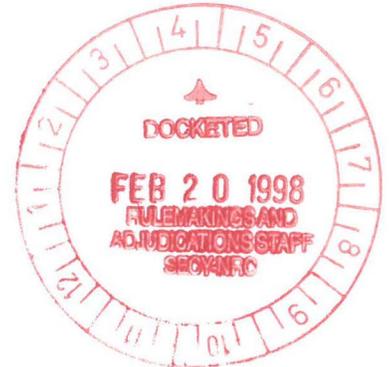


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Chief Administrative Judge
B. Paul Cotter, Jr., Presiding Officer

Administrative Judge
Thomas D. Murphy, Special Assistant



_____)
In the Matter of)
)
HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
12750 Merit Drive)
Suite 1210 LB12) ASLB No. 95-706-01-ML
_____)
Dallas, TX 75251)

**PETITIONER MERVYN TILDEN'S NOTICE OF SUBMISSION OF
THIRD AMENDED PETITION TO INTERVENE, STATEMENT OF
CONCERNS, POSITION STATEMENT, AND REQUEST FOR A
TEMPORARY RESTRAINING ORDER (TRO)**

Comes now, Petitioner Mervyn Tilden (hereinafter "Petitioner Tilden"), by and through his own person and as citizen of the Navajo Nation and citizen of the United States of America, in accordance with the requirements of 10 C.F.R. 2.712 and all applicable laws, hereby submits and notifies the Presiding Officer 1 B. Paul Cotter; Administrative Assistant Thomas D. Murphy; the Office of the Secretary, U.S. Nuclear Regulatory Commission (NRC), Docketing and Service; and U.S. NRC Chairwoman Shirley Ann Jackson, of Petitioner Tilden's Submission of Second Amended Petition to Intervene, Statement of Concerns, Position Statement, and Request for a Temporary Restraining Order (TRO), pursuant to 10 C.F.R. 2.1209, prohibiting the issuance of a materials license to Hydro Resources, Inc. (HRI) for a proposed in situ leach (ISL) uranium mine and milling operation in Church Rock and Crownpoint, NM, pending completion of officially certified NRC public hearings before the City of Gallup and the McKinley County Commission as well as the *impacted* chapters--including Church Rock and Crownpoint, NM--on the Navajo Nation that will be negatively affected for generations to come by the ISL project proposed by HRI, it's attorneys and agents.

1 The general powers of a presiding officer in a 10 C.F.R. Part 50, Subpart L, proceeding include the power to regulate the course of the hearing and to allow for procedural requests by petitioners.

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FACTUAL BACKGROUND

HRI's Proposed ISL Mines and Processing Facilities

HRI filed its application for an ISL mine in Church Rock, NM on April 25, 1988 and amended it (May 08, 1989) to include uranium recovery processing in Crownpoint, NM. In 1992, HRI again amended its application to include ISL mining on allotted lands in the Crownpoint area (Unit 1) and in the community of Crownpoint itself. ² Both communities are predominately Navajo, in rural settings, and have a large poor and low-income populace. This is contrary to U.S. President Bill Clinton's Executive Order on Environmental Justice (E.O. 12898, Feb. 1994) and most certainly not a good neighbor policy as practiced by HRI for it violates the very spirit of the letter and impedes the intent to protect the environment, health and safety of The People. Not only has this ISL project been opposed by The People from the beginning but the opposition has remained at 100 percent. ³ Now, there is a Navajo Tribal Utilities Authority (NTUA) resolution ⁴ opposing the ISL project stating that it will not agree to plug and abandon its Crownpoint wells and/or relocate them elsewhere as it will cause a major disruption in its current water distribution system. This is not addressed in the NRC's "Safety Evaluation Report" or the FEIS. Further, the projects ISL mines and processing facilities will be located in "unprecedented" proximity to residential areas and drinking wells ⁵ despite other areas of concern such as HRI's lack of a Class III Injection Well Permit (IWP) and aquifer exemption from the U.S. Environmental Protection Agency (EPA) and a Class III IWP and temporary aquifer designation from the state of New Mexico (which must be approved by EPA). There are concerns with the consistent non-compliance with the Navajo Nation Moratorium on Uranium Mining and with procedural requirements of the National Environmental Policy Act, National Historic Preservation Act, Native American Graves and Repatriation Act or the many other U.S. and Navajo Tribal laws that protect the Traditional Cultural Properties (TCP) (Archeological sites, burial sites, medicine and food plant

² NUREG-1508, Final Environmental Impact Statement (FEIS) to Construct and Operate the Crownpoint Solution Mining Project, Crownpoint, New Mexico (1997) at 1-1.

³ In February 1995, the NRC conducted public meetings in Crownpoint and Church Rock--at Church Rock not one person spoke in favor of the ISL project. Moreover, at a September 18, 1997 duly called meeting of the Church Rock chapter, 100 percent opposition to HRI's ISL project *and presence* was reiterated--HRI President Dick Clemens disrespected The People (Elders) with angry words whereupon *they told him to his face* not to verbally attack their relatives (Petitioner Tilden and others who spoke out against the ISL project).

