
9 written filing or written presentation, and I think the staff
10 had proposed that they submit their written presentation by
11 October 30 of this year.

12 MR. BLOCH: But how do I decide how much time it
13 takes to analyze the extensive hearing file? It is not the
14 usual file in a subpart L case.

15 MR. HULL: Your Honor, I think we're talking here
16 about when the parties have to prepare and file their
17 written presentations. I am not aware of any requirement in
18 the subpart L regulations which would force you to make your
19 decision within a certain period of time.

20 MR. BLOCH: I wasn't worried about that. I'm
21 worried about their analytical tasks. There is a lot of
22 material in the record. Some of the tasks that they have
23 outlined appear to be pretty complex intellectually.

24 MR. HULL: There is a lot of material in the
25 hearing file, Your Honor. A lot of it has to do with issues

1 that are encompassed by the final environmental impact
2 statement, which was issued in February of 1997.

3 In August of 1997, the intervenors, ENDAUM and
4 SRIC at least, filed a very extensive, almost 190-page
5 pleading setting forth their disagreements with the final
6 environmental impact statement.

7 As I pointed out earlier, since that time, the
8 staff has issued a safety evaluation report, has issued the
9 license in January of this year, with a lot of license
10 conditions, and we have had litigation pretty much
11 continuously since early this year on various technical
12 aspects involved in this license.

13 They have already retained, I think, three expert
14 witnesses that had certainly -- already have had a
15 substantial amount of time to evaluate these issues.

16 MR. BLOCH: Your opinion, based on your looking at
17 the documents and looking at the time that's been available,
18 is that they should be able to finish by the end of October.

19 MR. HULL: Yes, Your Honor.

20 MR. BLOCH: They tell me it could take much
21 longer, it might take up to a couple of years. How do I ask
22 the questions that enable me to determine whether they're
23 right or you're right?

24 MR. HULL: Your Honor, it seems to me that if the
25 intervenors are saying that they need until the year 2000 in

1 which to complete this case, they need to persuade you of
2 the rightness of their request and explain why it would not
3 contradict the established subpart L procedures that have
4 been set up.

5 Why is this materials case so extraordinary?

6 MR. BLOCH: So would it be appropriate for me, for
7 example, to ask them for detailed analysis plan that shows
8 the tasks they're going to accomplish and the research
9 they're going to do given that we're in a legal litigation,
10 in the litigation context?

11 MR. HULL: Well, Your Honor, one of your earlier
12 orders from July of this year did just that and they have
13 come up with their plan of analysis in their September
14 filing.

15 MR. BLOCH: This is not really what I was looking
16 for and I said that when we started. I wanted to have
17 something much more detailed than this about the research
18 tasks that they were going to accomplish and who they were
19 going to schedule for that and how much time it was going to
20 take.

21 I can't parse what they've given me as to whether
22 they need that time.

23 MR. HULL: If that's the case, Your Honor, then
24 you need to order them to submit something further and be
25 very specific as to what information you're looking for.

1 MR. BLOCH: Have you further argument?

2 MR. HULL: A couple of points, Your Honor. There
3 was reference made to having to evaluate certain issues in a
4 vacuum. I don't think that's correct. For instance, HRI
5 has submitted a consolidated operations plan. It goes into
6 great detail about what their intended mining activities
7 are.

8 The issue about duplication of effort. I have
9 still not heard any intervenor response to what staff had
10 pointed out, I believe back in June of this year, regarding
11 the doctrine of estoppel. The issues that are considered to
12 be generic across all three sites and that are litigated up
13 front in phase one would not be subject to relitigation in
14 subsequent phases of the proceeding, and that's why the
15 doctrine of estoppel was created, to avoid this type of
16 duplication of effort that they seem to be so concerned
17 about.

18 I don't see that as --

19 MR. BLOCH: Did you notice that the licensee's
20 chart shows that we would do certain issues twice?

21 MR. HULL: I don't think I did, Your Honor. There
22 was also reference made to the license now gives HRI the
23 right to go forward with their mining activities. But you
24 have to remember that it's not an unconditional right that
25 they have to proceed.

