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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '99 MAR -5 P2:23

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
2929 Coors Road, Suite 101)
Albuquerque, New Mexico 87120)

NRC STAFF'S RESPONSE TO PETITION FOR REVIEW OF LBP 99-1

INTRODUCTION

This Subpart L proceeding concerns the Staff's January 5, 1998 issuance of a materials license to Hydro Resources, Inc. (HRI), which authorized HRI to conduct *in situ* leach (ISL) mining in New Mexico after several license conditions are met. On February 3, 1999, the Presiding Officer issued LBP-99-1,¹ denying the relief requests made by ENDAUM and SRIC in SRIC's Disposal Brief, at 54; and denying the relief requests made by Ms. Morris and Ms. Sam in Sam's Disposal Brief, at 15. On February 23, 1999, intervenors ENDAUM, SRIC,

¹ Partial Initial Decision (Waste Disposal Issues), 49 NRC ____, slip op. (Waste Decision). Therein, ruling in favor of HRI and the Staff, the Presiding Officer adopted many of the rebuttal arguments contained in HRI's December 9, 1998 waste disposal response brief, and the "NRC Staff's Response To Intervenor Presentations On Liquid Waste Disposal Issues" dated December 16, 1998 (Staff's Waste Response). HRI and the Staff were responding to two joint briefs, both dated November 9, 1998, regarding various concerns about ISL waste disposal issues. The brief filed on behalf of intervenors Eastern Navajo Diné Against Uranium Mining (ENDAUM), and Southwest Research and Information Center (SRIC), will be referred to as SRIC's Disposal Brief. The other joint brief, filed on behalf of intervenors Grace Sam and Marilyn Morris, will be referred to as Sam's Disposal Brief.

Ms. Morris, and Ms. Sam (collectively, "Petitioners"), jointly filed "Intervenors' Petition for Review of Presiding Officer's Partial Initial Decision (Waste Disposal Issues)" (Review Petition).²

As discussed below, the Review Petition was not timely filed, and otherwise fails to show that Commission review of the Waste Decision is warranted pursuant to 10 C.F.R. §§ 2.1253 and 2.786(b)(4). Accordingly, the Commission should deny the Review Petition.

DISCUSSION

A. Review Petition Was Not Timely Filed

Pursuant to 10 C.F.R. §§ 2.1253 and 2.786(b)(1), a petitioner seeking Commission review of a presiding officer's full or partial initial decision in a Subpart L proceeding must file a petition for review within 15 days after service of such a decision. As the Petitioners acknowledge, the Waste Decision was served upon them on February 3, 1999. *See* Review Petition, at 1.³ Accordingly, they were required to file their petition for review by no later than February 18, 1999.

The Petitioners offer no excuses, and do not otherwise explain, why their tardy Review Petition should nonetheless be considered. The Presiding Officer had alerted Petitioners to the 15-

² The Review Petition, at 1, carries a date of February 22, 1999. However, its signature page, at 11, carries the correct date of February 23. *See also* the Review Petition's telecopier cover sheet prepared by Petitioners' counsel, dated February 23, and the NRC date-stamp imprinted thereon.

³ Consistent with this acknowledgment, the record of the Presiding Officer's February 3, 1999 electronic mail (e-mail) message attaching the Waste Decision shows that counsel for Petitioners in the offices of New Mexico Environmental Law, Rod Ventura, and Diane Curran, received it. Such use of e-mail for filing purposes was previously adopted in this proceeding (*see* "Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation)," dated September 22, 1998 (unpublished), slip op. at 3-4), shortly after the Commission encouraged such use generally in adjudicatory proceedings. *See* 63 Fed. Reg. 41872, at 41873 col. 3 (August 5, 1998).

day deadline for filing any petition for review. *See* Waste Decision, at 13. Furthermore, the Commission's recent policy statement regarding the conduct of adjudicatory proceedings (effective August 5, 1998) (Policy Statement) emphasized that parties thereto "are expected to adhere to the time frames specified in the Rules of Practice in 10 C.F.R. Part 2." 63 Fed. Reg. 41872, at 41874 col. 2 (August 5, 1998). In the absence of any stated justification for the tardy filing, the Commission should deny the Review Petition.

B. Petitioners Fail To Show Review of Waste Decision Warranted

Notwithstanding the Review Petition's untimeliness, should the Commission nonetheless decide to consider the Review Petition, the Commission should deny it for the reasons set forth below.