⁴ NTUA-11-97, passed on Dec. 11, 1997 by the NTUA Management Board

⁵ NUREG-1508, Draft Environmental Impact Statement (DEIS) to Construct and Operate the Crownpoint Solution Mining Project, Crownpoint, New Mexico at 3-31, October 1994.

gathering sites, offering sites, etc.) of the Dine' (Navajo) People who are practitioners of their religion. HRI's proposed Church Rock site will be right on the location of several documented and many undocumented sites of our ancestors and the anasazi. There are sacred sites that are not recorded simply because of the fact that there is no trust in the present system or its "laws" that are supposed to protect these sites, therefore they are not revealed by The People. In the DEIS there is only half-a-page of irrelevant information that was obviously provided by individuals who *are not practitioners of the Dineh Religion*. HRI's lack of knowledge and expertise on the Dineh Spiritual Way of Life, regardless of the "Navajos" employed by HRI, is clear a demonstration that HRI, and now the NRC, has failed to meet the basic requirement that the public must be well-informed and included in the development of the DEIS and FEIS. This, while the application was "pending but unapproved".

Moreover, there seems to be absolutely no real knowledge, as demonstrated by HRI, it's attorneys and agents, of the Dineh (Navajo) Religion, Culture, History or Spiritual Way of Life as it pertains to the locations of the proposed ISL project's injection and extraction wells, nor does the DEIS, the FEIS and the Consolidated Operations Plan (COP) revision offer us a clue that the aforementioned parties are aware of the connection that the Dineh have with the earth when in fact, the land is actually our identity as "The Earth Surface People". We have been told from the beginning of our creation that if we ever lose the land, we will no longer be "The People". This appalling exclusion of the very people who will be adversely affected by and who will suffer irreparable injury from HRI's ISL operation, have had their hearing rights grossly violated; HRI's argument that Petitioner Tilden and many others who are indeed practitioners of the traditional Dineh religion will not be harmed is inadequate and the lack of documentation warrants official certified public hearings to allow all parties to address these very life threatening issues at hand.

It is very clear that HRI is merely in the process of discovery as it keeps returning to amend it's application before the NRC regardless of the Navajo Nation's Moratorium Against Uranium Mining and the will of the majority population who do not want to wager their, their children's, and future generation's well being on an experimental project that has not been proven to be absolutely safe. This is indicative of the need for a prelicensing hearing under the due process clause of the U.S. Constitution, the Atomic Energy Act *and NRC regulations*. To neglect the public's will is tantamount to domestic terrorism and despotic rule of law.

PROCEDURAL HISTORY

In December 1994 and January 1995, Petitioner Tilden, acting *pro se*, submitted timely requests for a hearing and petitioned to intervene. By Memorandum and Order dated September 13, 1995, the Presiding Officer held the proceeding in abeyance--during which time the NRC Staff issued the FEIS--just so the NRC Staff could complete it's review of the license application and update the hearing file to reflect their new found "discoveries".

In his initial and amended petition to intervene and statement of concerns, Petitioner Tilden set forth a number of ominous concerns relating to the fanciful speculation and misleading promises made by HRI that its proposed ISL project will not be a grave threat to the public, including the fact that the health, safety and property of many will sustain injury if the proposed activities are allowed to go forward without more hearings to explain future water quality and quantity (use and rights), restoration of groundwater, the potential release of radioactive contaminants (called "population doses") in the air, on land, during the transport of pure "yellow cake" on public roads, or worse, within the Morrison Formation aquifer itself--the sole source of drinking water for over 50,000 people in our region.

By Memorandum and Order, dated September 19, 1997, the Presiding Officer *reiterated* his previous order that the proceeding should be held in abeyance until issuance of the NRC's Safety Evaluation Report (SER). This does not explain why the FEIS was issued in March 1997 nor will it explain the (expected) denial of Petitioner Tilden's request for a TRO based upon the fact that Petitioner Tilden (and many others) will indeed *suffer irreparable injury if the relief is not granted and that others will also be harmed if the relief is not granted and that the public interests favors that granting of a TRO and official public meetings financially sponsored by the NRC and ASLB must be duly conducted*. After all, it is public taxpayer's dollars that provide for the salaries and perks of the NRC and ASLB.

On December 04, 1997, the NRC Staff issued its SER for HRI's proposed facility, which concluded that issuance of the license with specific conditions "will not be inimical to the common defense and security or to the public's health and safety" and that "there is adequate assurance that the applicable requirements of 10 C.F.R. Parts 19, 20, 40, and 71, and the AEA [Atomic Energy Act], have been or will be met." 7

On January 05, 1998, the NRC Staff issued a materials license to HRI. This was done by means that do not demonstrate "good faith efforts" and clearly, there is a definite need for public scrutiny into the covert and accelerated rush 8 by the NRC

6 If HRI is allowed to develop the proposed site(s) at the former United Nuclear Corporation's Church Rock site, the activity will disturb the ground and *dried* uranium particulates will be released into the air near Navajo residential areas.

7 SER at 34

8 The complex and sometimes confusing nature of the NRC's rules and language, causes we, the petitioners, much stress and pressure in our efforts to act upon the procedural "deadlines to file" a response in a timely manner. While they (NRC) give themselves over two (2) years to review HRI's license application, we (the petitioners) are once again only allowed a very short period of time to respond, in this case less than three (3) weeks! The Presiding Officer is required to "conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, *and maintain order*". NRC Regulations at 10 C.F.R. 2.1209

to grant a license to HRI. Muchlike the ghost organization dubbed the "Allottees Association", ⁹ (hereinafter the "Association") there seems to be a few parties to this proceeding that are granted permission to participate and incorporate their arguments and discoveries. Everyone else goes through the lengthy and complicated procedural requirements (and are denied their requests time and again) except the ones who have no legitimate claim or basis to their application for a materials license, muchless "standing" as parties who will be injured and harmed as a result of HRI's proposed project. The \$40,000.00 paid to these individuals was clearly the reason why many signed the lease agreements--they will not suffer injury or harm once the mines start up nor will they live on the land afterwards--how many actually live on the land at present? Is this included in the NRC's DEIS, FEIS or SER? Where is the order in this proceeding?