1 The license is studded with conditions that HRI
2 must meet before any lexsiviant can be injected. And after
3 all, it's the lexsiviant injection which could possibly
4 produce the harm that the intervenors have been talking
5 about. Until there is that lexsiviant injection, there is
6 not going to be any harm to any aquifers.

7 I think I'll save the rest of my time for
8 rebuttal.

9 MR. BLOCH: I do want to ask one question. To
10 what extent -- the intervenors are arguing that they have to
11 present their case in a certain way and I understand that
12 they ought to have some choice as to how they present their
13 case.

14 How would you evaluation the effect of taking the
15 Section 8 issues up first on their usual right to litigate
16 matters in the way they want to in order to prove their own
17 contentoins, their own arguments?

18 MR. HULL: Your Honor, if we simply follow the
19 subpart L procedures, the procedures call for a written
20 presentation to be made by the intervenors. How they
21 structure that written presentation is entirely up to them
22 and whatever issues they feel they have the strongest case
23 on, I would think they would concentrate on those.

24 MR. BLOCH: So they could do that, but that means
25 they could also include Crown Point issues.

1 MR. HULL: Not under our bifurcatoin, not under
2 HRI's bifurcation request, Your Honor. That's the issue
3 that still remains to be decided.

4 MR. BLOCH: I'm trying to evaluate to what extent
5 that will interfere with their right to present their case
6 in their way.

7 MR. HULL: I don't see that it would interfere
8 with any hearing rights that they have under the Atomic
9 Energy Act. The AEA does not specify the type of hearing
10 that they are entitled to. They are entitled to a hearing
11 and certainly subpart L provides them with that hearing.

12 MR. THOMPSON: I would concur with that last
13 statement by Mr. Hull. Essentially, what ENDAUM and SRIC
14 want to do is they want to say that NRC's regulatory
15 program, as I indicated earlier, is improper, illegal, and
16 that it is because of NEPA, at least in part.

17 They want to be able to second-guess every single
18 decision made during the operations process, starting with
19 Section 8, probably on a well field by well field basis.
20 They want to be able to come in and say they don't agree
21 with this and they don't agree with that.

22 That simply is they don't have a right to do that.
23 Certainly that would be incredibly burdensome, both for the
24 NRC staff and the hearing officers, presiding officers, and
25 certainly for HRI.

1 It would -- if they prove their case on this
2 performance-based licensing and some of these other issues
3 they've raised, they will -- and there is a decision in
4 their favor, they will essentially nullify the license of
5 every existing NRC licensee and agreement state licensee.

6 There is no vacuum here. There is plenty of
7 information in the COP. If you take the EIS, the SER, the
8 license, and the COP, all of which are tied together, there
9 is a lot of information available. They have had that
10 information for a long time. They have, as indicated by Mr.
11 Hull, they've had experts who have provided affidavits on
12 virtually all of these issues that they have raised.

13 There is absolutely no reason to draw this thing
14 out other than a desire, frankly, to delay this as long as
15 possible.

16 It is indeed staggering to litigate an in situ
17 license into the year 2000. Most of these in situ licenses
18 that have been issued have EAs. They don't even have EISs.
19 So this was -- the reason there was an EIS here is that
20 there was -- property was purchased in different time-frames
21 and when we came to Unit 1, the EIA said we have to have an
22 EIS. So NRC staff said, well, rather than an EIS for that
23 and an EA for the other two, let's roll it all into one.

24 So now we have an EIS that covers all the
25 cumulative impacts and a license that is tied to that and a

1 license that is tied to the SER, which moves in a step-wise
2 fashion and which says there will be no cumulative impacts
3 of any significance if the license conditions are adhered
4 to.

5 I don't believe that NEPA can force the NRC to
6 modify its regulatory procedures. That is essentially what
7 they are arguing and they ought to be able to do that by the
8 end of October. They seem to have a lot of cases that they
9 are wanting to rely on.

10 As long as this proceeding hangs out there, in
11 spite of Ms. Curran's statement that we have a license and,
12 therefore, we can go forward on any of these sites, that is
13 patently not the case.

