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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judge Peter B. Bloch, Presiding Officer  
and Robin Brett, Special Assistant

\_\_\_\_\_  
In the Matter of )  
)  
HYDRO RESOURCES, INC. )  
(2929 Coors Road, Suite 101 )  
Albuquerque, NM 87120 )  
\_\_\_\_\_ )

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

**ENDAUM AND SRIC'S MOTION FOR RECONSIDERATION  
OF THE APRIL 21, 1999 MEMORANDUM AND ORDER (Questions)**

**INTRODUCTION**

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") move the Presiding Officer to reconsider the April 21, 1999 Memorandum and Order (Questions) ("April 21 Order"), which poses questions to the Nuclear Regulatory Commission ("NRC") Staff on several issues about the proposed Crownpoint Uranium Project ("CUP"). ENDAUM and SRIC request that the Presiding Officer vacate the April 21 Order's requirement that the Staff respond to questions 1 through 7.<sup>1</sup> This motion is made pursuant to 10

<sup>1</sup> The April 21 Order indicates that Questions 1 through 7 must be answered by the Staff but that the other parties are not required to respond to them. ENDAUM and SRIC do not object to Question 8, which requests that ENDAUM and SRIC provide a specific citation.

U.S. NUCLEAR REGULATORY COMMISSION  
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C.F.R. §§2.730 and 2.1237 on four grounds.

First, Questions 1-7 posed by the April 21 Order to the Staff provide the Staff with a second opportunity, which it has not requested, to present arguments on issues which already have been addressed. This constitutes assistance to the Staff in the presentation of its case, which violates the Presiding Officer's duty to conduct a fair and impartial hearing. Second, the April 21 Order is contrary to the Commission's January 29, 1999, instructions for the conduct of this proceeding. Third, the questions posed to the Staff in the April 21 Order are not an appropriate request for additional information under 10 C.F.R. §2.1233.

Finally, the April 21 Order requests information that should have been provided in the Final Environmental Impact Statement.<sup>2</sup> This implies that the FEIS is deficient and should have contained additional information. The Presiding Officer should act on that determination in accordance with the requirements of the National Environmental Policy Act ("NEPA"), and should require preparation of a supplement to the FEIS, rather than posing additional questions.

#### **FACTUAL BACKGROUND**

The April 21 Order's Questions pertain to ENDAUM's and SRIC's concerns about "groundwater, the adequacy of the FEIS, and environmental justice." April 21

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<sup>2</sup> NUREG-1508, Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico (February, 1997) ("FEIS") (ACN 9703200270).

Order, 1. In accordance with the schedule established for this matter, ENDAUM and SRIC filed written presentations on these issues.<sup>3</sup> The Staff had an opportunity to address each of these issues in its responses to ENDAUM's and SRIC's presentations.<sup>4</sup> In addition, the Staff neither complained that it needed additional time in which to address any of these issues nor requested an opportunity to supplement any or all of its responses.

## ARGUMENT

### I. RECONSIDERATION IS APPROPRIATE WHERE THERE HAS BEEN AN ERROR OF LAW OR FACT.

The only mention of reconsideration in the procedural regulations is in 10 C.F.R. §2.771, which relates to reconsideration of final decisions by a Presiding Officer. It suggests by analogy that a ruling such as the April 21 Order may be reconsidered if there:

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<sup>3</sup> See ENDAUM's and SRIC's Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Groundwater Protection (January 11, 1999); ENDAUM's and SRIC's Amended Written (continued) Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Groundwater Protection (January 18, 1999) ("ENDAUM's and SRIC's Amended Groundwater Brief"); ENDAUM's and SRIC's Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: NEPA Issues Concerning Project Purpose and Need, Action Alternatives, No Action Alternative, Failure to Supplement EIS, and Lack of Mitigation (February 19, 1999) (ENDAUM's and SRIC's NEPA Brief"); ENDAUM's and SRIC's Brief in Opposition to HRI's Application for a Materials License with Respect to: Environmental Justice Issues (February 19, 1999) ("ENDAUM's and SRIC's Environmental Justice Brief").

