

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 OPPOSITION TO, AND,
PETITION TO DENY, THE EASTERN NAVAJO ALLOTTEE'S
ASSOCIATION'S PETITION FOR LEAVE TO INTERVENE AND
MOTION TO DENY THEIR ATTORNEYS ENTRY OF
APPEARANCE AND, SECOND REQUEST FOR A TEMPORARY
RESTRAINING ORDER**

Mervyn Tilden (hereinafter "Petitioner Tilden"), by and through his own person, *pro se*, respectfully notifies and petitions 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; the Atomic Safety and Licensing Board (ASLB) and, U.S. NRC Chairwoman Shirley Ann Jackson that Petitioner Tilden states his opposition to the Eastern Navajo Allottee's Association's (hereinafter the "Association") Leave to Intervene 2 and respectfully prays for the Denial of the Association's Leave to Intervene as the correct filing date for individuals and organizations to submit their timely petitioners in the manner as prescribed by NRC Regulations was December 13, 1994. Petitioner Tilden also submits his Motion before the Presiding Officer and the ALSB to deny *and disregard* the Association's Attorney's, notice of "Entry of Appearance" *and* grant Petitioner Tilden's Second Request for a Temporary Restraining Order (TRO).

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.

2 Submitted January 05, 1998

In support of my opposition to, and petition to deny, the Eastern Navajo Allottee's Association's Petition for Leave to Intervene and their Attorneys "Entry of Appearance", and Second Request for a TRO in the above-captioned matter, Petitioner Tilden states:

1. That, the Dineh (Navajo) Religion is the most at risk of irreparable injury and permanent harm if Hydro Resources, Inc. (HRI) is allowed to start up it's proposed In-situ Leach (ISL) uranium mines at Church Rock and Crownpoint New Mexico (including the Unit 1 site);

2. Incorporation under the Navajo Nation Corporation Act is muchlike how a corporation can exist on paper--if they only file as a "Delaware Corporation" [such as in the case of HRI]; 3

3. The list submitted by the Association and their attorneys contains individuals who do not meet the test in the Atomic Energy Act for standing as they are not persons whose direct long-term "interests may be affected by this proceeding" and are not entitled to participation as they have thoroughly failed to submit a timely Petition for Leave to Intervene; 4

4. The "Allottees" have expressly incorporated to voice and express positions regarding leases ("for mining of uranium deposits located on their lands.") that are not only clandestine in nature but are called private business matters by HRI in spite of the fact that the U.S. Bureau of Indian Affairs (BIA) must ratify any "business" leases *prior to any type of business transaction* and this cannot happen until the Navajo Nation Moratorium on Uranium Mining (hereinafter the "Moratorium") is abolished--to do so would otherwise violate the "Trust Responsibility" of the United State Government and the obligations owed to all federally recognized tribes via the treaties, agreements, and constructive arrangements the aforementioned parties signed;

5. The issue of the legality of HRI's business "agreements to lease" the (Allottees) "allotted lands to Hydro Resources for the production of uranium concentrates" is not resolved neither has the NRC, HRI, the Association, their attorneys, and agents, produced any type of documentation that substantiates the claim that agreements have been ratified by the BIA or that the Moratorium has been rescinded;

6. If the Association is allowed to enter into the proceedings at this twelfth hour as individuals or an organization with "standing" based upon the

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

4 "Deadline for Submission(s)": December 13, 1994

preposterous claim that they (Allottees) are actually concerned with any type of "environmental injury", then it is imperative that Petitioner Tilden and the other Petitioners, be allowed to participate as well for they are not full time residents of cities far away from HRI's proposed ISL uranium mines, rather, they are full time residents of Crownpoint and Church Rock (NM) and surrounding communities/region on the Navajo Nation in the State of New Mexico;

7. Again, if the Association is allowed to enter into the proceedings at this twelfth hour as individuals or an organization with any classification of "standing", then it must be obligatory (under the Treaty of 1868) that the grassroots organization Eastern Navajo Dine' Against Uranium Mining (ENDAUM) be allowed to enter the proceedings as Petitioners to Intervene for some of the standing membership (of ENDAUM) are residents of the affected allottees "land" as well, with the exception that they actually live on the land. The Association's interest does not meet the requirements of ss 2.1205(a) of the NRC Rules; 5

8. The business "arrangements" that have been negotiated and signed by HRI and the Association do not represent the best interests of the majority of the Navajo Nation (especially the traditional, [non-]English speaking Dineh who are Practitioners of their Dineh Religion) or the rest of the public-at-large for they (arrangements) only "cover a portion of the properties at issue before the ASLB" (in this case, the monetary 6 needs of the few outweigh the total needs of *the many* through the "advance lease payments" and "future royalty payments" HRI employed as an incentive for the [non-]residential Allottees).