ARGUMENT

There appears to be no order to this proceeding, instead, the chaos that has overtaken due process and quashed the rights of many has also denied the petitioners and all interested parties their hearing rights. Further, because of this gross deficiency, I call upon the Presiding Officer to restore order and grant Petitioner Tilden (and all who request) a fair and impartial hearing ¹⁰ as his hearing requests strictly adhere to the requirements set forth in 10 C.F.R. 2.1205(e) and addresses the determinations the Presiding Officer is required to make by 10 C.F.R. 2.1205(h) in deciding whether to admit a petitioner as a party to this proceeding.

At present, a TRO will serve the public's interests, by not only assuring that petitioners are not effectively deprived of their rights to seek a public hearing which the NRC has provided for in 10 C.F.R. 2.1263. ¹¹ This is especially true when the majority of the unknowing public is poor, low-income Navajos. ¹² Further, HRI has failed to explain how their activities are in the public's interest, ¹³ or how the public will benefit, especially when there are "population doses" that HRI cannot

⁹ The Allottees Association [filed with the "Navajo Nation Corporation Act", "96SEPT10"] has members who are "impacted" although they live hundreds of miles away from HRI's proposed Church Rock and Crownpoint, NM, ISL uranium mine sites, and in far away cities such as Sun Valley, NV; Geary, OK; Salt Lake City, UT; Albuquerque, NM and Chinle, AZ. How is it that we petitioners and concerned citizens who live right on the proposed sites or nearby are not considered and our concerns quashed by the NRC and ASLB? This is outright "Environmental Racism" against The People, specifically, the Dineh (Navajo) people.

¹⁰ The Presiding Officer has "all the powers necessary to those ends," including the power to "[r]egulate the course of the hearing and the conduct of the participants." 10 C.F.R. 2.1209(a).

¹¹ See 52 Federal Register at 20,090.

¹² See 59 Fed.Reg. at 7629, 7630 (Feb. 16, 1994)

¹³ 10 C.F.R. 2.788(e)

control, contain or rectify. We are dependent upon this water supply for our life and livelihood, HRI is not. HRI, the NRC and the ASLB have made no demonstration that the petitioners and the public will be harmed by public hearings conducted on the above matter, rather, the public at large stands to benefit, not only in understanding the issues at hand but in that they will be better informed and thus better able to make more informed decisions regarding their present and future. HRI seems to be able to get everything they are asking for while we (the petitioners) are constantly made to go through the procedural requirements without proper or adequate notification or timeline to respond to the haste provided to HRI by the NRC. 14 HRI has every intention of returning to the NRC and amending its license application and *will* "without prior NRC approval" 15 make changes, tests, and experiments regardless of a "Safety and Environmental Review Panel (SERP) who by the way, *will* be HRI employees. This is explicitly demonstrated in the lack of concern by both HRI **and the NRC** when they disregard the hazards of (airborne) radioactive material--especially in closed areas--and choose to make the workers anesthetized to the potential inherent dangers of radioactive materials and call important safety reminders "redundant requirements". 16 Signs that keep workers aware of their surroundings keep workers, and eventually the public, safe. This and all other "redundant" requirements were put into NRC Regulations for a purpose and should not be changed at will whenever it suits the NRC or *any other uranium extraction operation!* Further, "annual" "determinations" made by HRI's SERP *will* be too far apart for the NRC to make its own "determination" whether or not the conditions of the license that NRC granted to HRI are met. For example, the NRC maintains that there are "two (2) potential major radioactive airborne effluents: radon gas from production solutions and uranium particulates from the yellowcake drying and packaging area." 17 This is incorrect, especially at the Church Rock site where there *will* be clearing of land, excavation, site exploration, road construction, etc., and other substantial actions that would adversely affect the environment (See Page 4, No. 6) and threaten the health, safety and environment of the Navajos who live adjacent to the mine sites. This airborne radioactive material *will* be breathed in

14 This is apparent in the SER although there is no adequate assurance that the applicable requirements of 10 C.F.R. Parts 19, 20, 40, and 71, and the AEA, have been or will be met. See also SER 1.3 Review Scope and 10.0 CONCLUSION AND SAFETY LICENSE CONDITIONS: "Where ever the words 'will' or 'shall' are used in the aforementioned licensee documents, it denotes an enforceable license requirement." How **will** the NRC enforce these "words"--there is no indication that there **will** be enforcement by the NRC or any other federal regulatory entity.

15 SER at 3.2.1

16 "The licensee is hereby exempt from the requirements of 10 C.F.R. 20.1902(e) for areas within the process facility, provided that all entrances to the facility are conspicuously posted in accordance with Section 20.1902(e), and with the words, "ANY AREA WITHIN THE FACILITY MAY CONTAIN RADIOACTIVE MATERIAL.", SER at 5.0, "SECURITY"

17 SER at 4.1

by the residents, their animals and *will* settle in their homes, on their property and crop fields. Residents of Church Rock and Crownpoint, NM should be provided the same training and protective gear required for workers in Section 2.5 of Regulatory Guide 8.31 (and) 8.31 (NRC 1983b) as well as 10 C.F.R. Part 20, Subpart H for they are as much at risk as the workers but remain uninformed on HRI's proposed activities. This information is not included in the DEIS, FEIS, COP and the SER.