14 As Your Honor knows, as Mr. Hull referred to,
15 there are multiple conditions, conditions precedent to going
16 from Section 8 to Section 17 and Section 17 to Unit 1 or to
17 Crown Point.

18 We have a conditioned license. We agreed to those
19 conditions because the NRC felt that it would provide
20 additional levels of protection, a "conservative approach to
21 defense-in-depth." And HRI agreed to certain conditions
22 that it didn't think we were really necessary to protect
23 public health and safety in order to facilitate the
24 licensing process.

25 As long as this hearing is hanging out there, it's

1 a cloud over the management of the company. It's a cloud
2 over the company's ability to continue to operate in the
3 fashion that it has the right to make choices about. We
4 need to focus on those things where we have the facts now.
5 We need to focus on the issues that are related to all three
6 sites and we need to do it in a reasonably efficient
7 fashion, which does not mean May of next year. Absolutely
8 no basis for that.

9 We are prepared to go forward, the staff is
10 prepared to go forward. I see no reason why the petitioners
11 shouldn't be prepared to go forward.

12 MR. BLOCH: In reflecting on what's been said so
13 far, I have become aware that I really need more
14 justification to be able to support the time schedules that
15 you're asking for. I have no way of knowing that you
16 actually need the time.

17 I believe that the estimates are made in good
18 faith, but I not only have to persuade myself that those
19 time estimates are realistic, I also have to be able to
20 explain it in a way that the Commission is going to accept
21 it, and the Commission is placing great pressure on hearing
22 officers to try cases efficiently.

23 So I need suggestions from the intervenors about
24 what more can be given to me to help to support the schedule
25 that you're asking for.

1 MS. CURRAN: Okay. We are able to give you some
2 illustration here today, but I just want to back up a little
3 bit first because I think it needs to be made really clear
4 here that this is an NRC licensing hearing. Now, we may not
5 have an opportunity to cross examine witnesses or take
6 discovery, but this is a hearing and we are entitled to a
7 meaningful opportunity to participate in this hearing.

8 We have been given an opportunity to raise issues
9 and we found significant and numerous problems with this
10 application. I have been involved in NRC hearings before
11 and I have participated in hearings in which licensing
12 boards phased or scheduled the presentation of testimony in
13 a way that didn't require everything to be filed all at
14 once, first of all, and gave the intervenors some time to
15 review the record and prepare their case.

16 When we sat down to prepare the schedule, we were
17 aware of the Commission's policy of expediting hearings, of
18 trying to make them go quickly and resolve issues quickly.
19 We have presented to you a hearing schedule which is going
20 to be extremely difficult for us to meet, but we're prepared
21 to do it.

22 MR. BLOCH: What I'm saying is I need to be able
23 to document that it is difficult for you to meet and that
24 it's required for your purposes.

25 MS. CURRAN: Take, for example, the hydrogeologic

1 issues and I've just been talking with Mr. Wallace and asked
2 him to give me an outline of the kinds of things that he
3 needs to do in order to evaluate the various hydrogeologic
4 issues that are raised in this case.

5 First of all, he needs to obtain and review all
6 the geologic information, including the results of drilling
7 tests. That's a lot of information, a great quantity you go
8 through and digest and assemble.

9 MR. BLOCH: And they're referring to tests that
10 have already been conducted.

11 MS. CURRAN: That's right. There are hundreds of
12 wells. This information is being relied on in the
13 application. It hasn't been published. It hasn't been put
14 into the dockets. So we need to get it.

15 MR. BLOCH: It isn't in the docket.

16 MS. CURRAN: No. We need to get it.

17 MR. BLOCH: Do you have a motion that you're
18 preparing now on what needs to be in the hearing file that
19 isn't?

20 MS. CURRAN: Yes. We are preparing a motion. We
21 have been taken up with preparing for this scheduling
22 conference and we have not been able to do it until this
23 point. We have been fairly busy with this case consistently
24 since it started and we are now at the point where we're
25 ready to tell the presiding officer what more information we

1 need, at least with respect to this first group, which is
2 what we would like to focus on first.