9. The property rights of those Allottees who are opposed to HRI's proposed ISL project and are members of ENDAUM and other organizations or individual Petitioners, meet the "irreducible constitutional minimum" of standing (A. an actual or threatened injury, B. that is fairly traceable to the private business "arrangements", and C. that is likely to be redressed by a favorable decision) and will suffer actual economic loss due to the "arrangements" of the Association with HRI (and the NRC). The actual or proposed economic loss and environmental destruction is sufficient to confer standing to all Petitioners to Intervene and *all interested parties*;

5 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. This is "Environmental Racism" against The People, specifically, the poor and low-income Dineh (Navajo) people. See Federal Register at 7629, 7630 (Feb. 16th, 1994)

6 Some of these individuals were paid \$40,000.00 for their signature

10. For many years Petitioner Tilden has been aware of the enormous effort by HRI to come onto Navajo land and interrupt the Dineh Religion by using it's ISL project propaganda as a lure to many poor and low-income individuals who desire jobs to support themselves and their families when in reality the entire sales pitch ("jobs") of HRI has not been shown to be based on actual fact that is supported by real documentation, and instead HRI has used it's own contrived figures, projections and estimates to weave a perplexing and deliberate illusion to the Allottees *and the public* by distorting the record (DEIS, Final Environmental Impact Statement [FEIS], and HRI's Consolidated Operation Plan [COP]) *and* misrepresenting the "public's long-term, economic and financial interest(s) by dramatizing "economic development" ventures that are not prudent, feasible, or viable to the majority of the Church Rock and Crownpoint (NM) population, the Navajo Nation, and the public at large who all have been excluded from the proceedings. This has also set family members against each other;

11. The assertion by the Association and their attorneys that "other petitioners have been allowed broad latitude to file or amend their filings in this proceeding and no prejudice or injury will result from the granting of this petition" is grave evidence that the "timeliness" requirements by the NRC are better defined as "legal obstacles" for those who even question 7 any uranium extraction project (in this case, HRI) and the NRC's "authority to regulate" such operations *and*, that the Association's untimely petition to intervene is outlandishly inexcusable and it will duly prejudice and injure the other parties to the proceeding by virtue of the fact that the exclusion of Petitioner Tilden, the other Petitioners and the populace in the Church Rock and Crownpoint region has been premeditated--their (calculated) exclusion in the proceedings can be rectified by the Presiding Officer who has the authority to grant our (timely and) untimely petitions pursuant to ss 2.1205(l)(l)(i) and (ii) of NRC's adaptable and effervescent rules;

12. The Association's attorneys use the justification that the proceedings need a "balanced record", therefore, Petitioner Tilden respectfully requests that this matter also be put before the public who will then be given the rightful opportunity to further scrutinize the NRC's position as evidenced by the FEIS and it's "Safety Evaluation Report (SER)" and question whether or not the "major Native American interests" are valid parties to this proceeding, as well as the NRC Staff who issued a source materials license to HRI based upon the aforementioned deficient and questionable documents (Petitioner Tilden's position that the majority of people that will be impacted are in fact poor and low-income Navajos and that his environmental justice contention is firmly grounded in the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. ss 4321 *et seq.* (NEPA);

7 Here I memorialize the heroism of Karen Silkwood and honor the Corn Pollen (Path) Way with Yellow Corn Pollen offerings for HRI, NRC and the Association. The constant harassment, intimidation, threats of witchcraft and the employment thereof, and the imposition of deliberate hardship upon HRI's opponents must end!

13. Further, the Association's unqualified and overdue Petition for Leave to Intervene does not address the health, safety, safeguards, environmental, financial qualification(s), and the decommissioning funding requirements of NRC Rules and Regulations suchlike it's business partner, HRI. Because the NRC Staff rejects the intention of President Clinton's Executive Order (12898) on "Environmental Justice", refuses to acknowledge the disproportionate impacts that the proposed ISL project will have upon the minority Dineh (Navajo) communities, refuses to incorporate the E.O. into the proceedings regardless of the low-income and poor population in Crownpoint and Church Rock (NM), I respectfully remind the Presiding Officer of case law 8 that addresses the disparate impact of the proposed ISL project and forthwith request that the record be balanced by restraining the license issued to HRI (by the issuance of a TRO) until public hearings are conducted in the City of Gallup, before the McKinley County Commission and all impacted chapters of the Navajo Nation so that the public's collective decisionmaking power can incorporated as a valuable contribution to the current proceedings;

14. Petitioner Tilden's on-going ordeal before the NRC to demonstrate that he does not have adequate representation or legal counsel and who continues to be unable to convince the NRC Staff that he has met the "minimal" requirements of burden of proof that supports his petition to intervene has been very burdensome as he has done his best to respond in a timely manner as prescribed by NRC Rules to the timelines prescribed for filing, therefore, if the Association's admission, that by "allowing the Allottee's Association to participate will not cause any delay to the proceedings", is accepted by the Presiding Officer, then the precedent is such that the Petitioners, all interested parties and the public at large must be allowed to participate as well;

