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USNRC

February 4, 1998

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULE MAKING AND  
ADJUDICATION STAFF

BEFORE THE PRESIDING OFFICER

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

NRC STAFF'S REQUEST  
FOR CLARIFICATION AND FOR EXTENSION OF TIME

On January 27, 1998, Hydro Resources, Inc. (HRI) filed a Request For Extension Of Time (HRI's Extension Request), asking for an additional two weeks in which to file a response to all outstanding hearing requests. See HRI Extension Request, at 1,3. On February 2, 1998, the Presiding Officer adopted HRI's Extension Request, transforming it into an Order granting the requested relief.

The Presiding Officer had previously established a schedule whereby amended hearing requests were to be filed by January 16, 1998; HRI was to file its response to amended hearing requests by February 6, 1998; and the Staff was to file its response to amended hearing requests by February 20, 1998. See December 18, 1997 Memorandum and Order (Lifting Hearing Suspension and Schedule for Filing Amended Hearing Petitions), LBP-97-23, 47 NRC \_\_\_ (Scheduling Order), slip op. at 3-4.<sup>1</sup>

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<sup>1</sup> Since the Scheduling Order was issued, additional matters have arisen, including the need to review and respond to: (1) a January 5, 1998 Petition For Leave To Intervene and

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Request For Clarification

The subsequent filing of the Tilden Petition raises the question of the extent to which the Scheduling Order applies to Mr. Tilden. The Scheduling Order only refers specifically to ENDAUM and SRIC. *See* Scheduling Order, at 2. Presumably, the Scheduling Order's statement (at 2) that "the Presiding Officer is now allowing the petitioners to amend their hearing requests on the basis of any new information" applies to all previous intervention petitioners, including Mr. Tilden. This would mean that, pursuant to the Scheduling Order, the Tilden Petition was nominally filed in a timely manner, and that Staff's response to the Tilden Petition would be due by February 20, 1998. The Staff, however, requests a clarification as to whether the Scheduling Order applies to Mr. Tilden and other petitioners.

Similarly, the Staff reads the Scheduling Order as requiring the Staff to respond to all hearing requests by February 20, 1998, even though the Scheduling Order only makes reference

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Memorandum In Support of Petition For Leave To Intervene (Petition), filed on behalf of the Eastern Navajo Allottees Association (Allottees); (2) a January 15, 1998 Motion For Stay, Request For Prior Hearing, and Request For Temporary Stay (Stay Request), filed on behalf of Eastern Navajo Dine Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC); (3) ENDAUM's and SRIC's Third Amended Hearing Request And Petition To Intervene, dated January 16, 1998; (4) "Petitioner Mervyn Tilden's Notice Of Submission Of Second Amended Petition To Intervene, Statement Of Concerns, Position Statement, And Request For A Temporary Restraining Order (TRO)" (Tilden Petition), dated January 16, 1998; and (5) "The Red Devil's Petition For Leave To Intervene," dated January 24, 1998 (received by Staff counsel on February 4, 1998). The Staff recognizes that it was previously granted an extension of time, until February 20, 1998, regarding items (1) and (2) above. *See* Memorandum and Order (Granting Temporary Stay of Staff Licensing Action and Ruling on Motions), LBP-98-3, 47 NRC \_\_\_, slip op. at 11-12.

to the "amended hearing requests" in connection with the Staff's February 20, 1998 due date. *See* Scheduling Order, at 4. The Staff requests a clarification of the Scheduling Order on this point as well.

Request For Extension of Time

Before filing its Extension Request, HRI counsel Paul Gormley contacted the undersigned. *See* HRI Extension Request, at 3. In order to preserve the structure of the then-existing schedule established by the Scheduling Order, Staff stated that it did not object to HRI's requested extension, provided that the Staff was given an additional two weeks, until March 6, 1998, to file its response to the amended hearing requests.<sup>2</sup> Due to the fact that HRI's Extension Request (now an Order) is not specific in this regard, Staff requests an additional two weeks, until March 6, 1998, to file its response to all hearing requests.

As detailed in the "NRC Staff's Request For Leave To Participate As A Party In This Proceeding," dated September 4, 1997, Staff did not submit any response to the several hearing requests filed in the 1994-95 time frame. The task now confronting Staff is considerable, since the Staff must respond to the filings of multiple petitioners for the first time.<sup>3</sup> Additionally, NRC procedural rules contemplate that the Staff will respond to intervention petitions after the applicant

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<sup>2</sup> There was an apparent mis-communication, as the nature of the Staff's conditional consent to HRI's request for more time is not clearly expressed in HRI's Extension Request; the Staff did not anticipate having to file another request for more time. The need to do so arose due to the nature of the Presiding Officer's February 2, 1998 Order.

<sup>3</sup> In addition to recently-amended hearing requests, the Staff is obligated to respond to hearing requests filed in December 1994/February 1995 by (1) Zuni Mountain Coalition; (2) Dine' Citizens Against Ruining Our Environment; (3) Water Information Network; and (4) Grace and Marilyn Sam.

files its response. *See* 10 C.F.R. § 2.1205(g). Moreover, Staff counsel is presently engaged in responding to the Stay Request, due to be filed by February 20, 1998.

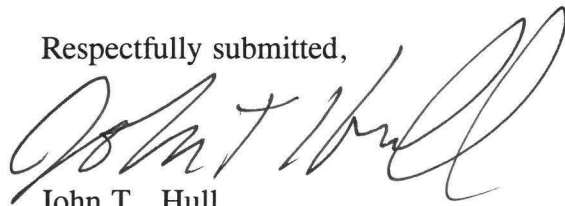
The undersigned spoke to Susan Jordan, counsel for ENDAUM/SRIC,<sup>4</sup> regarding Staff's request for more time. Ms. Jordan stated she would take no position on the request, but reserved the right to file a response after reviewing this filing (a copy of which is being faxed to her). An expedited ruling on this motion for more time is requested.

#### CONCLUSION

Pursuant to 10 C.F.R. § 2.711, and for the reasons stated above, the Staff requests an additional two weeks, until March 6, 1998, to file its response to all hearing requests, amended or otherwise, filed to date in this proceeding.

The Staff also requests that petitioners in this proceeding, particularly Mr. Tilden, be advised of the responsibility to attach a certificate of service (or other proof of service) to their filings, identifying to whom and by what method the document has been served, and that Staff counsel must be served.

Respectfully submitted,



John T. Hull  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 4th day of February 1998

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<sup>4</sup> As HRI counsel previously consented to this Staff request for additional time (*see* HRI's Extension Request, at 3), the undersigned did not contact HRI counsel regarding the instant filing.

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Docket No. 40-8968-M

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF'S REQUEST FOR CLARIFICATION AND FOR EXTENSION OF TIME" in the above-captioned proceeding has been served on the following by deposit in the United States mail, first class, or as indicated by a single asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 4th day of February 1998:

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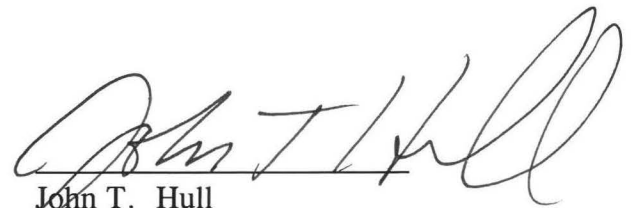
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