<sup>4</sup> NRC Staff's Response to Intervenors' Amended Presentation on Groundwater Issues (March 12, 1999) ("Staff's Groundwater Response"); NRC Staff's Response to Intervenor Presentations on NEPA Issues (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation) (April 1, 1999) ("Staff's NEPA Response"); NRC Staff's Response to Intervenors' Presentations on Environmental Justice Issues (April 1, 1999) ("Staff's Environmental Justice Response").

is some decision or some principle of law which would have a controlling effect and which has been overlooked or that there has been a misapprehension of the facts.

See Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-31, 40 NRC 137, 140 (1994). In this situation, the April 21 Order's Questions 1-7 violate applicable law. Those Questions also appear to be based on a misapprehension that the Staff has not had an adequate opportunity to address the issues raised by the Questions.

**II. THE APRIL 21 ORDER UNFAIRLY PROVIDES THE STAFF WITH A SECOND OPPORTUNITY TO ADDRESS ISSUES.**

**A. The parties have had an opportunity to address the April 21 Order's Questions 1-7.**

Questions 1-3 of the April 21 Order address ground water issues:

1. Based on the experience of Uranium Resources, Inc. (URI) and of the *in situ* leach mining (ISL) industry generally, as well as the laboratory work reported in the Final Environmental Impact Statement, NUREG-1508, February 1997, Tables 4.8 and 4.9 at pp. 4-32, 33, what *important* difficulties (including unlikely but foreseeable difficulties) may reasonably be considered for the Crownpoint Uranium Project (CUP) concerning restoration of groundwater quality at Churchrock Section 8? What environmental costs may reasonably be expected to result from foreseeable difficulties?

2. Based on local geology, what assurance is there concerning the likelihood of the existence of shears, fractures, and joints that could transmit appreciable quantities of water above or below the Westwater aquifer? How much greater assurance may reasonably be anticipated prior to commencing ISL operations at Churchrock Section 8? What environmental costs may reasonably be expected to result from foreseeable difficulties at Churchrock Section 8?

3. Qualitatively and, if possible, quantitatively, what are the effects on the quality of water that may reasonably be foreseen at the closest private water wells to Churchrock Section 8, resulting from the poorest foreseeable condition of groundwater after restoration is completed?

April 21 Order, 1-2, footnotes omitted, emphasis in original.

The Staff has had an opportunity to brief each of these issues, but chose not to do so. Moreover, the Staff was given notice that many of these issues should be addressed because they were raised by ENDAUM and SRIC in their presentations to which the Staff responded. For example, Question 1 asks about problems with restoration of ground water generally. April 21 Order, 1. ENDAUM and SRIC raised this issue at pages 46-59 and 66-68 of their Amended Groundwater Brief and in the extensive testimony provided by their experts in support of those points. ENDAUM and SRIC also pointed out that these problems include the inability of the *in situ* leach (ISL) mining industry to achieve restoration of ground water and the difficulties that will result from mining Church Rock Section 8 before Church Rock Section 17 because Section 8 is downgradient of Section 17. ENDAUM's and SRIC's Amended Groundwater Brief, 53-54, 58-59 and supporting testimony and exhibits.

Similarly, Question 2 addresses the transmission of water above or below the Westwater aquifer. April 21 Order, 2. ENDAUM and SRIC raised this issue at pages 23-27 of their Amended Groundwater Brief and in the testimony cited there. Question 3 pertains to impacts on wells from the Church Rock Section 8 proposed mining; issues

which were raised by ENDAUM and SRIC at pages 23-27 and 60-64 of their Amended Groundwater Brief. Finally, the issues raised by Questions 1 and 2 relating to the costs of ground water contamination also were raised by ENDAUM and SRIC in their written presentation concerning NEPA issues. ENDAUM and SRIC pointed out in their NEPA Brief and in the testimony submitted in support of that Brief the failure of the FEIS to set forth the environmental costs of ground water contamination, and explained the means by which that cost should have been considered. ENDAUM's and SRIC's NEPA Brief, 46-50.

The Staff therefore was on notice when it filed its responses to ENDAUM's and SRIC's Amended Groundwater and NEPA Briefs that these issues had been raised, and the Staff had an opportunity to address those issues. Moreover, the Staff has neither indicated that it needed additional time to respond to ENDAUM's and SRIC's Groundwater Briefs was insufficient, nor requested an opportunity to amend its responses to those Briefs.