3 Second, our experts need to perform new pump test
4 analyses on the sites. Third, our experts need to perform
5 independent geologic analysis on the new data that we get
6 from HRI, the well drilling data.

7 MR. BLOCH: Under subpart L, the ability to do new
8 empirical work on the site is going to depend on you proving
9 that that's necessary. I don't think you'd be able to do
10 that before the filing.

11 In other words, if you can demonstrate that the
12 hearing file is inadequate to show the safety of the
13 hydrogeological conclusions, then one of the conditions on
14 licensing that you might impose is your being able to
15 conduct additional tests.

16 MS. CURRAN: We're not talking about testing
17 ourselves.

18 MR. BLOCH: I thought that's what you were saying.

19 MS. CURRAN: No. We're talking about taking the
20 data and performing our own analysis of the data, which
21 would be a different interpretation of the data.

22 MR. BLOCH: I thought you were actually asking to
23 do your own tests on the site.

24 MS. CURRAN: If we could afford it, we might.

25 Another --

1 MR. BLOCH: Statistical tests, okay.

2 MS. CURRAN: Fourth would be to perform
3 independent modeling studies of our own.

4 MR. BLOCH: So that kind of detail would show me
5 the kind of information about the time you need to use to
6 get it. And also, incidentally, the motion on gaps in the
7 record would also indicate a need for additional time.

8 When will that motion be ready?

9 MS. CURRAN: May I have a minute to confer?

10 MR. BLOCH: Before you continue the discussion,
11 there is an efficient way to do this, too, which is to be
12 talking to the staff about whether they agree that these are
13 now gaps and it may not even require the filing of a motion,
14 if you have discussions with the staff, and they may be able
15 to tell you whether or not these things exist.

16 MS. CURRAN: What we're trying to decide or figure
17 out here is at what point would we be satisfied that we had
18 reviewed the entire record and knew what was missing. It's
19 a huge record and we're part way through it.

20 We have identified some things that are still
21 missing, such as the drill logs and some structural maps
22 that are mentioned in the application, but not included.
23 But we haven't been through the entire application.

24 MR. BLOCH: An accounting of what you've done and
25 how much personnel is taken and how many pages you've gotten

1 through and the kinds of conclusions you've already done
2 would be a way of projecting your future needs, also, and it
3 would have to be considered by me I think in order to decide
4 what is fair and efficient here.

5 Without that information, I'm just in the dark. I
6 know it's an extensive record, but I don't know how
7 extensively you're analyzing it or that you need to continue
8 analyzing it.

9 MS. CURRAN: Well, at a certain point, we're
10 reluctant to share our strategy for preparing our case with
11 all of the parties, frankly. We feel that we are entitled
12 to a certain amount of privacy in preparing our case under
13 the law and for us to lay out every single thing that we're
14 going to do to prepare our case, it always just seems -- it
15 seems to me that one can look --

16 MR. BLOCH: It's clearly a privacy need, but to
17 say that you had six people going over this, including an
18 expert in hydrology and whatever other experts have done it,
19 and you've gotten through a certain number of pages and
20 you've prepared these kinds of results and you're even
21 finding gaps in the record, I don't think that -- I think if
22 you prepare it carefully, it won't interfere much with your
23 privacy rights for preparing the case.

24 And I really do need that, both for my own purpose
25 to satisfy myself about how long you need and definitely for

1 the purpose of being able to write something that the
2 Commission will understand.

3 And there are substantial impacts here, too. I
4 understand that the more time it takes, the more uncertainty
5 there is, that doesn't mean that HRI is entitled to having
6 things take less time that you legitimately need to have a
7 fair trial, but that is a consideration that I am aware of.

8 That is, if the uncertainty lasts longer than it
9 has to, they're being injured. So I have to know why it's
10 not longer than it has to.

11 MS. CURRAN: Do you still want us to give you a
12 date for providing that information?

13 MR. BLOCH: I think a date by which you can be
14 addressing that with the staff, at least. Whether you're
15 going to provide it as a filing or not will depend I think
16 on what happens with your discussions with the staff. What
17 date do you think you'll be able to be in conversation with
18 the staff?

