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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECURITY
RULEMAKING AND
JUDICATIONS STAFF

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

SERVED MAR 23 1999

In the matter of

HYDRO RESOURCES, INC.
(2929 Coors Road
Suite 101
Albuquerque, New Mexico 87120)

Docket No. 40-8968-ML

Re: Leach Mining
and Milling License

ASLBP No. 95-706-01-ML

MEMORANDUM AND ORDER
(SRIC-ENDAUM Motion for Reconsideration)

On March 22, 1999, intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") moved for the Presiding Officer to reconsider LBP-99-15 (the Memorandum and Order issued on March 18, 1999) and to vacate his request for more information from the NRC Staff on the adequacy of the Final Environmental Impact Statement's treatment of the impacts of radiation from the Crownpoint Uranium Project and elevated radiation levels in the Project area.¹ LBP-99-15 at 11.

In its brief, ENDAUM and SRIC, with support from the SAMS, rely on the following argument:

¹ ENDAUM and SRIC do not object to the other questions posed by LBP-99-15.

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.

I have studied that case carefully. It involved a Presiding Officer who was trying one of the first Subpart L cases, and he made many errors. In this case, which involves the same person, who now serves as a more experienced Presiding Officer, none of the prior errors were made.

The questions asked by the Presiding Officer in this proceeding were framed after a careful study of the record, which has been compiled pursuant to the regulations. They did not involve putting any fresh matter into controversy, as the NEPA issue has been squarely raised and is already contested, even though the Staff inexplicably abstained from the fray. The questions were a legitimate request made in the Presiding Officer's discretion, pursuant to 10 C.F.R. § 2.1233(d). The purpose of the request is to provide a more complete hearing record that will facilitate a reasoned decision. While Staff could have filed comments within the scope of the question that has been asked,² Staff

²Although it is generally true that areas of concern do not overlap in this case, there is a separate NEPA concern and Staff may have chosen to reserve its comments on this concern for later.

comments are often very helpful to the Presiding Officer and a Staff response would be very helpful at this time. The Staff response may be influenced by the interpretation of background radiation found in LBP-99-15.

Since the request for information was within the powers of the Presiding Officer, it is authorized. There is no reason to treat this action as an unrequested extension of time. Accordingly, the Motion for Reconsideration is *denied*.

IT IS SO ORDERED.



Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O--SRIC-ENDAUM MOTION..RECON have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)40-8968-ML
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Dated at Rockville, Md. this
23 day of March 1999

Adria T. Byrdson
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