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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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(STAMPED)

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, Texas 75251

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Docket No. 40-8968-ML
ASLBP No. 95-706-01-ML

**RESPONSE OF HYDRO RESOURCES, INC. TO
REQUEST FOR ISSUANCE OF SUPPLEMENTAL DRAFT
ENVIRONMENTAL IMPACT STATEMENT AND ESTABLISHMENT
OF A LOCAL PUBLIC DOCUMENTS REPOSITORY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Hydro Resources, Inc. (HRI) to present its response to the Request of Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) for Issuance of Supplemental Draft Environmental Impact Statement and Request for Establishment of a Local Public Documents Repository. Neither request is supported by any showing that Requestors need or merit the remedies sought and both are founded upon bare speculation as to the assumed interests of unidentified persons unknown to this proceeding. Both requests should be denied as unsupported, unnecessary, and contrary to law and sound public policy.

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I.
NO SUPPLEMENTAL DEIS IS NEEDED

The law does not require and public policy does not warrant the issuance of a supplemental draft environmental impact statement (DEIS). Requestors present three arguments for issuing a supplemental DEIS; however, all fail for lack factual support. The Commission's regulations call for the issuance of a supplemental DEIS under specific conditions and more generally when such action would serve the purposes of NEPA. 10 C.F.R. §51.72 The relevant inquiry for the Commission is, therefore, whether there are new environmental or project facts which so alter its understanding of either the project or the environment that the DEIS is likely to have substantially frustrated or misdirected a sound environmental appraisal of the action in question. Neither the DEIS nor any of the documents which have appeared in the DEIS review process gives any credible basis to claim such new facts have appeared. No alleged error, omission or claimed new alternative threatens to undermine the DEIS review process so as to make a supplemental DEIS necessary or even desirable. For their part, Requestors have not made even a rudimentary showing on this point. Moreover, Requestors ignore the wasteful expense and delay which preparation of a supplemental DEIS would entail.

The First Argument.

Requestors' first argument simply asks the Commission to act on Requestors' assumptions and unsupported claims. Requestors begin by reciting that NRC regulations

require preparation of a supplemental DEIS whenever there are either substantial changes in a proposed action or significant new circumstances or information relevant to the action. However, rather than to present facts showing that one or the other has occurred, Requestors simply ask the Commission to assume one or both have occurred. On the issue of substantial changes, Requestors admit "ENDAUM and SRIC cannot ascertain whether there are 'substantial changes in the proposed action. ' (Request, p. 5) Lacking essential facts, they ask the Commission to simply assume them because a large volume of paper--with which Requestors admit they are not familiar--has passed between HRI and the staff of the Commission. The first argument fails for want of any basis in fact.

The Second Argument.

Requestors's second argument fails similarly, but adds a false assumption in place of needed fact. Beginning from the premise that NRC regulations require a supplemental DEIS to disclose new alternatives under consideration, Requestors assert that "since February, 1996, thousands of pages of new and explanatory data and information have been submitted to NRC by HRI." To this, Requestors then add an unsupported and false assumption that this "new information has not been made available to the general public for review and comment." HRI has painstakingly ensured that all of its submissions to the Commission were made available to the public, and all are available at the Crownpoint reading room voluntarily maintained by HRI. However, Requestors' claim is interesting for what is not said: They do not claim they or their members or anyone else has been

denied access to any documents. Instead, they simply speculate. The Commission can and must assume Requestors have told all they know on the point and simply cannot support their claim.

Requestors continue by claiming the voluminous documents provided by HRI to the Commission could be used by NRC to formulate a new Alternative 2, and that--assuming this were true--in such case, the public would be deprived of meaningful opportunity to consider such a new alternative in the context of a DEIS review. The argument fails, however, because

- (1) there are no documents which have not been offered to the public in reading rooms and otherwise;
- (2) Alternative 2 is not new, just a restricted and scaled-back version of the same project;
- (3) there is no showing that anyone has been or will be denied meaningful opportunity to evaluate Alternative 2; and,
- (4) Requestors fail to show how the legitimate purposes of the National Environmental Policy Act would be advanced by their requested action.

Once again, unable to claim that they themselves have been denied their due, Requestors ask the Commission to assume that some unknown person somewhere may be wronged by the Commission's decisionmaking procedure. Requestors ask the Commission to act on bare speculation rather than fact.

The Third Argument.

Finally, Requestors assert that a supplemental DEIS is needed to correct numerous factual inaccuracies of the DEIS and to cover a number of listed matters they claim to have been inadequately handled in the DEIS. However, this argument fails because instead of pointing out the claimed errors and the manner in which any of them has defeated or may frustrate meaningful environmental review, Requestors simply recite vague claims and ask the Commission to assume the rest.