19 MS. CURRAN: Could you hold on one minute?

20 MR. BLOCH: The licensee will know what this
21 conversation is with the staff, too.

22 MS. CURRAN: We could probably get to the staff
23 within two weeks and then if we weren't able to resolve our
24 concerns, I guess come to the Presiding Officer in another
25 two weeks.

1 MR. BLOCH: It might be faster than that.

2 MS. CURRAN: Well, we would certainly try to do it
3 faster than that.

4 MR. BLOCH: And how much time do you think it will
5 take you to prepare the statement that I want about your
6 work process needs?

7 MS. CURRAN: Could we just do a filing with you in
8 30 days that would address that and include any other issues
9 that might have come up in our discussions with the staff?

10 MR. BLOCH: I want to schedule the case faster
11 than 30 days from now. What I am asking for, I thought I
12 had asked for for this session. I guess I could have been
13 more complete, but I also thought that the intervenors knew
14 the problems about efficient proceedings at the NRC and the
15 need to document anything like -- I mean, to have anything
16 like this time schedule will require a lot of documentation.

17 MS. CURRAN: Right. That -- I must respectfully
18 say that I disagree with you on that question because it is
19 not unusual for a materials licensing briefing to take the
20 amount of time that we have set forth here. It's 15 months
21 between the first pleading and the last. That is not an
22 incredibly long time for a project of the size and
23 complexity of this one.

24 And in our view, you can look at the size of this
25 record, at the complexity of the issues that have been

1 raised in our statement of concerns. You can look at the
2 other pleadings in the case and see the kinds of issues that
3 have been raised there, and it seems perfectly reasonable to
4 conclude that these are the -- A, that these issues will
5 take some time to prepaer and that there isn't that much
6 time between the briefing of each issue in this case.

7 We have left relatively little time. Things are
8 going forward steadily. Each issue is being progressively
9 adressed.

10 MR. BLOCH: I understand that. The context I'm
11 thinking of -- I have sympathy for what you're saying, and,
12 yet, the context in which we're operating is one in which
13 the Commission believes that license renewal cases can be
14 finished in ten months.

15 I have to persauade a Commission that thinks that
16 license renewal cases shoudl be finished in ten months. A
17 materials license case can take longer than that.

18 MS. CURRAN: Well, we would propose to give you a
19 statement of the additional work that we need to do on this
20 application simultaneously with our contact with the NRC
21 staff and that if, at that time, I guess we would identify
22 issues that have come up in terms of documents we might need
23 to add to the hearing record and then we would let you know
24 within a week following whether we've been able to resolve
25 those issues.

1 MR. BLOCH: And I take it that nothing we're
2 talking about doing now is going to itnerfere with the
3 schedule you've already offered. You're not going to ask
4 for a delay in the times you've already set.

5 MS. CURRAN: No, not based on this.

6 MR. BLOCH: Is there anyone else who would like to
7 make a finish statement before we conclude today?

8 MS. CURRAN: I would just like to finish my
9 rebuttal. First, I think Mr. Thompson said as long as the
10 hearing is hanging out there, it's a cloud over the company.
11 The same can be said for the members of this community. As
12 long as this entire project remains unresolved, it's a cloud
13 over this community and it's important to point out that
14 there are many allotees who are depending on income from
15 this project and none of those allotees are at Churchrock.

16 All of those people have land in Crown Point, at
17 either the Crown Point project or Unit 1. Their issues
18 remain unresolved until we get this entire proceeding
19 completed.

20 So there is a cloud over this community because of
21 the delay which HRI seeks in the resolution of the case.

22 We think the schedule that we propose is
23 reasonable because it would conclude the entire hearing
24 before HRI even begins to mine at Section 8. That's removal
25 of the cloud before the action even starts.

1 I also would like to point out that it took the
2 staff four and a half years to prepare an EIS for this
3 project. This is a complicated affair. This is something
4 that has taken the government a long time to analyze and
5 it's taking us some time, and we would like to have the time
6 we need, and we will be addressing that further to you.