15. Further, the Association has the burden of proof in this proceeding to provide documentation to show that it will prevail on each contested issue and that it's Leave to Intervene must be supported by the preponderance of the evidence which is notably absent from their petition. Additionally, because the NRC Staff relies extensively upon the petitioners submission(s) in preparing consequential documents such as the DEIS, FEIS, and SER and because the SER has already been released, the Association should be denied its Petition for Leave to Intervene as it has never provided the required burden of proof (indisputable documentation) necessary to defend its challenged position as it seeks to become a proponent in the above captioned matter;

8 In the Matter of LOUISIANA ENERGY SERVICES, L.P. (Claireborne Enrichment Center), Docket No. 70-3-70-ML, ASLB No. 91-641-02-ML (Special Nuclear Material License), May 01, 1997, LBP-97-8, FINAL INITIAL DECISION (ADDRESSING CONTENTION J.9). The history of this proceeding may also be found in three previous decision. See LBP-96-7, 43 NRC 142 (1996); LBP-96-25, 44 NRC 331 (1996); LBP-97-3, ___ NRC ___ (slip op. Mar. 07, 1997).

16. Even if in the event the Association is stating facts in its petition to intervene (i.e. that they are concerned about the effects on the environment) then it would not be detrimental to, and it will serve a valuable purpose if, the Allottees adequately weighed the negative environmental, economic and sociological impacts that HRI's proposed ISL project will have on the low-income and poor minority communities of Crownpoint and Church Rock (NM) and incorporated this data in their Leave to Intervene;

17. That Petitioner Tilden and all other petitioners are in fact, *already advocates for the Association* whose membership is "comprised solely of Native Americans" who "have a direct interest in any adverse environmental impacts on their allotted properties". HRI has used biased and inaccurate historical and cultural information that is not only environmentally discriminatory to the poor (traditional Dineh) Navajos who reside in the Church Rock and Crownpoint (NM) region, whereas Petitioner Tilden (and the other petitioners) uphold the Dominant Society's and Dineh concept of cohesive community/family leadership, unity, spirituality (Dineh Way of Life) and support roles, and merely seeks to impede the outsiders who stand to benefit by imposing such life-threatening risks as volunteered by HRI and officially sanctioned by the NRC. We are taking an opposing position, thereby exercising our basic Constitutional rights and the fundamental right to exist and survive as sovereign nations and simply protecting the land, air and water for our safe use (availability and quality) and that of future generations;

18. Of certainty, one of the purposes of a NRC DEIS, FEIS and a SER (and other such documents) issued by the NRC is to provide adequate environmental and socio-economic *full disclosure* to all interested parties, namely members of the public who request this information. There is nothing to support the Association's assertion that this proceeding will benefit from their participation in these proceedings nor have any members (or their attorneys) submitted proper evidence for the record that is compelling, credible or convincing toward this end. This is hardly sufficient justification to establish their standing and more than enough reason to reject its incorrect conclusions that it (the Association) can better defend Dineh (Navajo) sovereignty (our landbase and Spiritual Way of Life) than the current Petitioners to Intervene, (including Petitioner Tilden) who have filed their submissions in a timely manner before the NRC and ASLB as set forth in NRC Rules and Regulations. By the same token, the NRC ⁹ has failed to address identified insufficiencies in the NRC's Staff DEIS, FEIS, and SER and to take appropriate steps to incorporate the position of the public's opposition (to HRI)

9 President Clinton's memorandum that accompanied E.O. 12898 specifically states that the Executive Order is designed "to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice" and "to promote nondiscrimination in Federal programs substantially affecting human health and the environment." 30 Weekly Comp. Pres. Doc. at 279.

while at the same time, denying NRC administrative remedies (due process) and quashing the hearing rights of many, all current Petitioners and all interested parties alike. This merits scrutiny under Executive Order 12898.

