

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

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March 4, 1999

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION STAFF

The Honorable Peter Bloch  
Presiding Officer  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

By electronic mail

Re: Hydro Resources, Inc. letter of February 26, 1999  
Docket No. 40-8968-ML; ASLBP No. 95-706-01-ML

Dear Judge Bloch:

We write on behalf of Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") to inform you that we intend to respond to the letter sent to you on February 26, 1999<sup>1</sup> by Hydro Resources, Inc. ("HRI"). We write also to alert you that Ms. Curran received the voluminous attachments to the letter only yesterday, and that the attorneys at the New Mexico Environmental Law Center have not received them at all as yet; and to request that you delay making any decision based on the HRI letter until we have had a reasonable opportunity to respond to the letter formally.

To the extent that we have been able to review the letter, we have identified various aspects to which we intend to respond, including HRI's unlawful attempt to make substantive changes to its brief and affidavits without seeking leave from the Presiding Officer, HRI's use of a letter rather than a pleading to make changes, and HRI's failure to file signed amended affidavits. In addition to the substantive changes presented in the letter, there may be more substantive changes in the attachments to the Affidavit of Craig Bartels, which we have not yet had an opportunity to review.

HRI has violated the Presiding Officer's instructions and prejudiced ENDAUM and SRIC by using different methods of serving the February 26 letter and its attachments on the Presiding Officer and the parties. Although the Presiding Officer was served by Federal Express, ENDAUM's and SRIC's counsel were served with the letter by electronic mail and with the attachments by first class mail. As a result, whereas the Presiding Officer presumably received the attachments on Monday March 1,<sup>2</sup> Ms. Curran did not receive

<sup>1</sup> The date on the first page of the letter is February 26; the date on the second and third pages of the letter is March 1.

<sup>2</sup> The Presiding Officer presumably received the letter on March 2 if it was sent March 1.

U.S. NUCLEAR REGULATORY COMMISSION  
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The Honorable Peter B. Bloch  
March 4, 1999  
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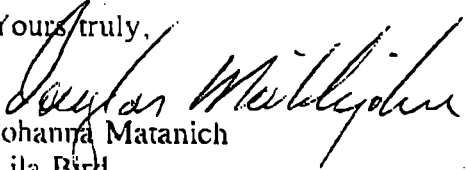
them until Wednesday March 3, and attorneys at the New Mexico Environmental Law Center still have not received them. HRI's method of service is contrary to your direction in your September 22, 1998 Order that presentations be served by electronic mail and exhibits and attachments to the presentations be delivered within two days after the filing of the presentation. The material in and attached to HRI's letter effectively constitute amendments to HRI's presentations, for which HRI should have conformed to the Presiding Officer's service requirements.

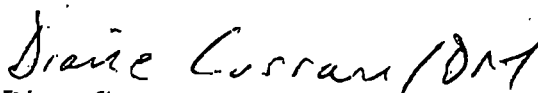
The disparity in the method of service used by HRI is a particular problem with respect to the Environmental Law Center because of the length of time that it takes first class mail to reach Santa Fe from Washington. When the Presiding Officer receives filings days before the parties, it has a prejudicial effect on the parties' ability to make a timely response that is taken into consideration by the Presiding Officer. This is especially true here because the Presiding Officer has been instructed by the Commission to render his decision expeditiously and by a specific deadline.

As the Presiding Officer instructed in our conference call in February, ENDAUM and SRIC intend to measure the allowable time for filing a response to HRI's letter based on the date of Ms. Curran's receipt of HRI's complete package, March 3rd. ENDAUM and SRIC intend to file their response to the letter within ten days of that date, i.e., by March 15th. We ask that, in order to cure the prejudicial effect of HRI's improper service of its letter and to allow for consideration of ENDAUM's and SRIC's response to HRI's unlawful attempt to amend its presentation without leave of the Presiding Officer, the Presiding Officer not make any decisions in reliance on the letter or its attachments until ENDAUM and SRIC have filed their response.

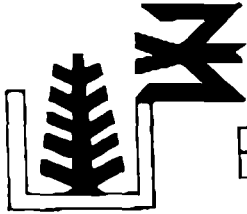
Thank you for your consideration.

Yours truly,

  
Johanna Matanich  
Lila Bird  
Douglas Meiklejohn  
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# NEW MEXICO ENVIRONMENTAL LAW CENTER

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**FAX COVER SHEET**  
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**THIS FAX IS DIRECTED TO:**

DATE: 3/4/99  
TO: Office of Commission Appellate Adjudication  
COMPANY: U.S. Nuclear Regulatory Commission  
PHONE #: \_\_\_\_\_  
FAX #: 1.301.415.1101

**THIS FAX IS SENT BY:**

FROM: Douglas Meiklejohn  
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URGENT:  
 YES  NO

**MESSAGE:**

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