Finally, the Staff did address several of these issues.<sup>5</sup> For example, the Staff asserted in its response to ENDAUM's and SRIC's NEPA Brief that Church Rock Section 8 can be adequately restored, and that ENDAUM's and SRIC's assertions concerning the likelihood of vertical excursions at Church Rock lack merit. Staff's Groundwater Response, 11, 10. In addition, the Staff "addressed" the environmental

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<sup>5</sup> ENDAUM and SRIC do not concede the validity of the Staff's arguments on these or any other issues.

costs of ground water restoration by flatly asserting that those costs were adequately discussed in the FEIS. Staff's NEPA Response, 16-17.

Similarly, the Staff had an opportunity to address the issues raised by Questions 4, 6 and 7 pertaining to the costs and benefits of the proposed Crownpoint Uranium Project ("CUP") and the alternatives outlined in the FEIS. These questions ask:

4. What are the adjusted benefits of the CUP, as stated in the FEIS, for one or two prices of yellowcake that are at or above the minimum price at which HRI would commence work on this project? (This is important because the price of uranium fluctuates and a reasonable cost/benefit picture requires an assessment of benefits at more than one arbitrary price.)

6. What are the financial effects of uncertainties about the application of a tax on the CUP by the Navajo Nation? In light of these uncertainties and the possibility of litigation about this tax, are the parties willing to offer to begin negotiation with relevant governments? Have negotiations begun? Are negotiations producing results?

7. For Churchrock Section 8 (and 28 days later for the entire CUP): What is your comparative analysis of the NRC Staff-Recommended Action to: (1) the non-action alternative, and (2) Alternative 2 (modified action) -- including a concise, descriptive summary of the advantages and disadvantages of the options? In your answers to this question, please consider the answers to the questions set forth in your overall discussion.

April 21 Order, 2, 3-4, citations and footnote omitted.

In their NEPA Brief, ENDAUM and SRIC raised the Question 7 issue of the relative advantages and disadvantages of the FEIS's alternatives. ENDAUM's and SRIC's NEPA Brief, 54-60. In addition, although they did not address the costs and benefits that would occur at specific price levels, ENDAUM and SRIC also pointed out



that the FEIS relies upon erroneous assumptions about price, costs, and production levels. *Id.*, 23-55. Intervenors pointed out that the FEIS overstates the tax benefits to the Navajo Nation in light of the jurisdictional dispute, while the cost of production for HRI is understated. *Id.* 39-40; 43-45.

The Staff therefore has had notice of the issues posed by Questions 4, 6 and 7 relating to the comparison of alternatives and importance of prices and tax revenues in the determination of the costs and benefits of the proposed project. Moreover, the Staff addressed the adequacy of the alternatives set forth in the FEIS in the Staff's NEPA Response, and specifically asserted that the FEIS's comparison of alternatives is adequate. Staff's NEPA Response, 7-9. In responding to the overinflated tax revenues, the Staff responded that it had included "numerous caveats when discussing potential tax benefits" in the FEIS, by citing to sections outside the cost/benefit section. *Id.*, 15-16. The Staff also asserted that it had determined that the benefits of the chosen alternative outweighed the costs of that alternative. *Id.*, 17.

Lastly, the Staff had an opportunity to respond to the topic raised in Question 5, which states:

5. Because of financial and market uncertainties, it is foreseeable that Churchrock Section 8 will be the only section developed. What are the governmental needs that arise because of the CUP? Would local governments need to make any capital expenditures that might not be recouped if the CUP suspended or terminated mining operations without going beyond Section 8? In light of the financial situation of local governments, would environmental justice considerations require indemnification or assurances to local governments for possible losses?

ENDAUM and SRIC raised the issue in their NEPA brief that the FEIS assumes an unreasonable level of production for the CUP, and described the environmental justice issues for Church Rock at length in their environmental justice presentation. NEPA Brief, 37-38; ENDAUM's and SRIC's Environmental Justice Presentation (February 19, 1999). Thus, the Staff also had notice of the issues in Question 5. However, the Staff chose to respond by asserting that the FEIS reasonably assumed maximum production costs, and adequately discusses environmental justice. Staff's NEPA Response, 10-13; Staff Environmental Justice Response, 9-11.

The April 21 Order's requirement that the Staff address these issues again therefore points out to the Staff that it should have provided additional information and provides the Staff with a second opportunity to provide that information. The April 21 Order does this even though the Staff neither complained of insufficient time to prepare its written presentation nor requested an opportunity to supplement or to amend its presentation since it was filed.

