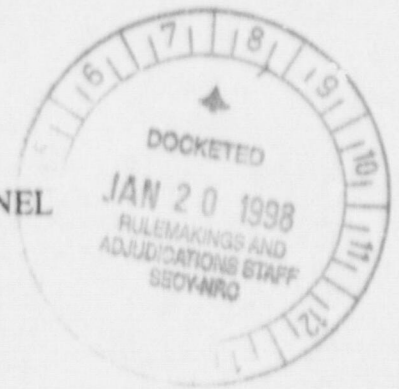


18753

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
12756 Merit Drive	)	
Suite 1210 LB12	)	ASLBP No. 95-706-01-ML
Dallas, TX 75251	)	
	)	January 20, 1998

**ENDAUM'S AND SRIC'S MOTION FOR LEAVE TO RESPOND TO  
EASTERN NAVAJO ALLOTTEES ASSOCIATION'S INTERVENTION  
PETITION  
AND RESPONSE TO NRC STAFF'S REQUEST FOR EXTENSION OF TIME**

The Nuclear Regulatory Commission ("NRC" or "Commission") Staff has requested an extension of time to February 20, 1998, to respond to (1) Eastern Navajo Allottees Association's Petition for Leave to Intervene and Memorandum in Support of Petition for Leave to Intervene (January 5, 1998) ("Allottees Association's Petition") and (2) Eastern Navajo Diné Against Uranium Mining's ("ENDAUM") and Southwest Research and Information Center's ("SRIC") Motion for Stay, Request for Prior Hearing, and Request for Temporary Stay (January 15, 1998) ("Stay Motion"). NRC Staff's Request for Extension of Time (January 20, 1998) ("Extension Request"). ENDAUM and SRIC hereby move for leave to answer Allottees Association's Petition. In addition, ENDAUM and SRIC do not oppose the Staff's

9801300236 980120  
PDR ADDCK 04008968  
C PDR



DS03

request with respect to the Allottees Association's Petition provided that the Presiding Officer also allow ENDAUM and SRIC to respond to Allottee's Petition on February 20, 1998. However, ENDAUM and SRIC oppose the Staff's request with respect to the Stay Motion.

#### **Allottees Association's Petition**

Eastern Navajo Allottees Association ("Allottees Association" or "Association", an organization of landowners and allottees holding property interests on the site of Hydro Resources, Inc.'s ("HRI's" or "Applicant's") proposed mine and milling facility, seek to intervene for the purpose of supporting HRI's license application. In its supporting Memorandum, the Association addresses its standing to intervene and the timeliness of its petition. It also makes various equitable arguments for its admission as a party, including a request for discretionary intervention. Petitioners believe that contrary to the Association's claims, it lacks standing, that its petition is inexcusably late, and that the intervention of the Association would unduly and unfairly prejudice the interests of ENDAUM and SRIC in a meaningful hearing on this license application.

While NRC regulations at 10 C.F.R. § 2.1205(g) provide for responses by the license applicant and NRC Staff to a petition to intervene, the regulations are silent on whether other parties may respond. Clearly, it is within the authority of the Licensing Board under 10 C.F.R. § 2.1209 to provide such an opportunity where it is required to ensure Petitioners a meaningful opportunity to be heard. Petitioners

request an opportunity to answer the Allottees Association's arguments in order to ensure that the issues raised by the Allottees' petition are fully addressed. In this context, the Board should note that Petitioners constitute the only opponents to the license that are represented by counsel. Therefore, they are extremely unlikely to have their interests in this matter represented by HRI and the NRC Staff, which both support issuance of the license, and therefore are likely to favor the Allottees' admission as a party.

In addition, Petitioners should be allowed to file an answer because allegations concerning ENDAUM and SRIC's opposition to the licensing are the basis for Allottees Association's justification of its untimely petition and its arguments in support of standing. See, e.g., Allottees Association Brief at 2, 3-4. ENDAUM and SRIC are best positioned to respond to those allegations -- which they dispute -- and thus to assist the Presiding Officer in making an informed decision.

Finally, although there is no regulation governing the timeliness of such an answer, it is generally timely because it will be filed within the same time period as the Staff's answer. Therefore, granting Petitioners leave to file an answer will not prejudice other parties to this proceeding.

Jon Indall, counsel for Allottees Association, stated in a telephone call with Petitioners' counsel today that he had no objection to Petitioners' filing an answer on February 20, 1998. Paul Gormley, counsel for HRI, stated in a telephone call with



Petitioners' counsel today that his office had no objection.<sup>1</sup> John Hull, counsel for the Staff, did not state any objection when Petitioners Counsel advised him that we anticipated filing an answer, and noted in his Extension Request that Petitioners join in the Staff's request for extension to answer Allottees Association. Extension Request at 2.