CONCLUSION

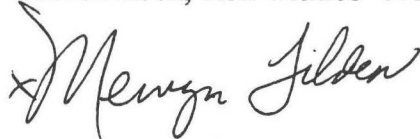
It is the expressed opinion and belief of Petitioner Tilden that there is an inescapable "Trust Responsibility" requirement that is reiterated by President Clinton's Executive Order (12898) on Environmental Justice, that the Nuclear Regulatory Commission (NRC) and Atomic Safety and Licensing Board (ASLB) must fulfill *not only to the Navajo government* but to the traditional Dineh ("The Earth Surface People") whose Religion will be adversely affected regardless of the NRC Staff's reasons as set forth in the NRC Staff's Draft Environmental Impact Statement, Final Environmental Impact Statement and Safety Evaluation Report (and Hydro Resources, Inc. Consolidated Operation Plan), thereby creating new substantial rights of the adversely affected parties who have been deliberately excluded from these proceedings. The standing of the entire membership Eastern Navajo Allottees Association has not been proven to be fact for they have not submitted a timely petition as set forth in NRC Rules and Regulations thereby nullifying their position. In addition, in these proceedings, they have not demonstrated that other petitioners and all interested parties *will not* suffer prejudice and be harmed by their *dilatory* and *untimely* Petition for Leave to Intervene and their attorneys Entry of Appearance. Because of the poor and low-income Navajo minority population, the Presiding Officer must ensure that the "Trust Responsibility" obligations by the U.S. Environmental Protection Agency, the U.S. Bureau of Indian Affairs and the NRC are not impeded and/or disrupted; Executive order 12898 *does not* impose burdensome duties on the NRC because the NRC has undertaken several initiatives to carry out the President's directive; and, it would be prudent and wise to incorporate the findings and conclusions of law as set forth In the Matter of LOUISIANA ENERGY SERVICES, L.P. (Claireborne Enrichment Center), Docket No. 70-3070-ML. Therefore, the Presiding Officer must allow Petitioner Tilden's Opposition to the Eastern Navajo Allottees Association's Petition for Leave to Intervene; deny the Eastern Navajo Allottees Association Petition for Leave to Intervene; disallow the Eastern Navajo Allottees Association's Attorneys Entry of Appearance; and grant Petitioner Tilden his Second Request for A Temporary Restraining Order (TRO) based on the insufficiencies in this proceeding and affirm the TRO by allowing for duly called official public hearings jointly conducted with the City of Gallup, the McKinley County Commission, and the Navajo Nation--especially in the chapters that will be adversely affected by the locations of HRI's proposed In-situ Leach uranium mines.

Respectfully submitted this 20th Day of February, 1998

Mervyn Tilden

P.O. Box 457

Church Rock, New Mexico 87311



MEMORANDUM

FOR THE RECORD

TO: All Parties to the Matter of HRI
Docket No. 40-8968-ML

FROM: Mervyn Tilden
Petitioner to Intervene

RE: January 16 and 20 (1998) Filing Dates

For the Record:

On the 16th and 20th of January, 1998, I, Mervyn Tilden, a Petitioner to Intervene in the Matter of Hydro resources, Inc. [Docket No. 40-8968-ML] did in fact make every extended effort to file "on time", my Second Amended Petition and Response to Eastern navajo Allottees Association. On January 20th, 1998, at approximately 3:22 PM, I did talk to and coordinate with Mr. Emile Julian, Nuclear Regulatory Commission (NRC), Ajudication and Rulemaking, and he *confirmed the receipt of and acceptance into the record*, both of my timely filings.

However, I had the most difficult time trying to get anyone else at the NRC to assist me with my filing. It was most frustrating but I imagine that this is part of the intent of the "rules". I must protest this disappearance of the NRC Staff when they are most urgently needed in these matters.

Signed this 20th Day of February, 1998

Mervyn Tilden, Petitioner to Intervene
in the Matter of HRI [40-8968-ML]

A handwritten signature in cursive script, appearing to read "Mervyn Tilden", written in dark ink.

MEMORANDUM

FOR THE RECORD:

TO: B. Paul Cotter, Jr., ASLB
Thomas D. Murphy, ASLB
Joseph Holonich, Chief, NRC
Shirley Ann Jackson, Chairwoman, NRC
Michael Layton, CGWP, NRC
Melissa Benson, Staff, NRC
Emile Julian, A&RM, NRC

FROM: Mervyn Tilden, Petitioner

RE: Nuclear Regulatory Commission filing dates [Jan. 16 and 20, 1998]

On January 16th, 1998, I experienced a very difficult time in trying to confirm the receipt of my second amended petition to intervene vis FAX transmittal. Although I did leave repeated phone messages with several of you.

On Jan. 20th the same struggle occurred *during regular Nuclear Regulatory Commission (NRC) hours*, however with different results. Again, I left repeated phone messages with several of you. Bear in mind if the circumstances were afforded I would have delivered my petitions in person as I did the first time.

I must extend my appreciation to Emile Julian and Melissa Benson, who obviously were working overtime but assisted me and confirmed the timely receipt of both petitions and acceptance by the NRC. It is individuals like Mr. Julian and Ms. Benson who are truly dedicated to making sure the public has confidence in "the system". As no one else was there to help me file my petitions during normal working hours, I sincerely appreciate their efforts on my behalf. They are a credit to the NRC.

A handwritten signature in black ink, appearing to read "x Mervyn Tilden", followed by a long horizontal line.

Mervyn Tilden, Petitioner to become an Intervener
in the Matter of Hydro Resources, Inc. [No. 40-8968-ML]