Again, why is HRI allowed to present a "COP" that has already gone through a revision? 18 The NRC states that the "SER and the FEIS (NRC 1997) provide the *bases*" (sp?) 19 "for NRC's decision to issue a source materials license to HRI"; the public has not yet had the opportunity to scrutinize the COP which should have been included in the FEIS. The public has already come forth with more than general or conclusory assertions with respect to the need for official public hearings on the Navajo Nation, in the City of Gallup and before the McKinley County Commission. The NRC and HRI have failed to prove that public hearings will harm or injure The People. This is *both great and certain*, even after the fact that HRI now has its coveted materials license. Understandably, this is probably why the NRC has acknowledged the governmental interest in avoiding administrative delay and now chooses to extend "prompt administrative assessment of and determination about" HRI's application and *will* allow it (HRI) to proceed with its planned (pre)construction activities. 20 HRI can merely rely on the NRC to take action its behalf despite pending hearing requests *and* keep the public out of the proceedings while they are the first to be harmed when 21 there is a population dose (HRI expects there will be uncontrollable lixiviant excursions underground, transportation accidents, worker exposure and surface spills). HRI fails to substantiate its hypothetical claim that it can and will restore the region sole source drinking supply back to its original quality, are there special circumstances that

18 SER at 1.0 "INTRODUCTION" (Paragraph 2)

19 SER at 1.1--the language here seems to deviate (i.e. "bases"), perhaps this is a typo and should be "basis"? Baseball terminology is not consistent with the applicant's license nor is it appropriate, this is our future we are fighting for, not a game of any type. See 10 C.F.R. 2.1209(a). Forgive *my* limited English.

20 This more than substantiates Petitioner Tilden's claim that any type of activity that *will* disturb the earth's surface *will* violate the religious rights of many Dineh and that the NRC *will* find no inimical or adverse effects thereby allowing HRI to continue its activities while The People remain ignorant of the deadly effects of airborne radioactive material--religious ("environmental") values of the Dineh are reason enough for hearings and public input. Any surface activity is incompatible with 10 C.F.R. Part 51 and 10 C.F.R. 40.32(e).

21 At present, HRI has not met its burden of demonstrating that they have Memorandum of Agreements with the Navajo Nation, local authorities, fire departments, and other emergency services that are ratified or in effect, *and* HRI has indicated that "wellfield pipe breaks" are anticipated, this is especially true at 2,000 feet below the earth's surface where the pipes will be under extreme pressure(s).

exempt HRI from demonstrating this to be fact? HRI has not provided this demonstration nor have laboratory(s) been named, experts identified, (by name or area of expertise), dates tests were completed, and filed it's results with the NRC. Even if the Presiding Officer were to grant HRI special circumstances in this area of concern, why has this information not been included in the DEIS, FEIS, COP and SER? The Presiding Officer can issue a TRO for it is the intent of the NRC's criteria to stay "the effectiveness of a decision that has already occurred, pending some additional event".²² Congress is not concerned about the significant hazard considerations that HRI anticipates *will* occur; a Federal Register notice is grossly inadequate for public notice or the dissemination of crucial information regarding the public's health and safety; and the NRC's supervisory authority is startling as is it's comprehensive exclusion of the public, especially the Dineh (Navajo) populace, who have a right to know what has been decided without their input.

HRI, as a prerequisite requirement, must be able to provide and maintain a NRC-approved financial surety arrangement ²³ yet the parent company of HRI, Uranium Resources, Inc. (URI) ²⁴ filed for Chapter 11 Bankruptcy Protection in February 1995. Mark Pelizza (HRI vice-president) stated at a meeting with the Navajo Tribal Council's Inter-Governmental Relations Committee on July 07, 1997, in Crownpoint, NM, that Mr. Oren Benton, as C.E.O. of URI had "embezzled" over one (1) million dollars from URI and that they (URI? HRI?) are pursuing charges. This issue has not been resolved and URI and HRI have not issued a cash equivalent bond that could assure the sound financial solvency of both companies (i.e. supporting documentation showing a breakdown of the costs, the basis for the cost estimates with adjustments for inflation, adjustments for emergencies, accidents and other unexpected situations, and any other conditions affecting estimate costs for site closure). The information submitted by URI/HRI (in its application) on the organizational chart is very unclear about its financial stability which is unmistakably omitted and not evident in detail as to how HRI could be able to post a cash equivalent bond as required by the NRC. This is also true with other areas of public concern such as the unspecified length of time HRI will maintain its records although there are requirements in the NRC regulations. ²⁵ Even HRI expects that their employees *will* deviate from its Standard Operating Procedures (SOPs) ²⁶ and offer counseling and follow-up supervision to those who are in conflict with NRC Regulations and requirements. This deviation can also occur with record keeping and a one-sided "Review Panel". The NRC fails to address this type of deviation and should not depend on HRI's proposed SERP. Citizens who have

²² 10 C.F.R. 2.1205(c), (1) 2.163

²³ 10 C.F.R. Part 40, Appendix A, Criterion 9

²⁴ SER at 3.1.1 "C.E.O. of Uranium Resources, Inc."--"who *will* have the ultimate responsibility for all operations of Uranium Resources, Inc., including its subsidiary, HRI, Inc."