1. Applicable Legal Standards

Pursuant to 10 C.F.R. § 2.1253,⁴ the standards governing the Commission's exercise of its discretion to grant or deny petitions to review a presiding officer's decisions are set forth in 10 C.F.R. § 2.786(b)(4)(i-v). In order to justify Commission review, Petitioners here must raise a "substantial question" regarding at least one of the following five areas of consideration: (1) whether a finding of material fact in the Waste Decision is clearly erroneous;⁵ (2) whether a necessary legal conclusion in the Waste Decision departs from or is contrary to established law;

⁴ *See Babcock And Wilcox Company* (Pennsylvania Nuclear Services Operations), CLI-95-4, 41 NRC 248, 250-51 (1995).

⁵ To show that a factual finding in the Waste Decision was "clearly erroneous," Petitioners must show that the finding was "not even plausible in light of the record viewed in its entirety." *Kenneth G. Pierce* (Shorewood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995), *citing Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985). *See also Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 322 (1972) (a licensing board's factual findings may not be set aside simply because the appeal board might have found differently).

(3) whether Petitioners identify any substantial and important policy or legal questions; (4) whether Petitioners identify any prejudicial procedural error in the proceeding to date; or (5) whether Petitioners identify any other consideration which the Commission may deem to be in the public interest. *See* 10 C.F.R. § 2.786(b)(4)(i-v).

Under these standards, a petitioner has the burden "to raise questions that are sufficiently substantial to justify Commission review." *Babcock And Wilcox, supra*, 41 NRC at 251. To emphasize the discretionary nature of Commission review, the regulations provide that if a review petition is granted, the Commission specifies the issues to be briefed on appeal. *See* 10 C.F.R. § 2.786(d).

2. Review Petition Fails to Meet Review Standards

The Petitioners fail to meet their burden to show that review of the Waste Decision is warranted, pursuant to 10 C.F.R. § 2.786(b)(4). The Petitioners simply repeat arguments previously made to the Presiding Officer without addressing the rebuttals thereto, and incorrectly characterize selected aspects of the Waste Decision. *See* Review Petition, at 3-9. The Petitioners then address, in summary fashion, the five review standards of 10 C.F.R. § 2.786(b)(4). *See* Review Petition, at 10. This approach puts the cart before the horse.

The Petitioners' summary discussion of the 10 C.F.R. § 2.786(b)(4) standards is deficient in at least five significant respects. First, while they may believe that the Waste Decision contains "significant errors of law and fact" (Review Petition, at 10), the Petitioners fail to establish the presence of any substantial errors regarding material facts or necessary legal conclusions as required by 10 C.F.R. § 2.786(b)(4)(i-ii). Second, while this may be "the first time that an application for an ISL mine materials license has been adjudicated" (Review Petition, at 10), the

Petitioners fail to show that the Waste Decision raises any “substantial and important” questions meriting Commission review pursuant to 10 C.F.R. § 2.786(b)(4)(iii). Third, while any Commission decision on the merits might “provide valuable guidance” (Review Petition, at 10), the proper focus here is not on any potential Commission decisions, but on the Waste Decision. Fourth, no claim of procedural error is made. Fifth, the bare conclusion that Commission review “lies within the public interest” (Review Petition, at 10) is made without any supporting discussion on this point. Accordingly, the Review Petition should be denied.

Moreover, those supporting arguments which the Petitioners did choose to provide do not correctly characterize the Waste Decision in several respects. For example, the Petitioners cite the Waste Decision, at 6-9, as holding that with the exception of Criteria 2 and 5A, the 10 C.F.R. Part 40, Appendix A requirements “do not apply to ISL mining.” Review Petition, at 3. The Waste Decision did not so hold.