7 Finally, I would just like to emphasize one more
8 time that a license has issued in this case and the entire
9 NRC structure for dealing with licensing issues is that the
10 focus is the issuance of a license. It is not the project,
11 it is not what HRI is planning to do. It is the license.
12 We're entitled to litigate the entirety of this license and
13 we're entitled to a reasonably expeditious hearing on that.

14 Thank you.

15 MR. BLOCH: Thank you. Mr. Ventura.

16 MR. VENTURA: Just a couple of comments here. I
17 know it was said by HRI that the goal here is -- it seemed
18 to be the goal of the intervenors to delay this as long as
19 possible, and I don't think that's true.

20 Just because it's an informal hearing doesn't mean
21 that there shouldn't be order in the way it's scheduled and
22 doesn't mean that there shouldn't be fairness. In fact,
23 there has to be fairness and there has to be order in the
24 way things are scheduled.

25 The schedule that we proposed attempted to do

1 that. If Your Honor needs more regarding work process
2 needs, that can be provided to justify that schedule. But
3 this schedule was meant to take things in an orderly fashion
4 rather than have one giant glob of a presentation that would
5 neither fairly represent the case that we have or present
6 any order to the Presiding Officer.

7 MR. BLOCH: Thank you. Mr. Hull, you're last.

8 MR. HULL: I think HRI is last, Your Honor.

9 MS. CURRAN: I don't think they went.

10 MR. BLOCH: They already went with their rebuttal
11 time.

12 MR. HULL: Your Honor, I'm really puzzled as to
13 why we only find out now about alleged gaps or deficiencies
14 in the hearing file material. Again, I would reiterate that
15 that material was distributed to the parties back in
16 mid-June of this year, pursuant to the tentative schedule
17 you had established way back on May 13 of this year.

18 For them to be saying now that they need an
19 additional four weeks before they could even file a motion
20 with you explaining what material is not there, I just don't
21 see any justification for that.

22 There have been no new issues that I have heard
23 today that have been raised of a technical or legal nature
24 which would justify the extraordinary amount of time which is
25 being requested in the proposed schedules for completing

1 this case.

2 I would strongly urge you to take a very close
3 look at any reasons they come up with why there has been so
4 much delay to date and why so much further delay would be
5 needed before we could complete this proceeding.

6 MR. BLOCH: When we mention gaps, there is one
7 problem I have had in identifying something in the record,
8 which interests me. I noticed that in the course -- and
9 this relates to the areas of concern.

10 In the course of issuing the license, the staff
11 determined that the wells at Crown Point should be moved,
12 some should be shut down, others opened up. I haven't seen
13 an analysis of the types of excursions that the staff is
14 thinking of and the magnitudes of excursions and many of
15 these risks, so that I can understand the staff's thinking
16 about why that has to be moved.

17 I would expect that that would be in the record,
18 but I haven't been able to find it.

19 The staff seemed to think that HRI had an
20 additional opportunity to speak. Is that -- am I missing
21 something or is that not true?

22 MR. THOMPSON: Well, I reserved most of my time.

23 MR. BLOCH: Is there something you would like to
24 say right now?

25 MR. THOMPSON: Yes, there is. I would like to say

1 that what I'm hearing from intervenors --

2 MS. CURRAN: Excuse me. I just want to point out
3 that Mr. Thompson did have a rebuttal opportunity. He
4 spoke.

5 MR. BLOCH: He's saying he didn't use all his
6 time. We are only talking about one direct and one
7 rebuttal.

8 MR. HULL: Your Honor, the order in which these
9 presentations were given, it went from the intervenors to
10 the staff to HRI, and that's why I was puzzled when you
11 seemed to think that I was going to be speaking last.

12 The order you selected is that HRI seems to have
13 the final --

14 MR. BLOCH: We started with HRI and they spoke
15 briefly and then we went to the intervenors and then to the
16 staff. We went back for rebuttal to HRI.