**B. The April 21 Order violates the Presiding Officer's duty to conduct an impartial proceeding.**

The Presiding Officer has "the duty to conduct a fair and impartial hearing according to law" (10 C.F.R. §2.738), which means that he must accord the same treatment to HRI and the Staff as he does to ENDAUM and SRIC. For that reason, if the Presiding Officer finds that the Staff has not addressed an issue, he must make his ruling on that basis. Here, the Presiding Officer has violated his principal duty by

favoring the Staff.

The extent of the Presiding Officer's lack of impartiality is demonstrated by the fact that this is the third time that he has told the Staff that it needed to provide more information and given the Staff an opportunity to submit that information. The Presiding Officer did this first in Orders issued on March 3 and March 9, 1999, requesting additional information pertaining to HRI's qualifications and second in his Orders of March 18 and March 23, 1999 requiring the Staff to provide additional information concerning the FEIS's treatment of radioactive air emissions. It is clear that whenever the Presiding Officer determines that the Staff has not provided the information necessary for its case, he will help the Staff to make its case by pointing out the problem to the Staff and giving the Staff an opportunity to provide that information.

Moreover, this is not the treatment that the Presiding Officer has afforded ENDAUM and SRIC. There are several factual issues on which the Presiding Officer has determined that ENDAUM and SRIC have not submitted adequate information to support their positions. For example, in LBP-99-9, the February 19, 1999 Partial Initial Decision on Issues Related to the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) and Cultural Resources ("Cultural Resources Decision"), the Presiding Officer found that the testimony of a witness presented by ENDAUM and SRIC (William Dodge) was not

helpful, and that their brief "did not explain what official action was taken by the NRC and what regulations apply to that action." Cultural Resources Decision at 6.

The Presiding Officer did not, however, request that ENDAUM and SRIC provide more helpful testimony or more information on these issues. Rather, on the basis of those and other findings, the Presiding Officer found that ENDAUM and SRIC had "not demonstrated that there is a defect in the NRC's proof of compliance with 36 C.F.R. §800.4(d)." *Id.* at 9. That finding was one of the grounds for the Presiding Officer's ruling denying ENDAUM and SRIC any of the relief they requested in their brief on the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and related cultural resources issues. Cultural Resources Decision at 12.

Similarly, in LBP-99-10, the February 19, 1999 Partial Initial Decision on Performance Based Licensing Issues ("Performance Based Licensing Decision"), the Presiding Officer rejected arguments presented by all of the Intervenors to the effect that license condition 9.4 (the performance based license condition) grants HRI authority to modify its operations. Specifically, the Presiding Officer determined that:

"[t]he number and breadth of express requirements in HRI's license restrict application of PBL [Performance Based Licensing] to a very few, discrete, operational changes.

Performance Based Licensing Decision at 6-7.

The Presiding Officer did not, however, request that the Intervenors answer

questions about what changes HRI is permitted to make unilaterally under the performance based licensing condition. Instead, he rejected the Intervenor's claims. *Id.* at 12. The Presiding Officer also ruled on other factual issues raised by the Intervenor concerning performance based licensing. For example, the Presiding Officer rejected their claims concerning the record on which the license is based and their arguments concerning the scope of the license's delegation of authority to HRI. *Id.* at 5-8. On none of these or any other issues did the Presiding Officer pose questions to the parties that would have given ENDAUM and SRIC an additional opportunity to present their positions.

ENDAUM and SRIC do not agree with the Presiding Officer's findings on these and other issues on which he has ruled against ENDAUM and SRIC in the four partial initial decisions that have been issued. Nevertheless, ENDAUM and SRIC understand that having made those findings, the Presiding Officer has an obligation to rule on the basis of them. It is not equitable, however, for the Presiding Officer to refuse to rule on the basis of findings that are made against the Staff. Yet that is exactly what the Presiding Officer did in his Orders of March 3, 9, 18, and 23, and April 21.

To date, the Presiding Officer found four times that ENDAUM and SRIC allegedly failed to present an adequate case in an area of concern, and has ruled against ENDAUM and SRIC each time. On the other hand, the Presiding Officer has impliedly found that the Staff has failed to present its case three times, and each time

has pointed this out to the Staff and has given it additional time in which to present more information.