Accordingly, ENDAUM and SRIC respectfully request that the Presiding Officer grant their motion for leave to answer the Allottees Association's Petition.

### **Stay Motion**

As the Staff acknowledges, its response to the Stay Motion is due January 26, 1998. Thus, the Staff seeks 35 days or three-and-a-half times the ten days allowed by the Commission's regulations to respond. 10 C.F.R. §§ 2.788 and 2.1263. The Staff seeks to justify its admittedly "liberal" extension request solely on the basis of the combined length of the Stay Motion and supporting exhibits. Extension Request at 3. For several reasons, this is insufficient grounds for the extension requested.

First, by excluding affidavits from the ten-page limit on stay motions (10 C.F.R. §§ 2.788(b)) while limiting the time for filing a response to ten days (id. §§ 2.788 and 2.1263), the Commission plainly contemplated that the Staff would have to respond to stay requests including lengthy affidavits within ten days. Second, the practicability of responding to the Stay Motion within the ten-day time limit is

---

<sup>1</sup> Mr. Gormley further requested that Petitioners Counsel state that HRI might file something in response to Allottees Association's Petition on February 20, 1998.

evidenced by HRI's intent to file an in-time response. See Extension Request at 3.

Third, the Staff has been on notice that Petitioners would file their Stay Motion on or about January 15, 1998 -- and hence that the Staff would have to respond on or about January 26, 1998 -- since December 18, 1997, when Petitioners' filed their Request for Housekeeping Stay seeking in part to establish a schedule for filing the motion.

Fourth, the body of the stay motion, including the procedural history, argument for a prior hearing, and argument for a stay, is within the ten-page limit. The Staff's complaint that the three non-affidavit exhibits to the Stay Motion exceed the page limit restriction elevates form over substance. Those exhibits consist of a letter from Petitioners' counsel offered to show that the Staff was previously apprised of Petitioners' position that issuance of the license would violate the National Historic Preservation Act (Exhibit 1), HRI's parent company's quarterly filing with the Securities and Exchange Commission (Exhibit 5), and the grazing permit issued by the Bureau of Indian Affairs to ENDAUM member Larry J. King (Exhibit 11). While no purpose would be served in attaching those three exhibits to an affidavit,<sup>2</sup> the burden on the staff would be no less if those three exhibits were simply attached to an affidavit.

Finally, granting the extension sought by the Staff would unduly injure and prejudice Petitioners. The Staff wrongly implies that granting of its requested

---

<sup>2</sup> Indeed, there is no suggestion that the facts presented in these three exhibits or their authenticity are in dispute.

extension would not injure Petitioners. Extension Request at 3-4 (citing discussion in Stay Motion regarding additional permits HRI must obtain prior to mining). In fact, as explained in Petitioners' Stay Motion, immediate and irreparable injury is likely to occur well before mining commences as a result of ground-disturbing preparation activities. Stay Motion at 7-8. Petitioners further explained that the Staff's violation of the National Historic Preservation Act constitutes implied irreparable damage and is the kind of "extraordinary case" which warrants an immediate temporary stay prior to the filing of any responses to preserve the status quo pursuant to 10 C.F.R. § 2.788(f).<sup>3</sup> Id. at 3, 4. Thus, the extension of the Staff's time to file a response to February 20, 1998, especially if no temporary stay is in place, will unduly prejudice Petitioners. Moreover, an extension to the Staff would be particularly inappropriate in that it would allow the Staff's manifest violation of the National Historic Preservation Act to continue unchecked.

When Staff's counsel contacted Petitioners' counsel today to obtain Petitioners' position on the extension request, Petitioners' counsel proposed to Staff's counsel a ten-day extension to February 5, 1998, on the condition that the Staff could not oppose the request for temporary stay. Petitioners' counsel emphasized that no extension

---

<sup>3</sup> Consequently, the Staff is incorrect in stating that Petitioners provided no basis showing that a temporary stay is necessary. Extension Request at 3 n.5. Moreover, the Staff's objection that the Stay Motion does not specify the length of the requested temporary stay is puzzling. The plain purpose of a temporary stay is to preserve the status quo until the Licensing Board issues a decision on the stay motion. Therefore, the length of the temporary stay requested is simply the time until the Licensing Board's decision is issued.