While the Presiding Officer correctly found that the requirements of 10 C.F.R. § 40.31(h) are not applicable to the review of ISL license applications (*see* Waste Decision, at 6-7), he did not restrict the applicability of Appendix A criteria in the manner claimed by the Petitioners.⁶ Instead, he concluded section II.A.1 of the Waste Decision by finding that while specific Appendix A criteria by their terms are applicable here, the Appendix A criteria “do not apply wholesale” to HRI’s license. *Id.*, at 7. The Presiding Officer then discussed in section II.A.2 of the Waste Decision (*id.*, at 7-9) Appendix A Criterion 5A regarding surface impoundments, and Criteria 7 and 7A regarding required monitoring programs to detect leakage from permanent mill tailings

⁶ The weakness of the Petitioners’ argument in this regard is shown by their note that the Presiding Officer would thereby allow all new sites to escape regulation. *See* Review Petition, at 3 n.6.

disposal areas. These were the criteria on which the Petitioners had submitted arguments in their November 9, 1998 briefs. Not included in those briefs was any reference to Criterion 9 of Appendix A, regarding financial surety requirements. Yet there is no question that Criterion 9 applies to ISL mining operations (*see, e.g.*, HRI License Condition 9.5), a fact which ENDAUM and SRIC admit in their January 11, 1999 brief (at 5-6) on decommissioning issues. The fact of Criterion 9's applicability would thus certainly be known to the Presiding Officer, and to suggest that he would nonetheless hold that only Criteria 2 and 5A are applicable to ISL mining is not a credible argument.

In trying to show that the Presiding Officer was somehow "intellectually inconsistent" regarding the applicability of Criterion 5A (Review Petition, at 4), the Petitioners again do not correctly characterize a finding in the Waste Decision. They vaguely contend that Criterion 5A was found to be applicable "because the provisions in Criterion 5A address issues that usually arise in ISL mining operations." Review Petition, at 4, *citing* Waste Decision, at 7. There, the Presiding Officer found Criterion 5A to be applicable because ISL operations use surface impoundments, and because "such operations produce 'byproduct material'." The Presiding Officer cites 10 C.F.R. § 40.4 and the Staff's December 1997 Safety Evaluation Report (*see* Waste Decision, at 7) as additional bases for his finding, which the Petitioners ignore. Instead, they simply claim that the finding is "a legal error," but in doing so merely repeat contentions rejected by the Presiding Officer. Review Petition, at 4. This head-in-the-sand approach does not address the arguments made in the Staff's Waste Response and HRI's rebuttal, both of which the Presiding Officer found persuasive, and thus fails to meet the burden Petitioners have here to show that Commission review is warranted.

Similarly, the Petitioners argue that the Presiding Officer ignored the "fact" that 10 C.F.R. § 40.31(h) required that Criterion 5A specifications be included in HRI's license application. Review Petition, at 5. Far from being a "fact", this point was a matter of argument, which the Petitioners lost below. Again, the Petitioners fail to address the arguments made in the Staff's Waste Response and HRI's rebuttal. Moreover, the Presiding Officer did not ignore the issue, but addressed it in section II.A.1 of the Waste Decision, at 6-7:

Next, the Petitioners revive an argument Ms. Morris and Ms. Sam made to the Presiding Officer concerning the alleged differences between "retention ponds" and "evaporation ponds." See Review Petition, at 5-6. The Staff has already made clear that these terms are used interchangeably as references to surface impoundments. See Staff's Waste Response, at 24. By not citing this rebuttal, the Petitioners make it appear that they are providing facts which undercut the Waste Decision.⁷ The Presiding Officer apparently thought this point was so trivial that he did not bother to address it.

The Petitioners' argument regarding 10 C.F.R. Part 20 requirements is self-contradictory. See Review Petition, at 6-7. Therein, they claim that the Staff "has already authorized HRI to conduct land application" (a liquid waste disposal option), but acknowledge that HRI License Condition (LC) 11.8 requires in pertinent part that:

Prior to land application of waste water, the licensee shall submit and receive NRC acceptance of a plan outlining how the licensee will monitor constituent build-up in soils resulting from the land application. (Emphasis added.)

⁷ The Petitioners repeat this argument concerning differences between "retention ponds" and "evaporation ponds" in a slightly different context (see Review Petition, at 7), but again fail to acknowledge the Staff's rebuttal argument. See Staff's Waste Response, at 24.

Thus, pursuant to LC 11.8, absent an NRC-approved monitoring plan, HRI will not be authorized to use land application to dispose of liquid waste. Accordingly, this argument has no merit, and does not support the Review Petition.