The Presiding Officer's conduct is particularly egregious because the Staff has the burden of proof to demonstrate that there has been compliance with NEPA. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI 93-19, 17 NRC 1041, 1049 (1983); Louisiana Energy Services (Claiborne Enrichment Center). LBP-96-25, 44 NRC 331, 338 (1996). ENDAUM and SRIC have met their burden of going forward and have shown that neither the FEIS nor the Staff has adequately addressed the issues raised by Questions 1-7. The Staff must therefore meet its burden of showing that its and the FEIS's analyses are adequate. The Staff did not do this, and it is not appropriate for the Presiding Officer to provide the Staff with a second opportunity to do so.

### **III. THE APRIL 21 ORDER VIOLATES THE COMMISSION'S DIRECTION FOR THE CONDUCT OF THIS CASE.**

The Commission has made it clear that it expects this proceeding to be conducted expeditiously, and that "it does not advance that goal to stretch out briefing deadlines well beyond what even the hard-pressed parties themselves need or request." CLI-99-1; January 29, 1999. The Commission made that statement in its *sua sponte* review of the Presiding Officer's January 21, 1999 Order extending to March 5, 1999 the deadline for the Intervenors to file their final presentations. The Commission reversed that January 21, 1999 Order on the grounds that the goal of resolving this

matter expeditiously was not advanced by extending the time for filing those briefs beyond what the Intervenors had requested. CLI-99-1 at 3.

The April 21 Order's Questions should be reconsidered and vacated because they do essentially the same thing: they provide the Staff with an opportunity to amend its written presentations for the purpose of providing information that could have and should have been presented in those written presentations, and it invites the Staff to submit such information.

The Staff has not requested this opportunity; nor did it request any extension of time in which to make its presentation initially. Moreover, all of the parties have had ample opportunity to address the issues raised by the April 21 Order's Questions. In addition, as is reflected in their Groundwater, NEPA, and Environmental Justice Briefs, ENDAUM and SRIC have addressed these issues, and the Staff has either addressed them or chosen not to address them.

The April 21 Order's request for information from the Staff amounts to an extension of the deadlines for the Staff's presentation, an extension that the Staff has not requested. This is contrary to the Commission's direction. Questions 1 through 7 therefore should be vacated, and the Presiding Officer should rule on the issues addressed by those Questions on the basis of the information that has been submitted by the parties.

**IV. THE APRIL 21 ORDER'S REQUEST FOR ADDITIONAL INFORMATION FROM THE STAFF VIOLATES THE PROCEDURAL RULES GOVERNING SUBPART L PROCEEDINGS.**

The NRC regulations provide that the Presiding Officer may ask questions of the parties, but it is not appropriate for the Presiding Officer to do so when the parties have already had opportunities to address and have addressed the issues involved. In explaining the manner in which a Subpart L proceeding is to be conducted, the Commission has pointed out that a Presiding Officer's use of questions pursuant to 10 C.F.R. §2.1233 should be for the purpose of following up on and clarifying the information that parties provide in their written presentations, not to put matters into controversy initially. See Rockwell International Corporation (Rocketdyne Division), ALAB-925, 30 NRC 709, 717-718 (1989). In that case, the Appeal Board instructed the Presiding Officer "to comply with both the letter and intent of the Subpart L rules."

The Appeal Board stated that:

In particular, pursuant to 10 C.F.R. §2.1251(d), the Presiding Officer is to examine and decide only those issues properly put into controversy by the parties, absent some basis for invoking the exception found in that same provision.

30 NRC at 723.

This is consistent with the Commission's 1998 Policy on Conduct of Adjudicatory Proceedings. In that Policy, the Commission directed that:

parties are obligated in their filings before the board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual



basis, including, as appropriate, citation to the record.

NRC Policy on Conduct of Adjudicatory Proceedings; Policy Statement (August 5, 1998), 63 FR 41872, 41874.

A party that chooses to address an issue in a specific manner or not to address the issue has made a choice and should be prepared to live by it. *See* Curators of the University of Missouri (Trump-S Project), LBP-91-14 (ASLBP No. 90-613-02-MLA), 33 NRC 265, 266 (1991) (denying because of a lack of a specific enough showing a motion for leave to respond to an NRC Staff response to the Presiding Officer's request for information). The purpose of requests for additional information pursuant to 10 C.F.R. §2.1233 should be to insure a complete record, not to provide parties with additional opportunities to address issues. *Cf.* Curators of the University of Missouri (Trump-S Project), CLI-95-1, 41 NRC 71, 116-117 (1995) (upholding a Presiding Officer decision that denied intervenors who had already submitted presentations an opportunity to submit rebuttal evidence as well).