²⁵ 10 C.F.R. Part 20, Subpart L

²⁶ SER at 3.2.4 "Standard Operating Procedures"

expressed their concerns and are willing to do so should be allowed to sit on the SERP and also serve as Consultants. 27 Only then can the public guarantee that HRI's proposed baseless SERP will address the public's interests and HRI's charge (by the NRC) for acceptable management control and adherence to appropriate safety practices. This will also insure that the public's right-to-know is not impeded.

As a national security measure against the "loss or theft" of "yellowcake or sealed sources", HRI has yet to inform the public how it can prevent a loss or crime of this magnitude and how it would rectify the occurrence. There is no visible documentation that any MOA's have been signed with local law enforcement authorities 28 or any of the federal or state agencies 29 that respond to radioactive "accidents" 30, "unusual occurrences", "spills" or "wellpipe breaks". HRI employees who *will* work in "hot" radioactive areas (Uranium Work Area) must also have some training to at least try and contain the initial excursion in whatever form it *will* happen. Prior experience and one training session per year 31 is thoroughly insufficient by today's standard(s) of public safety.

This is consistent with HRI's failure to provide the NRC with all the detailed information necessary for approval of all the methods for "waste disposal" 32 and consistent with the NRC to give HRI (*and just about any other uranium mining company that merely asks*) whatever it solicits regardless of the lack of information or burden of proof. HRI has proposed "*deep well disposal*" without establishing this as a method approved by the public; this factor of waste and its disposal is in need of further public review as the NRC has sanctioned this psychotic poisoning of America's water supply, notably on or adjacent to Native American reservations regardless of the Navajo Nation's (and other tribe's) jurisdiction and status as "sovereign" nations. During the 1997 Navajo Tribal Council Session (NTC), HRI President Dick Clemens stated to the NTC that HRI "intends to proceed with

27 SER at 3.2.2 "Safety and Environmental Review Panel"

28 The Navajo Department of Law Enforcement, the New Mexico State Police, the McKinley County Sheriff, and the Gallup Police

29 The U.S. Environmental Protection Agency (EPA), the Federal Emergency Management Agency, the New Mexico Department of Transportation (DOT), the NM Environmental Department (NMED) and all other specialized teams that are trained and equipped to handle such worst-case accident scenarios.

30 SER at 4.5.5 "Slurry Transports": Again, "HRI is exempted from all other requirements of 10 C.F.R. Part 71, pursuant to 10 C.F.R. 71.10(b)" Because the transport *will* take place on roads that are used by the Public School system, HRI should be required to enter into a MOA with the McKinley County School Board. This dereliction of duty towards the children and their safety goes against the very purpose of 10 C.F.R. 71.5 (requirements for transportation of licensed material).

31 SER at 3.4.6

32 SER at 7.0 "Waste Management": (1) surface discharge, (2) land application, (3) brine concentration, (4) waste retention ponds, and (5) *deep well disposal*

mining, whether or not the Navajo Nation upholds the moratorium or not", even after the Navajo Environmental Protection Agency stated (after review of HRI's license application data and the SER) that "the NRC was wrong in concluding that there is no risk to the water supply in Crownpoint if HRI starts up".³³ This is precisely what happened to Navajo uranium workers who, with their families have developed lung cancer, respiratory disease, birth defects and a host of new illnesses among The People; *deep well injection of waste* is in direct violation with the Navajo Water Code and Navajo Safe Drinking Water Act and will only serve as a cheap and easy way for HRI to poison the water supply, leave and then escape liability. HRI's ludicrous and misleading claim that it will restore pristine water (according to EPA) back to its original state is again refuted by NTUA's resolution opposing HRI's ISL project. This is also recapitulated by the 18-member "Hospital Safety Committee of the Indian Health Service (IHS) Crownpoint Healthcare Facility in their submission (for the record) to the NRC along with many other valid statements of fact.³⁴ Several of these doctors have publicly stated that they will leave when the mines start up; this is a serious threat to what the federal government calls "Trust Responsibility" (via the Treaty of 1868) and the obligations that it must fulfill when it forced the Dineh³⁵ to sign away our "sovereign immunity" (as defined by the federal government). The NRC has not proposed any requirements for interim or final restoration during a "shutdown" period in the event an "accident" occurs; this means that lixiviant would remain in the ground for the duration of the shutdown and ultimately, a population dose of unknown extent and magnitude. The IHS uses large amounts of water for the health care it provides to the Navajo in the Crownpoint and surrounding areas. In addition, there is also no definition in any of HRI's and the NRC's correspondence of what the definition of "excursion" actually means; this must be resolved before any type of activity takes place--on the surface and below the surface.