In claiming that the Presiding Officer improperly rejected their arguments concerning the Staff's February 1997 Final Environmental Impact Statement (FEIS), based on the mere fact that the FEIS has 250 pages of text (*see* Review Petition, at 7, *citing* the Waste Decision, at 10-11), the Petitioners again do not correctly characterize the Waste Decision. On the contrary, the Petitioners' FEIS arguments were rejected based on the Presiding Officer's findings that (1) the Petitioners failed to show that there were any significant FEIS deficiencies; and (2) their arguments did not correctly characterize the contents of the FEIS. *See* Waste Decision, at 10-11. The Waste Decision, at 11-12, proceeds to discuss those incorrect characterizations.

The rest of the Petitioners' argument in the Review Petition's Section C, at 7-8, amounts to nothing more than an assertion that their arguments submitted to the Presiding Officer were correct,⁸ and should be reviewed by the Commission notwithstanding the failure to address the

⁸ For example, the Petitioners vaguely state that the Presiding Officer in the Waste Decision admits that restoration flow descriptions in the FEIS "can cause misunderstanding," and that the Presiding Officer failed "to address the concern raised by Intervenors that because there is confusion the FEIS is inadequate." Review Petition, at 8, *citing* SRIC's Disposal Brief, at 46. Additionally, this argument fails to cite a Waste Decision page number, and the Petitioners thus violate the following portion of the Policy Statement:

Parties are also 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. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed.

HRI and Staff rebuttals thereto. As discussed above, this is not enough to meet the burden Petitioners have to show that Commission review is warranted.

The Petitioners argue in the Review Petition's Section D, at 8-9, that the Presiding Officer's failure to address every issue raised in the 54 pages of SRIC's Disposal Brief, and every issue raised in the 15 pages of Sam's Disposal Brief, violates 10 C.F.R. § 2.1251(c)(1). The Staff disagrees; as noted by the Petitioners, that provision only requires that findings be made on "all material issues."⁹ The Petitioners seem to believe that any issue they raise must be deemed a material one, no matter how lacking in merit. For example, they complain that the Waste Decision does not address their argument that HRI, in failing to show that it will be able to accommodate any future expansion of operations, thereby violated the "Introduction" to Appendix A. See Review Petition, at 8-9, *citing* SRIC's Disposal Brief, at 27-29. As previously pointed out by the Staff (*see* Staff's Waste Response, at 26, which the Review Petition does not reference), this contention is one which is obviously outside the scope of this proceeding. As such, it is not a material issue which the Presiding Officer was required to address.

Moreover, with respect to at least one of the issues allegedly "ignored" by the Presiding Officer, the Petitioners are simply wrong. The Petitioners contend that the issue of whether the FEIS evaluated "the adequacy of pond liners to prevent leakage, or prevent structural failures," or addressed "the impact on alluvial groundwater" was ignored. Review Petition, at 9, *citing*

⁹ The Staff found no NRC cases construing this regulatory wording, which is also used in 10 C.F.R. § 2.760(c)(1). This wording certainly gives presiding officers discretion to weed out those arguments which are so trivial, inconsequential, or otherwise lacking in merit, that to address them would serve no useful purpose. Otherwise, parties seeking delay would be encouraged to submit overly lengthy written presentations in hopes that the presiding officer would overlook one or more points, thus producing a remand on appeal.

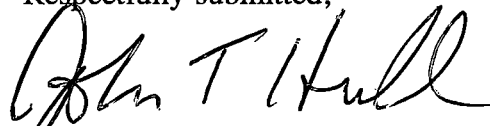
SRIC's Disposal Brief, at 47-48. The Presiding Officer addressed this contention. *See* Waste Decision, at 11-12. *See also* Staff's Waste Response, at 32-33.

Accordingly, the arguments made in the Review Petition's Section D do not establish that Commission review of the Waste Decision is warranted.

CONCLUSION

As discussed above, the Review Petition was not filed in a timely manner. Additionally, the Review Petition fails to show that Commission review of the Waste Decision is warranted, pursuant to the standards of 10 C.F.R. § 2.786(b)(4). Petitioners have the burden of raising questions "that are sufficiently substantial to justify Commission review." *Babcock And Wilcox, supra*, CLI-95-4, 41 NRC at 251. The Petitioners here have failed to meet this burden, and have failed to show that any of the Waste Decision's findings were "not even plausible in light of the record viewed in its entirety." *Kenneth G. Pierce, supra*, CLI-95-6, 41 NRC at 382. Accordingly, the Commission should deny the Review Petition.

