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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SEC
RULEMAKING
ADJUDICATION

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

SERVED DEC 16 1998

In the matter of

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

Docket No. 40-8968-ML

Re: Leach Mining
and Milling License

ASLBP No. 95-706-01-ML

MEMORANDUM AND ORDER

(Motion for Subpoena and to Supplement the Hearing File)

On December 10, 1998, SRIC and ENDAUM (Intervenors) filed a "Motion for Issuance of a Subpoena for the Production of Documents, Or, Alternatively, To Supplement the Hearing Record And to Postpone the Deadline for Filing Written Presentations on Groundwater Issues and NEPA Issues; Expedited Consideration Requested" (Motion). The purpose of the Motion is to require the hearing file to be supplemented pursuant to 10 C.F.R. § 2.1231(b) so that it will contain:

1. Structural cross-sections and structural contour maps for each of the sites at which HRI proposes to mine pursuant to License No. SUA-1508, issued on January 5, 1998;
2. Drillers' logs for each of the proposed 10 Crownpoint monitoring wells at the Crownpoint site, for each of the 12 proposed Church Rock monitoring wells, and for a representative sample (which ENDAUM and SRIC's expert will assist selecting) of the 100 plus boreholes at the Unit One site; and

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3. The surface elevations for each of the boreholes at each of the sites at which HRI proposes to mine.

In the Motion, Intervenor's attempt to show that their informal attempts to have this material included in the Hearing Record have been rebuffed. Motion at 3-4.

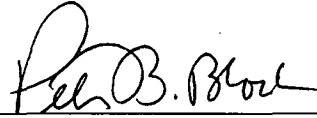
After carefully studying Intervenor's filing and the procedural rules, I have determined that there is not yet any need for relief. 10 C.F.R. § 2.1231(d); but see 10 C.F.R. § 2.1231(b). This way of determining the motion is both expeditious and fair. By determining the motion promptly, before responses have been filed, there need not be any further delay in the proceeding.

With the present state of the Hearing File, Intervenor's may continue to show in their written presentation that there are essential evidentiary gaps in the record and that, therefore, Applicant has failed to meet the burden of proof¹ assigned to it by our procedural rules. Additionally, they may argue that pursuant to 10 C.F.R. § 2.1235 that the Presiding Officer must require oral presentations or testimony and they may suggest cross-examination for use by the Presiding Officer. Should additional documents be needed with respect to an oral presentation or testimony, the Presiding Officer may obtain documents at that time. I conclude that it would be far better to determine this evidentiary argument in light of the complete arguments on the merits that will be available a bit later in this proceeding.

¹The proprietary nature of information does not affect whether it is required to be in the hearing record. *Necessary* information must be included in the hearing record whether or not it is proprietary. Proprietary information may be appropriately marked and withheld from the general public. It shall be provided to Intervenor's under protective order. See Exhibit 3 (HRI letter from Mark Pelizza, October 16, 1998) to Motion at page 1 §2, ¶2.

Accordingly, I consider Intervenors' Motion to be premature and I deny it for now. Since Intervenors will not be obtaining any additional documents, their request for an extension of time within which to analyze the documents also is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Peter B. Bloch". The signature is fluid and cursive, with the first name "Peter" and last name "Bloch" clearly distinguishable.

Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland

UNITED STATES OF AMERICA
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Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

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

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Dated at Rockville, Md. this
16 day of December 1998


Office of the Secretary of the Commission