Because HRI's proposed ISL project is going to impact mainly Navajo people [particularly those who do not read, write or speak the English language], the written and oral (translated/interpreted) arguments of all interested parties of the Navajo Nation should be accepted by the Presiding Officer and entered into the record. Those Elders who speak only the Dineh language deserve this opportunity since their arguments are legally astute and factually comprehensive, moreso than the Navajo employed by HRI. As one of many practitioners of the Dineh Religion who rejects the customized laws of the NRC but nevertheless maintains that uranium is good for certain ceremonial purposes but we (Dineh) have been

³³ The Navajo Times. Dec. 11, 1997

³⁴ Crownpoint Healthcare Facility Safety Committee Position Statement Regarding the In-Situ-Leach Uranium Mine Proposed by Hydro Resources, Inc. dated 5-23-97

³⁵ The Dineh were rounded up in mass numbers and forced to march to Fort Sumner, NM where they were held in captivity for over 10 years before they were finally released and allowed to return to our traditional aboriginal homeland in 1868.

instructed in the beginning that it (uranium) must remain in the ground. We further maintain that we are only exercising our fundamental right of every state or nation to exist in peace and harmony (The Beauty Way) and survive as "sovereign nations". As we are one, we are also a whole. This is a religious issue and must be included and HRI *and* the NRC both fail to show how it is not in the public's interest to conduct hearings on the Navajo reservation and provide the costs for a trained and unbiased translator/interpreter for the sake of the non-English speaking Dineh. HRI cannot claim cultural ignorance or ignorance of the law, in fact, HRI's mad pursuit to erect the proposed ISL infrastructure and facilities before all required permits are in place is a blow to the rule of law in international relations. HRI does propose to set up its facilities within the recognized boundaries of the Six Sacred Mountains of the Dineh. Does HRI intend to deliberately skirt around Navajo Tribal Law as well and exclude the traditional Dineh when we are directly affected and our identity (landbase) is severely and seemingly secretly tampered with?

In terms of the national Navajo Government, has HRI included the NTC's Inter-Governmental Relations Committee (IGR) ³⁶ Important information has been withheld from the IGR and other NTC Committees including the fact that the nation will not benefit--financially or otherwise--from the extraction of uranium from private "lands". In this phenomenon, HRI picks and chooses on which lands the Navajo Nation will receive "Treatment as State" status, thereby defying Navajo "sovereignty", when it (the Navajo Nation) can provide direction and regulate HRI's questionable activities. The Navajo public has a immediate interest and "sound administrative decisionmaking" powers and because HRI has not included the representative governmental body of the Navajo Nation in these proceedings, new and urgent substantive rights have been created that can be addressed in public hearing at all of the affected chapters on the Navajo reservation. Therein lies the departure from "status quo" , HRI has again deprived many Navajos of their hearing rights regardless of the truth that HRI *has not* shown that there are special circumstances present in this proceeding that overrule the Presiding Officer from exercising his powers to regulate the course of the proceeding and grant Petitioner Tilden's appeal for official duly called NRC public hearings and grant his request for a TRO. In this instance, the U.S. Bureau of Indian Affairs (BIA) has not ratified the

³⁶ At a July 07, 1997 meeting with the IGR, it was echoed by several members of the committee that HRI proceeded without the IGR's input and set the DEIS, FEIS, COP [and later, the SER and materials license] into place, signed "private business leases" *and then told the Navajo Nation* what it was going to do. "I think we need to discuss why the Navajo Nation's IGR Committee wasn't involved. It looks like you (HRI) are going forward with this project anyway." (David John, Economic Development); "We need to revisit the Navajo moratorium. There is still a lot of questions that need to be answered and clarified. All my correspondence asks me to oppose it, most are with health concerns and water issues." (George Author, Resources Committee). [Taped] recording on file with Navajo Legislative Services.

current leases and cannot do so while the Navajo Moratorium on Uranium Mining remains in place. To proceed with it's proposed ISL project without the direct involvement of the BIA, is likewise a direct violation of the federal government's "Trust Responsibility" to the Navajo Nation populace. Moreover, HRI insults the Navajo Nation as a whole by not embracing it and exercising a genuine "good neighbor" policy. To scorn Navajo sovereignty is to scorn the Treaty of 1868.

Has HRI acknowledged, cooperated and complied with the Codes of the Navajo Tribal Council; the Navajo Environmental Protection Agency (particularly the Air and Water Dep'ts.); the Navajo Tribal Utilities Authority; Navajo Abandoned Mines Land Reclamation Office; Navajo Fish and Wildlife Dep't.; all Navajo Heritage Programs; the Economic Development Committee and all Business Regulatory Agencies (including the BIA); Natural Resources and all mineral dep'ts.; the Navajo Division of Health and Human Services; the IHS; the Historic Preservation Dep't.; the Solid Waste Authority; the Navajo Department of Justice and the Attorney General's Office; and, Navajo vice-president Thomas Atcitty? 37

Has HRI acknowledged and complied with the Navajo Water Quality Act; the Air Pollution Prevention Act; Solid Waste Act; Navajo Water Code; Navajo Safe Drinking Water Act; Civil Trespass Act; Historic Preservation Act, all mining regulations and all Codes that protect the Dineh (Navajo) Traditional Cultural Properties. If HRI does not submit to Navajo Tribal jurisdiction, there is always Title 17 of the NTC Criminal Code which provides for an exclusionary order to be immediately issued to HRI, (it's Attorneys and agents).