Respectfully submitted,



John T. Hull
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of March 1999

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 MAR -5 P 2:23

BEFORE THE COMMISSION

In the Matter of)
HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
2929 Coors Road, Suite 101) (Re: Leach Mining and Milling License)
Albuquerque, New Mexico 87120)

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION FOR REVIEW OF LBP 99-1" in the above-captioned proceeding have been served on the following by U.S. Mail, first class, or as indicated by a single asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by double asterisks via e-mail and express mail this 5th day of March 1999:

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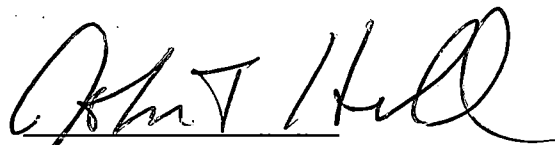
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March 2, 1999

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 MAR -4 P3:13

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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 OPPOSITION
TO INTERVENORS' PETITION FOR REVIEW OF PRESIDING
OFFICER'S FEBRUARY 3, 1999 PARTIAL INITIAL DECISION
REGARDING WASTE DISPOSAL ISSUES**

INTRODUCTION

As the Commission is by now well aware, in the above captioned Subpart L proceeding, Intervenor Eastern Navajo Dine' Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC"), and Grace Sam and Marilyn Morris (jointly, hereinafter "Intervenors") challenge Hydro Resources, Inc.'s ("HRI's") license to construct and operate in-situ leach ("ISL") uranium mining facilities at Church Rock Section 8, located in McKinley County, New Mexico. Pursuant to the Presiding Officer's Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation) of September 22, 1998 ("September 22 Order"), and the Joint Notice of Modification of Schedule for Written Presentations of November 5, 1998 (jointly, the "Orders"), Intervenor were permitted to submit written presentations during Phase I of this proceeding relating to HRI's proposed ISL operations on Church Rock Section 8. See September 22 Order at 2-3.

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In accordance with the Orders, Intervenors presented a brief and supporting documentation to the Presiding Officer on November 9, 1998 regarding liquid waste disposal. *See*, Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Liquid Waste Disposal Issues; Initial Written Presentation of Grace Sam and Marilyn Morris (Nov. 9, 1998).

HRI filed its response to Intervenors' presentation on December 9, 1998. *See* Hydro Resources Inc.'s Response to Intervenors' November 9, 1998 Briefs In Opposition to Application for a Materials License with Respect to Liquid Waste Disposal Issues (Dec. 9, 1998). The NRC Staff responded on December 16, 1998, arguing that Intervenors motion should be dismissed. *See* NRC Staff's Response to Intervenor Presentations on Liquid Waste Disposal Issues (Dec. 16, 1998).

On February 3, 1999, the Presiding Officer issued a decision denying Intervenors relief with respect to waste disposal issues, stating that "Intervenors erroneously rested a substantial portion of their argument on 10 C.F.R. § 40.31(h) and on 10 C.F.R. Part 40, Appendix A, which apply to mill tailings facilities 'at sites formerly associated with such milling' . . . Intervenors have not raised any issues on which HRI has not carried its burden of demonstrating adequate protection of public health and safety and adequate consideration of environmental issues." *See* LBP-99-1, Partial Initial Decision (Waste Disposal), (Feb. 3, 1999) slip op. at 2 ("February 3 Order").

Consistent with their apparent strategy of trying to litigate HRI into bankruptcy, Intervenors now bring this petition for review of the Presiding Officer's February 3 Order. Intervenors' petition lacks merit and should be *denied*.

ARGUMENT

1. INTERVENORS' BASIS FOR REVIEW LACKS MERIT.

Intervenors' petition for review should be denied as it is based on a misinterpretation of NRC's regulations, specifically, 10 C.F.R. § 40.31(h) and Appendix A. Intervenors ignore the fact that Appendix A is not generally applicable to ISL mining. See February 3 Order at 2. As stated in Judge Bloch's February 3, 1999, Order:

The Intervenors erroneously rely on 10 C.F.R. § 40.31(h), which refers generally to the provisions of 10 C.F.R. Part 40, Appendix A, "Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction of Concentration of Source Material from Ores Processed Primarily for Their Source Material Content" (Appendix A). [citations omitted].

