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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF THE SECRETARY
ADVISORY BOARD

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Thomas D. Murphy, Special Agent

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
)
)

**HYDRO RESOURCES, INC.'S RESPONSE
TO INTERVENORS' MOTION FOR LEAVE TO SUBMIT
REPLY BRIEF REGARDING AIR EMISSIONS**

INTRODUCTION

Hydro Resources, Inc. ("HRI") submits this response to Intervenors' February 26, 1999 motion seeking leave to submit a reply to HRI's and the NRC Staff's presentations regarding air emissions ("Motion"). As discussed in detail below, though Intervenors *again* have filed yet more paper in this proceeding, they *again* fail to point to any facts showing that HRI's license results in inadequate protection of public health and safety and that it is based on an inadequate consideration of environmental issues related to air emissions. Intervenors' reply request merely re-argues points already discussed in their January 11, 1999 brief concerning air emissions. Based on this fact, HRI can reach no other conclusion than that Intervenors' motion is just another attempt to delay this *Subpart L proceeding* and to force HRI to expend more monies in

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litigation. In sum, Intervenors seek a second "bite" at the air emissions "apple" at HRI's expense. Intervenors' motion should be denied.

ARGUMENT

Intervenors fail to show that reply is warranted as their motion simply rehashes arguments made in their January 11, 1999 brief. As the Staff points out in its brief dated March 5, 1999 (arguing that Intervenors' motion should be denied), Intervenors' motion fails to point to any facts that Intervenors could not have obtained themselves prior to filing their brief. *See* Motion at 6-9. Moreover, although Intervenors complain about HRI's and the Staff's interpretation of the law, specifically, the definition of "background," *see* Motion at 6-7, they fail to recognize that HRI's and Staff's interpretations are consistent with their previous interpretations relied on in HRI's license, the COP, the ER and the FEIS and were the subject of page upon page of argument in Intervenors' January 11 brief on air emissions. Thus, Intervenors should not be permitted to re-argue the definition of "background."

Each of Intervenors' bases for requesting reply are meritless. First, ENDAUM and SRIC assert that they should have the opportunity to respond to "material and factual assertions made for the first time in HRI's and the Staff's presentations." Motion at 7. Intervenors complain that HRI provided new factual information about "radon and gamma levels at other sites around the country." *Id.* at 8. As pointed out by the Staff, this information was provided *in response* to the January 11 presentation of Intervenors, specifically, the Franke testimony. HRI would not have spent the time and money to obtain an expert to provide this information to the Presiding Officer had Intervenors not raised the issue first, thus requiring a response. Moreover, Dr.

Eggleston did not create the data about which Intervenors complain, rather, he gathered it from publicly available databases freely accessible to Intervenors and other members of the public.

Similarly, Intervenors also complain that they were unaware that HRI had taken steps to remove byproduct and source material from the CUP area and had sealed mine vents and shafts. *Id.* at 7. Here again, this information was provided in direct response to Intervenors' claims. In any event, Intervenors should hardly complain about these activities as the removal of source and byproduct material and the sealing of the mines and shafts could only result in what Intervenors seek -- a lower exposure to humans from airborne radiation. It is absurd for Intervenors, who have argued that air emissions pose a hazard, to complain about activities that result in lower air emissions.

Second, Intervenors protest the "unfairness" of having to make presentations without a complete hearing file. Motion at 7, fn. 5. While Intervenors may believe that the hearing file is incomplete, they neither provide support for that belief nor identify even a single piece of paper that should have been placed in the voluminous hearing file but which remains absent.

Third, Intervenors seek first to rehabilitate and then to bolster the testimony of Franke. Motion at 8-9. Recognizing the weaknesses in Franke's testimony, and fearful of being denied the ability to respond in full, Intervenors, expressing no shame, present Franke's rebuttal. The presentation of Franke's rebuttal is an attempt by Intervenors at an end-run around the Presiding Officer's requirement that parties file requests to file replies in this proceeding. For this reason, the statements made by Intervenors regarding Franke's testimony should be stricken from the record and Intervenors' request to reply further should be denied.

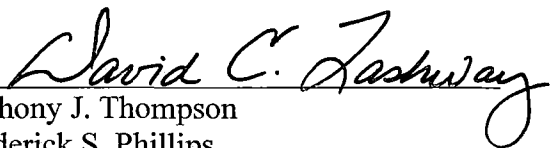
Finally, to the extent Intervenors raise other arguments in support of their motion, they either are too general to respond to or are based on a misinterpretation of the facts. In any event,

the voluminous record and the parties' briefs are more than adequate to reach a determination regarding air emissions, which has never been identified to pose a significant adverse impact at any other operating or non-operating ISL facility.

CONCLUSION

Because Intervenors have failed state an adequate basis for the need for a reply and for all the aforementioned reasons, Intervenors' request should be DENIED.

Respectfully submitted this 8th day of March, 1999.


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents, HYDRO RESOURCES, INC.'S RESPONSE TO INTERVENORS' MOTION FOR LEAVE TO SUBMIT REPLY BRIEF REGARDING AIR EMISSIONS, in the above-captioned proceeding were sent to the following by overnight mail on this 8th day of March, 1999.

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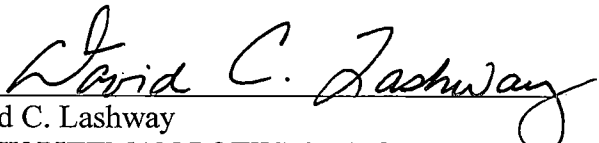
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