

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)

Docket No. 40-8968-ML

HYDRO RESOURCES, INC.)
2929 Coors Road, Suite 101)
Albuquerque, NM 87120)

ASLBP No. 95-706-01-ML

**PETITIONERS ENDAUM AND SRIC'S RESPONSE TO HYDRO RESOURCES
INC.'S REQUEST FOR EXTENSION OF TIME**

Petitioners Eastern Navajo Diné Against Uranium Mining (hereinafter "ENDAUM") and Southwest Research and Information Center (hereinafter "SRIC"), by and through their undersigned attorneys, hereby respond to Hydro Resources Inc.'s (hereinafter "HRI") Request for Extension of Time (hereinafter "HRI's Request") to respond to all hearing requests. HRI requests a two week extension of the February 6, 1998, deadline set by the Presiding Officer. HRI's Request at 3. Petitioners oppose any extension for the reasons stated below.

First, by HRI's admission, the difficulty that the Presiding Officer's deadline

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poses for HRI results from HRI's own choices about how to allocate its resources.¹ HRI asserts that it has spent "a substantial amount of time since January 15, 1998 responding to ENDAUM and SRIC's stay request" and that, anticipating amendments to the hearing request after the NRC issued the Safety Evaluation Report and license, "HRI thought it would be an unwise use of resources to prepare a detailed response to the Petitions to Intervene prior to reviewing any amended requests." HRI's Request at 2 and n.2. The fact that HRI's choices about how to use its time turned out to be unwise plainly is not good cause for giving HRI more time. Moreover, in setting the schedule for amended requests and responses, the Presiding Officer already implicitly determined that HRI would have enough time between the receipt of amended requests on January 16, 1998, and the filing deadline for responses on February 6, 1998, to review and respond to new amendments addressing not only new information in the license and SER, but also in the FEIS and correspondence generated while this proceeding was in abeyance. Memorandum and Order (Lifting Hearing Suspension and Schedule for Filing Amended Hearing Petitions) (December 18, 1997) at 2, 3-4.

In any event, neither the "bulk" of Petitioners' hearing request nor Petitioners's filing their Stay Motion provide good cause for an extension.

¹ Petitioners find it hard to fathom that HRI would be unable to meet the Presiding Officer's deadline of February 6, 1998, for filing responses, eleven days after the January 26, 1998 deadline for HRI's response to Petitioners' Stay Motion. Petitioners, with far less resources than HRI, met the January 15, 1998, deadline for requesting a stay and the Presiding Officer's January 16, 1998, deadline for amending hearing requests with only one day between filings.

Petitioners' Third Amended Hearing Request and Petition to Intervene filed January 16, 1998, makes no changes to the statement of concerns contained in Petitioners' Second Amended Request for Hearing, Petition to Intervene and Statement of Concerns (hereinafter "Second Amended Request"), which was served on HRI on August 19, 1997. A full month passed before the Presiding Officer ruled on September 19, 1997, that the Second Amended Request was premature, during which time HRI was presumably reviewing the Second Amended Request and preparing its response. On December 18, 1997, the day the Presiding Officer issued the schedule for amended requests and responses, HRI was also put on notice by receipt of Petitioners' Motion for Housekeeping Stay and Request for Briefing Schedule for Stay Motion that Petitioners' intended to file a Stay Motion on or about January 15, 1998. Thus, even if HRI actually stopped working on its response in anticipation of additional amendments and such idle waiting were reasonable and worthy of the Presiding Officer's consideration, and if HRI actually was prevented from working on its response while it responded to Petitioners' Stay Motion,² HRI has had ample time from mid-August to mid-September, from December 18 to January 15, and from January 26 to February 6 to prepare its response.

² HRI does not explain why it did not simply join in the Staff's request for an extension of time to February 20, 1998, to file its response to the Stay Motion, or seek such an extension after the Presiding Officer granted it to the Staff, so that responding to the motion would not preclude it from meeting the February 6, 1998, deadline for responding to hearing requests.

Second, the only other basis HRI gives for requesting an extension, its late receipt of Mervyn Tilden's Second Amended Petition to Intervene, is not good cause. HRI has had all of those hearing requests, with the exception of Mervyn Tilden's Second Amended Petition which HRI received from the NRC Staff on January 23, 1998, for three years. Indeed, HRI's counsel Jep Hill filed a detailed to response to each of the February 15, 1995, hearing requests on February 25, 1995. Thus, any additional burden posed by Mr. Tilden's approximately 15-page petition is minimal, and there is no justification for HRI needing an additional two weeks to respond to the petitions of Mr. Tilden or the other potential parties.³

Third, granting an extension to HRI would unduly prejudice Petitioners. HRI indicates that the NRC Staff's counsel would request an additional extension to file their response if the Presiding Officer grants an extension to HRI. HRI's Request at 3. These extensions will further delay a ruling on Petitioners' right to a hearing. Such delay would be especially prejudicial because the Presiding Officer has not yet determined whether to grant Petitioners' request for a stay pending completion of a hearing and the temporary stay could be lifted in the interim. See Memorandum and Order (Granting Temporary Stay of Staff Licensing Action and Ruling on Motions) (January 23, 1998) at 6-7. In the absence of a stay pending completion of the hearing, a further delay would result in further irreparable damage to Petitioners'

³ HRI's counsel apparently did not contact Mr. Tilden or the other potential parties who requested a hearing to ascertain their position on an extension of time to HRI to respond to their requests.

health, safety, and property as well as to their due process right to a prior hearing. See Petitioners' Motion for Stay, Request for Prior Hearing, and Request for Temporary Stay (January 15, 1998) at 5-8. Petitioners have diligently labored to respect the schedule set by the Presiding Officer, and HRI should be required to do the same.

Accordingly, Petitioners respectfully request that the Presiding Officer deny HRI's request for extension.

Dated: January 28, 1998

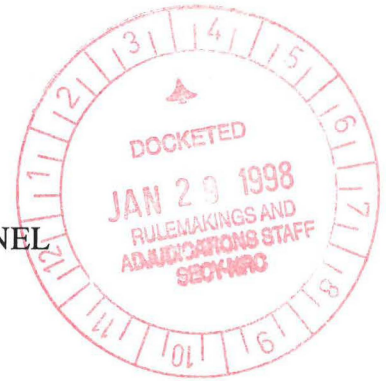
Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. Jordan', is written over a horizontal line.

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

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

CERTIFICATE OF SERVICE

I hereby certify that:

On January 28, 1998, I caused to be served copies of the following:

**PETITIONERS ENDAUM AND SRIC'S RESPONSE TO HYDRO RESOURCES
INC.'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*
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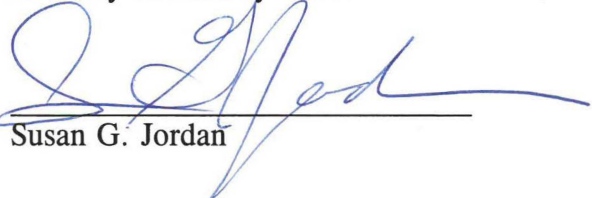
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Dated at Santa Fe, NM this
28th day of January 1998.



Susan G. Jordan