. . . On its face, 10 C.F.R. § 40.31(h) states that it applies "at sites formerly associated with such [uranium or thorium] milling."

. . . [T]he language of the section simply does not apply to the HRI site.

. . . Similarly, Intervenors have argued that Part 40 Appendix A is generally applicable to ISL mining. It is not. The principal purpose of Appendix A relates to "sites formerly associated with such [uranium or thorium] milling." . . . Specific criteria within Appendix A are applicable to this license only when they explicitly apply to ISL mining.

February 3 Order at 6-7. NRC Staff, in their response to the Intervenors' liquid waste disposal presentation, espouse this very same view:

The erroneous premise that 10 C.F.R. § 40.31(h) governs the Staff's review of ISL license applications is belied by its wording, which has not changed since its promulgation in 1980 . . . The (underlined) wording clearly indicates that 10 C.F.R. § 40.31(h), pursuant to the UMTRCA, only applies to the review of applications for licenses authorizing uranium mining at sites on which tailings piles are present. . . . [T]hese traditional mill sites are the ones to which 10 C.F.R. § 40.31(h) was meant to apply.

Staff Brief at 15-16. The Staff's lengthy analysis of the evolution of the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"), as amended, and the amended Part 40 regulations and Appendix A criteria promulgated pursuant thereto, offers a detailed explanation for why this is so. Specifically, as discussed in the Staff's brief at pages 5-21 and HRI's brief at pages 9-16, the legislative history and NRC's General Environmental Impact Statement ("GEIS") on uranium milling operations and management of mill tailings upon which the 1980 regulations and 10 C.F.R. Part 40, Appendix A are based, make clear that 10 C.F.R. § 40.31(h) and 10 C.F.R. Part 40, Appendix A are designed primarily to address uranium mill tailings, not ISL mining. *See also*, February 3 Order at 6-7.

Intervenors have failed to "raise[] any issues on which HRI has not carried its burden of demonstrating adequate protection of public health and safety and adequate consideration of environmental issues," February 3 Order at 2, as they misinterpret the law, continue to ignore HRI's license conditions and the Consolidated Operations Plan ("COP"), and raise issues irrelevant to this proceeding because they pertain to areas outside of Section 8. For these reasons, Intervenors' petition should be denied as the only "errors of law and fact" were committed by Intervenors, not the Presiding Officer. *See* Petition for Review at 10.

2. IN THE EVENT THE COMMISSION GRANTS REVIEW, BRIEFING SHOULD BE DEFERRED AND ALL ISSUES TO BE REVIEWED SHOULD BE CONSOLIDATED.

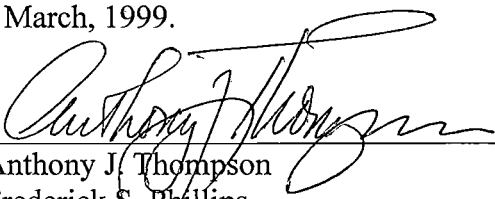
Should the Commission decide to grant Intervenors' petition for review, the Commission should defer briefing of liquid waste issues until the Presiding Officer has issued decisions on each of the issues being addressed in the current hearing and the Commission has decided which of the issues, if any, will be granted review. Failure to defer briefing is likely to result in a waste of the Commission's resources and the resources of the parties, as Intervenors are wont to revisit issues again and again in successive presentations. As it is likely that other Commission decisions regarding partial initial decisions may later be appealed to the Court of Appeals (as this

would be in line with Intervenor's attempts to drag out this proceeding and push HRI into bankruptcy), the Commission's deferral and consolidation of issues for Commission appeal would avoid serial Commission decisions on individual issues and potential presentation of those issues seriatim to the Court of Appeals.

CONCLUSION

For the aforementioned reasons, Intervenor's request that the Commission grant review of the Presiding Officer's partial initial decision regarding liquid waste disposal should be DENIED.

Respectfully submitted this 2nd day of March, 1999.


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 MAR -4 P3:13

BEFORE THE COMMISSION

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ASLBP No. 95-706-01-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document, HYDRO RESOURCES, INC.'S OPPOSITION TO INTERVENORS' PETITION FOR REVIEW OF PRESIDING OFFICER'S PARTIAL INITIAL DECISION REGARDING WASTE DISPOSAL ISSUES, in the above-captioned proceeding has been served on the following by first-class mail on this 2nd day of March, 1999.

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