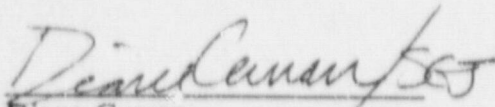


would be acceptable in the absence of a temporary stay because Petitioners' would suffer immediate and irreparable injury in the interim. Staff' counsel rejected this compromise.

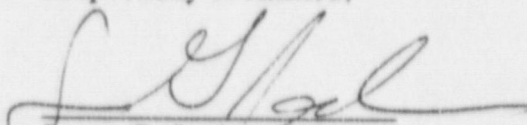
### **Conclusion and Request for Relief**

For the foregoing reasons, Petitioners respectfully request that the Presiding Officer (1) grant their motion to respond to the Allottees Association's Petition to Intervene, (2) grant Petitioners motion for leave to answer the Allottees Association's Petition, (3) order that Petitioners' and Staff's answers to Allottees Association's petitions shall be due February 20, 1998, and (4) deny Staff's request for extension of time to answer Petitioners' Stay Motion.

DATED: January 20, 1998

  
Diane Curran  
HARMON, CURRAN & SPIELBERG  
& EISENBERG, L.L.P.  
2001 "S" Street, Suite 430  
Washington DC 20009  
(202) 328-3500

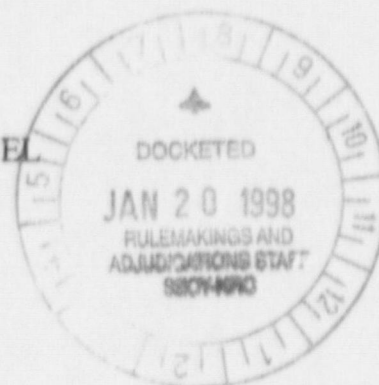
Respectfully submitted,

  
Susan G. Jordan  
Douglas Meiklejohn  
  
Douglas W. Wolf  
NEW MEXICO ENVIRONMENTAL  
LAW CENTER  
1405 Luisa Street, Suite 5  
Santa Fe NM 87505  
(505) 989-9022

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. )

12750 Merit Drive )

Suite 1210 LB12 )

Dallas, TX 75251 )

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

**CERTIFICATE OF SERVICE**

I hereby certify that:

On January 16, 1998, I caused to be served copies of the following:

**ENDAUM'S AND SRIC'S MOTION FOR LEAVE TO RESPOND TO  
EASTERN NAVAJO ALLOTTEES ASSOCIATION'S INTERVENTION  
PETITION AND RESPONSE TO NRC STAFF'S REQUEST FOR EXTENSION  
OF TIME**

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. The parties marked by an asterisk (\*) were also served by facsimile. The envelopes were addressed as follows:

Office of the Secretary\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemakings and Adjudications  
Staff

Office of Commission Appellate  
Adjudication\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge\*  
B. Paul Cotter, Jr.  
Presiding Officer  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington D.C. 20555



Administrative Judge  
Thomas D. Murphy\*  
Special Assistant  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington DC 20555

Jep Hill, Esq.\*  
Attorney for Hydro Resources, Inc.  
Jep Hill & Associates  
P.O. Box 2254  
Austin, TX 78768

Mitzi Young  
John T. Hull  
Office of the General Counsel\*  
Mail Stop - O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Mervyn Tilden  
Mary Lou Jones  
Zuni Mountain Coalition  
P.O. Box 22  
San Rafael, NM 87051

Grace Sam  
Marilyn Sam  
P.O. Box 714  
Thoreau, NM 87323

Diane Curran\*  
HARMON, CURRAN, SPIELBERG  
& EISENBERG, LLP  
2001 "S" Street, N.W., Suite 430  
Washington DC 20009

Anthony J. Thompson\*  
Paul Gormley  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 "N" Street, N.W.  
Washington, D.C. 20037-1128

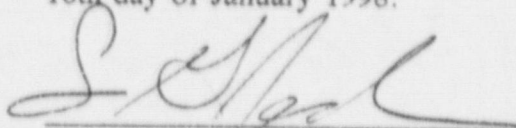
Lila Bird\*  
Executive Director  
Water Information Network  
P.O. Box 4524  
Albuquerque, NM 87106

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

Lori Goodman\*  
Diné CARE  
Navajo Nation  
10-A Town Plaza, S-138  
Durango, CO 81301

Jon J. Indall  
Joseph E. Mauges  
COMEAU, MALDEGEN,\*  
TEMPLEMAN & INDALL, LLP  
P.O. Box 669  
Santa Fe, NM 87504-0669

Dated at Santa Fe, NM this  
16th day of January 1998.



Susan G. Jordan