Moreover, this is particularly true when the parties involved are represented by counsel, especially counsel who have experience. The Commission does not hold *pro se* parties to the high standards it expects attorneys to achieve, but it expects even those parties to conduct their cases appropriately. *See* Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1246-1247 (1984) (remanding a licensing proceeding to the Licensing Board for further hearing on

several issues, including the adequacy of a training program, and granting an intervenor group's motion to reopen the record for hearing on allegations of improper leak rate practices). Attorneys, on the other hand, particularly experienced attorneys, are held to high standards. See Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1) (vacating a Licensing Board decision and remanding to the Board with instructions to dismiss an intervention petition for lack of specificity required by Commission's rules), ALAB-279, 1 NRC 559, 576-577 (1975).

In this case, the Presiding Officer should hold the Staff to the highest standards because its counsel appear to be experienced and to have significant backgrounds in NRC proceedings. The Presiding Officer therefore should not be in the business of providing the Staff with second opportunities to make their presentations, particularly when it has not requested such an opportunity.

**V. THE APRIL 21 ORDER'S QUESTIONS MANDATE SUPPLEMENTATION OF THE FEIS.**

The April 21 Order's Questions all request information concerning issues that either are or should have been part of the FEIS. That implies a determination by the Presiding Officer that the FEIS is deficient and should have contained additional information. The April 21 Order requests that the Staff prepare its responses in the form of a supplement to the FEIS. April 21 Order, 4. Questions 1-7, which request supplementation of the FEIS by the Staff, presuppose an ultimate issue in this proceeding; the FEIS is inadequate and should be remanded to the Staff. In addition,

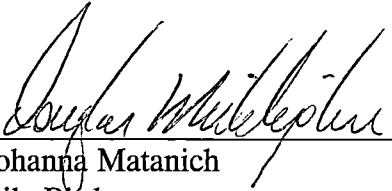
use of such information in decisionmaking without supplementation of the FEIS would violate NEPA. See March v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989) (a supplemental EIS must be prepared if there major federal action remains to occur and the new information is sufficient to show the action will significantly affect the quality of the human environment or to a significant extent not already considered). Thus, the content of Questions 1-7 belong most appropriately in the form of a partial initial decision, rather than as technical requests for information.

### **CONCLUSION AND REQUEST FOR RELIEF**

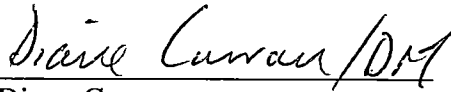
Questions 1-7 of the April 21 Order violate the Presiding Officer's duty to conduct an impartial proceeding. Questions 1-7 also violate the Commission's direction for the conduct of this proceeding, and they are an improper use of the Presiding Officer's authority to request additional information. Moreover, the April 21 Order's Questions demonstrate that the FEIS must be supplemented, and use of information provided in response to those questions to make a decision in this matter without making that information available to the public through supplementation of the FEIS would violate FEIS.

ENDAUM and SRIC therefore request that the Presiding Officer vacate the April 21 Order's request for the information covered by Questions 1 through 7. ENDAUM and SRIC further request that the Presiding Officer act on the basis of the information covered by those Questions that has been presented by the parties to date.

Dated: May 3, 1999.



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Before Administrative Judge Peter B. Bloch, Presiding Officer

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Albuquerque, NM 87120	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that:

On May 3, 1999, I caused to be served copies of the following:

**ENDAUM'S AND SRIC'S MOTION FOR RECONSIDERATION OF THE APRIL 21, 1999 MEMORANDUM AND ORDER (Questions)**

to the following parties by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. Service was also made upon the following parties marked by an asterisk via e-mail. The envelopes were addressed as follows:

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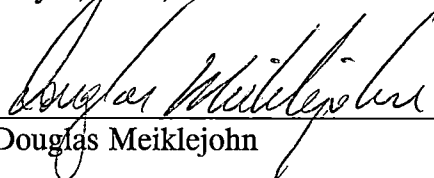
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