The request for a supplemental DEIS fails first for want of any factual support. To cover this lack of factual support, Requestors ask the Commission first to assume the necessary facts and then accept the false statement that important documents were not disclosed to the public. The arguments deserve no credence. The remedy Requestors ask is not owed as a matter of law, and it is not warranted by sound public policy. The additional delay and expense of preparing and circulating a supplemental DEIS would not ensure either a fairer or more legitimate or more technically sound decision. The law does not require a supplemental DEIS and public policy does not warrant one. The request should be denied.

II.

AMPLE PUBLIC DOCUMENT REPOSITORIES ALREADY EXIST; NO MORE NEED BE ESTABLISHED

Where as here, a licensee has voluntarily and successfully undertaken extraordinary measures to ensure public participation and the availability of documents and facilities for

all who care to avail themselves, there is no need for the Commission to create yet another document repository. As an integral part of its licensing activities for its Churchrock and Crownpoint mines, HRI has conducted a broad-based and intensive public information and outreach program to ensure the public both full access to documents and information and ample opportunities in formal and informal meetings (many conducted both English and Navajo) to ask questions and present views. As a part of this process, HRI established a local public document repository in Crownpoint, New Mexico in 1988. Since establishing this local public document repository, HRI has made available there all of the documents submitted to the NRC in connection with this proceeding. In addition to the public document repository in Crownpoint, the Environmental Protection Agency of the Navajo Nation has established its own, independent reading room for this proceeding at its offices in Fort Defiance, Arizona.

Because of these facts, it is understandable that the request that NRC establish yet another local public document repository for this proceeding is not founded on any real or claimed lack of access to documents by Requestors. Instead, they base their request upon bare speculation that somehow, somewhere, someone other than the Requestors might not have been able to review documents. The request for yet another local public document repository ignores the facts in favor of speculation and should be denied.

While Requestors may prefer to ignore the Navajo Nation's public document repository for this case, their grudging acknowledgement of the presence of the

Crownpoint repository argues persuasively against their request. First, their request is undermined by their apparent ignorance of the contents of the Crownpoint repository, which includes a copy of every document HRI has submitted to the Commission relative to the project. Second, it is remarkable that after 8 years of operations at the Crownpoint public document repository, Requestors do not offer a single criticism about those 8 years of service to the Crownpoint community. The Commission must assume Requestors would cite such facts if there were any. Lacking facts, Requestors speculate blindly that the existing repository might selectively exclude persons or could perhaps restrict the range of documents offered or may even frustrate efforts to copy documents.

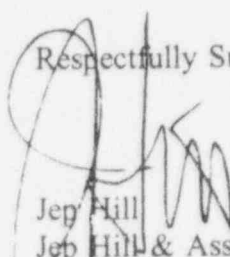
Second, the request for yet another document repository demonstrates once again Requestors' lack of legitimate standing in this case. When they ask for yet another repository, they are not speaking for themselves and their members. They know of no one who has been denied access to documents. Were it otherwise, Requestors would have presented those facts. Instead, knowing of no facts to support their request, Requestors resort to speculating about unnamed others who might, maybe, hypothetically be inconvenienced trying to examine some unspecified document.

There is no need for yet another local public document repository, and certainly Requestors do not show their need for one. They have, however, confirmed the opposite conclusion by failing to bring a single criticism of either the local public document repository established 8 years ago by HRI or the Navajo Nation's public document

repository. There is no need for yet another repository, and the Commission should summarily deny the request.

WHEREFORE, PREMISES CONSIDERED, HRI respectfully moves that the requests of Eastern Navajo Diné Against Uranium Mining and Southwest Research and Information Center for the issuance of a supplemental DEIS and the establishment of another local document repository be denied.

Respectfully Submitted,



Jep Hill

Jep Hill & Associates

ATTORNEY FOR HYDRORESOURCES, INC.

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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CERTIFICATE OF SERVICE

I certify that on this date, the foregoing two documents, (1) Response of Hydro Resources, Inc. To Request for Issuance of Supplemental Draft Environmental Impact Statement and Establishment of a Local Public Documents Repository, and (2) Letter to Chairman Jackson and Mr. Joseph Holonich were served upon each of the following by facsimile transmission or deposit of a true copy of the same into the U. S. Mail, either first class mail or express mail, postage prepaid, addressed to each as shown below:

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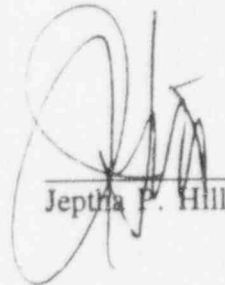
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Dated at Austin, Texas
December 13, 1996



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