Of great concern is the fact that the U.S. EPA has not issued a Class III Injection Well Permit (IWP) and aquifer exemption and a Class III IWP and temporary aquifer designation from the state of New Mexico (which must be approved by EPA) has not been granted as well. There are concerns with the consistent non-compliance with the Navajo Nation Moratorium on Uranium Mining and with procedural requirements of the National Environmental Policy Act, National Historic Preservation Act, Native American Graves and Repatriation Act or the many other U.S., State, and Navajo Tribal laws. Thrice HRI impedes the "Trust Responsibility" obligations of the U.S. Federal Government through the consistent defiance of federal agencies (here HRI obstructs EPA Underground Injection Control (UIC) authority by assuming the EPA *will* grant HRI the above mentioned permits) charged to carry out and fulfill these Treaty obligations and

37 As a key principle in bringing the required parties together (i.e. the NRC, HRI, BIA, New Mexico Bureau of Land Management and was instrumental in the organization of the Allottee's Association) as a private attorney, Navajo Nation President Albert Hale has withdrawn from representing HRI and has chosen to avoid the appearance of conflict of interest by appointing the Vice-president (Thomas Atcitty) with [official?] oversight on HRI's progress.

regulate its (HRI's) activities in regards to the injection of lixiviant into the sole source drinking water supply. This must surely be questioned and revisited by the Presiding Officer who also has a "Trust Responsibility" to federally recognized Native Americans (in this discussion, the Navajo tribe ³⁸) tribes; a "Performance Based License" (which is not mentioned in any of HRI's or the NRC's voluminous documents it has inundated the ASLB with) should be considered and incorporated into the proceeding as a prerequisite for HRI to comply with federal law and heed the "Trust Responsibility" obligations of the U.S. government via all treaties it has signed with federally recognized tribes.

HRI has presented documents that tout the "economic benefits" it dreamed of and uses in it's presentations nevermind the fact that HRI has never explained how it obtained it's baseline data for such claims nor has it shown evidence of any type of economic (financial) arrangements or agreements with the Navajo Nation that would verify their science of calculations. They have not named or identified their experts who came to HRI's utopian figures. First, the Navajo Nation does not "own" the uranium HRI *will* mine and there has been no indication that the nation will impose it's Business Activity Tax (BAT) upon HRI who *will* ultimately cash in on the proposed ISL project by giving the Navajo Nation only pennies on the dollar. According to the documents HRI has submitted, only \$900,000.00 seems to be projected in annual tax revenues (FEIS). The Navajo Nation has also not given any indication that it would implement it's Water Code and charge HRI for its willful and unprecedented usage of a sole source of Navajo drinking water.

"Jobs, jobs, and more jobs" appears to be the battle cry of HRI when it conducts its "public education" at meetings on the land. However, the jobs that HRI will "provide" to the communities is largely dependent upon: HRI's compliance with the Navajo Employment Preference Law; HRI's ability to maintain a steady uranium production flow in a world uranium spot market that is currently in a oversupply (lack of production means more Navajo lay-offs and further injury to the Navajo economy); URI/HRI's ability to pay back debtors and creditors (under its Chapter 11 Bankruptcy Protection shield); whether or not the international market prices fall below production costs; and, if URI (parent company of HRI) can reverse it's annual net loss. If URI/HRI is undercapitalized (as indicated in it's January 1997 report to the Securities and Exchange Commission) it only means that cash equivalent surety bond must be revealed along with HRI's license application else the Navajo Nation runs the risk of being left with the reclamation and abatement costs. This is not mention the expected loss of the use of Navajo land for agricultural and domestic animals which threatens the livelihood of multitudinous Navajos. The

³⁸ The Navajo Tribe is the largest federally recognized tribe, to do harm to the Treaty of 1868 is a direct threat to *all other federally recognized tribes* as it undermines the federal principles of tribal "sovereignty" and jurisdiction.

DEIS, FEIS, COP and SER should all be invalidated based upon the fact that the lease agreements do not include the Navajo Nation but are called "Private Business Leases" by HRI, the NRC and the Allottees Association.

CONCLUSION AND REQUEST FOR RELIEF

For the aforementioned reasons, Petitioner Tilden's prayer is for the following relief:

(1). That the Presiding Officer accepts Petitioner Tilden's Second Amended Petition to Intervene in the Matter of Hydro Resources, Inc. (HRI) [Docket No. 40-8968-ML] and his Statement of Concerns and grants him his urgent request for official duly called public hearings conducted by the Nuclear Regulatory Commission (NRC) on the Navajo Nation, in the City of Gallup, NM and before the McKinley County Commission;

(2). That the Presiding Officer accepts Petitioner Tilden's Position Statement on behalf of The People who are opposed to HRI's proposed ISL project and have stated their positions at duly called meetings;

(3). That the Presiding Officer incorporate the findings and conclusion of law as set forth In the Matter of LOUISIANA ENERGY SERVICES, L.P. (Claireborne Enrichment Center), Docket No. 70-3070-ML, and that a Temporary Restraining Order (TRO) be immediately granted to Petitioner Tilden;

(4). That the Presiding Officer accepts Petitioner Tilden's supplication for any and all relief that is required to maintain the status quo while he determines whether or not Prelicensing Hearings will be granted to the public at large and if Petitioners are entitled to a TRO pending completion of the adjudication.

(5) That the Presiding Officer accepts Petitioner Tilden's request that HRI be made to recognize the Sovereign Immunity and Jurisdiction of the Navajo Nation thereby fulfilling the "Trust Responsibility" of the U.S. Government to the Navajo Nation and all affected traditional Dineh.

(6) That the Presiding Officer correct the record to reflect actual fact in regards to Petitioner Tilden's timely submissions on January 16, 1998 and on January 20, 1998 as indicated by Rulemaking and Adjudication records.