17 MS. CURRAN: We could all have another round.

18 MR. THOMPSON: No, I don't think that's needed.

19 MR. BLOCH: Is there something that's come up
20 that's new that you absolutely need to address?

21 MR. THOMPSON: It seems to me that what they are
22 proposing sounds an awful lot like discovery. It sounds
23 like the equivalent of discovery and it also sounds like
24 they're trying to recreate the EIS. The EIS has been -- as
25 they pointed out, it's been in the works for quite a time

1 already and --

2 MR. BLOCH: Is it your position that motions to
3 supplement the record are inappropriate?

4 MR. THOMPSON: Unless they can show that something
5 -- basically, yes. I mean, we have an enormous record here
6 and now they're talking about going back and doing
7 independent research and all this sort of stuff.

8 MR. BLOCH: Is it also your position that the
9 staff couldn't volutarly decide to supplement the record?

10 MR. THOMPSON: No. If there is some information
11 the staff has that they wnat to supplement the record with,
12 I suppose they ought to dsicuss it with all the parties.

13 MR. BLOCH: After informal discussions between
14 intervenors and staff, if the staff decides that it should
15 supplement the record, do you have any objection?

16 MR. THOMPSON: I guess, unless I found it
17 objectionable, and I could make my objection known, but it
18 may not make --

19 MR. BLOCH: So you should be kept aware of those
20 discussions so you can make such a motion. In addition to
21 that, if they move to supplement the record, it will
22 appropriate response that no such motions are allowed, if
23 that's what you believe at that time.

24 I'm going to take about ten minutes just to talk
25 to my assistant, and then I will be back. I want to say a

1 few things before we close.

2 [Recess.]

3 MR. BLOCH: The hearing will come to order. I
4 would like to start with the matter of what was brought to
5 my attention just now by the staff of the NRC.

6 At the limited appearance session, I announced
7 that there was a local public library, local public document
8 room, which is at the Dine College library, and that library
9 has all the documents related to this case. I would like to
10 urge anyone who is intersted in the case to use that library
11 for the purpose of becoming more informed about what's
12 happening.

13 MS. BIRD: Judge Bloch, we also have the hours of
14 operation, if anyone is interested in that.

15 MR. BLOCH: Please.

16 MS. BIRD: There was a Federal REgister notice
17 published August 10, 1998, and it indicates that the college
18 library is open Monday through Thursday, 8 a.m. to 9 p.m.,
19 Friday 8 a.m. to 5 p.m., and that patrons should call ahead
20 to confirm weekend hours.

21 MR. BLOCH: I have decided, in consultation with
22 Judge Murphy, to establish a tentative schedule -- a
23 schedule for this case, subject both to a motion for
24 reconsideration and, at the time of the last filing, to a
25 motion showing prejudice concerning the length of time

1 permitted.

2 While the record is extensive, we also are aware
3 that it contains repetitive information, documents that are
4 earlier drafts of later documents, and some similar
5 information in different form, and that the file has been
6 available for several months already, and that the
7 familiarity of parties with this case goes back further than
8 that.

9 What I will require is that the intervenors file
10 all their documents by the end of January, that they be
11 permitted to do that in -- by the end of January 1999,
12 January 31. If that falls on a weekend, you have until the
13 next business day.

14 You can either challenge that through a motion for
15 reconsideration within ten days or, as I said, also by a
16 showing of prejudice at the time that you file your last
17 documents, showing what it is you haven't been able to
18 accomplish and why you think you're prejudiced by not having
19 more time.

20 Also, in addition, next week, I will issue a
21 decision on bifurcation in which I resolve the extent to
22 which Section -- issues other than Section 8 are appropriate
23 at this time. I'm not going to rule on that at this time,
24 however.

25 It will actually be February 1 of 1999, because

1 that's a Monday.

2 I would like to thank everyone for their
3 participatoin. This prehearing conference is adjourned.

4 [Whereupon, at 12:50 p.m., the prehearing
5 conference was concluded.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

NAME OF PROCEEDING: PREHEARING CONFERENCE OF
 HYDRO RESOURCES, INC.

CASE NUMBER: 40-8968-ML

PLACE OF PROCEEDING: Crownpoint, NM

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

David Yandle

David Yandle

Official Reporter

Ann Riley & Associates, Ltd.