Respectfully submitted this 20th Day of February, 1998:

Mervyn Tilden, Petitioner Pro se
P.O. Box 457
Church Rock, NM 87311



**POSITION STATEMENT
OF THE
TRADITIONAL DINEH
AS COLLECTED AT DULY CALLED MEETINGS OF
"THE PEOPLE"**

- 1. That** the Nuclear Regulatory Commission (NRC) immediately conduct official public hearings on the Navajo Nation, in the City of Gallup, and before the McKinley County Commission and provide the public at large the opportunity to express their concerns about HRI's proposed In-Situ Leach (ISL) project in Church Rock and Crownpoint, New Mexico;
- 2. That** the NRC provide for the costs of the public hearings--this includes a certified translator/interpreter that is unbiased and fair;
- 3. That** the NRC, HRI, and the Atomic Safety Licensing Board Panel demonstrate to the public, the safety of the "restored water" that will be injected back into our sole source drinking water supply after it is treated at HRI's facilities--this can be accomplished by HRI installing a faucet tap directly into the injection wells and with the above-named parties taking a drink prior to re-injection;
- 4. That** if license application conditions are not met by HRI for the changes, tests, or experiments under consideration by the NRC, it (HRI) must shut down;
- 5. That** the NRC incorporate President Clinton's Executive Order 12898 on Environmental Justice into the current proceedings and provide for citizen input;
- 6. That** HRI obtain the required permits, licenses and Memorandum of Agreements before there is any type of surface activity at the proposed Church Rock and Crownpoint sites and that Navajo residents be given the same proper education, training and protective gear as HRI employees and that HRI provide impacted Navajo residents with regular respiratory protection and bio-assay/urinalysis tests;
- 7. That** the federal government fulfill it's "Trust Responsibility" to the Navajo Nation, particularly the non-English speaking traditional Dineh of the land;
- 8. That** the water supply of The People not be tampered with in any way, shape or form by HRI or any other mineral extraction operation;
- 9. That** HRI and the NRC immediately conduct ethnographic surveys on all the lands that it intends to mine and conduct any surface activity;
- 10. That** HRI, the NRC, and their respective agents immediately cease all acts of intimidation, threats, and coercion of those who are opposed to HRI's project.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Chief Administrative Judge
B. Paul Cotter, Jr., Presiding Officer

Administrative Judge
Thomas D. Murphy, Special Assistant

_____)
In the Matter of)
)
HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
12750 Merit Drive)
Suite 1210 LB12) ASLB No. 95-706-01-ML
Dallas, TX 75251)

AFFIDAVIT

Kinlitsoh sinili)
) ss.
Sovereign Dineh Nation)

Mervyn Tilden being first duly sworn, deposes and states:

1. I was born in Fort Defiance, AZ but I have been a life-long resident of Kinlitsoh sinili (Church Rock), NM with my address at P.O. Box 457 Church Rock, NM 87311.
2. My Dine' beliefs and religion have prompted me to oppose any type of surface or subsurface activity (especially within the boundaries of the Six Sacred Mountains) that will desecrate our Mother Earth and cause such devastation to the land so as to cause the Dine' (Navajo) people to lose their identity which is found in the land itself (i.e. without the land we are no longer "The Earth Surface People").
3. I am the founder of the Church Rock Indian Village Survival Camp and Zuni Mountain Coalition "Dineh Bureau"; a member of Eastern Navajo Dineh Against Uranium Mining; a member of Zuni Mountain Coalition (Board of Directors); and Executive Staff Assistant to Sovereign Dineh Nation-Dineh Alliance.

4. I am representing myself *pro se* without the aid or assistance of a bona fide attorney(s), paralegals, or anyone who is certified to practice in the New Mexico Supreme Court and/or the United States Supreme Court and with limited legal and/or paralegal training.
5. I am forced to provide the majority of financial costs in my attempt to become a Petitioner to become an Intervenor in the Matter of Hydro Resources, Inc.(HRI), Docket No. 40-8968-ML and it has produced hardship and financial distress upon myself and immediate family members and has caused injury to me in such manner.
6. I have many relatives in the Church Rock and Crownpoint, NM areas.
7. As a resident of the land I have been intimidated at several public meetings by representatives of HRI and the NRC and feel uneasy when I have to travel alone in my course of *pro bono* work for The People on the land and I now also am forced to seek remedy for this unnatural experience caused by the aforementioned parties.
8. Because we (Dine') have been told from the beginning that if we allow our Mother Earth to be desecrated many evil things will come to pass, I am strongly opposed to HRI's proposed in-situ leach (ISL) uranium mines and forthwith continue my opposition in true defense of Dine' (Navajo) sovereignty, for myself, my family, my relatives, for my Dine' people and for the safety of all races of people.
9. HRI's proposed project in the Church Rock and Crownpoint areas affect my Dine' religious beliefs, my environmental interests, future generations and it is my opinion and belief that there has not been sufficient study or research as indicated by the Draft Environmental Impact Statement, the Final Environmental Impact Statement, the Consolidated Operation Plan and the Safety Evaluation Report to proceed with HRI's proposed ISL uranium mining project.

Further Affiant sayeth naught.

Henry C. Gillen

SUBSCRIBED AND SWORN TO before me this 20th day of February, 1998.

Loretta C. Francisco
Notary Public

My commission expires:

March 31, 1999
lf\mt\affidavit

