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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
OFFICE OF SECRETARY
BOARDING & SERVICE
BRANCH

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

Administrative Judge
Thomas D. Murphy, Special Assistant

SERVED JAN 30 1997

In the Matter of

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

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

January 29, 1997

MEMORANDUM AND ORDER
(Denying Motion to Strike)

On November 25, 1996, attorneys working for the New Mexico Environmental Law Center ("Law Center") filed a Notice of Entry of Appearance in this proceeding on behalf of petitioners Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("Southwest"). Licensee Hydro Resources, Inc. ("Hydro") now challenges the Law Center's representation of Southwest. Hydro argues that the "Notice of Appearance be struck as to Southwest because Southwest abandoned this proceeding on February 15, 1995, when it failed to replead its request for

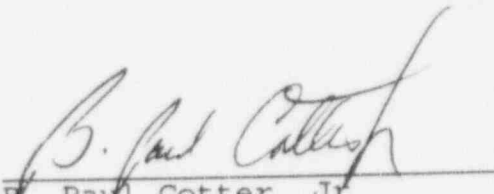
hearing." Response of Hydro Resources, Inc. To Notice of Entry of Appearance (December 13, 1996). Some background discussion of Hydro's claim is instructive.

After *Federal Register* publication of the Notice of Opportunity for Hearing in this proceeding, some seven individuals or groups petitioned for a hearing on the pending Hydro license application. See Memorandum and Order (Setting Schedule for Filings), LBP-95-2, 41 NRC 38 (1995). Because the Presiding Officer found many of the original petitions for hearing to be procedurally deficient prior to any determination on their merits and because Hydro itself had failed to file its response in a timely manner (*Id.* at 2, n. 2.), the Presiding Officer set a new filing deadline and allowed the petitioners to amend their petitions by a date established in LBP-95-2. The original filing deadline was extended to February 15, 1995, by a subsequent Order dated January 20, 1995 (unpublished). Most of the petitioners filed amended petitions by the filing deadline. Southwest chose not to file an amended petition. Hydro now argues that because Southwest failed to amend its petition at the request of the Presiding Officer, it has abandoned the proceeding and should now be denied participation.

As noted in LBP-95-2, petitioners were requested by the Presiding Officer to cure certain procedural defects found in most, not all, of the original petitions. All

petitioners were given a second chance to refine their arguments without ruling that any one petitioner had either met or failed to plead correctly the requirements of 10 C.F.R. § 2.1205. Therefore, LBP-95-2 was not an "exclusionary" Order as Hydro argues. A petitioner who chose not to amend its petition at that time suffers no greater consequence than to have its original petition serve as the basis for a decision on whether or not that petitioner will be allowed to intervene. As of this time, no determination has been made by the Presiding Officer on the merits of any petition to intervene because the record is not yet complete.

For all the foregoing reasons and on the basis of the record before me, the Response of Hydro Resources, Inc. To Notice of Entry of Appearance dated December 13, 1996 is hereby DENIED.


B. Paul Cotter, Jr.
Presiding Officer

Rockville, Maryland

January 29, 1997

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HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O DENYING MOTION DTD 1/29 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.

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

Susan G. Jordan, Esq.
Douglas Meiklejohn, Esq.
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505

Mervyn Tilden
Mary Lou Jones
Zuni Mountain Coalition
P.O. Box 39
San Rafael, NM 87051

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

Office of the General Counsel
Mail Stop - G-15 B18
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

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

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LB M&O DENYING MOTION DTD 1/29

Lori Goodman
Dine' CARE
Navajo Nation
10 A Town Plaza, S-138
Durango, CO 81301

Mitchell Capitan, President
ENDAUM
P.O. Box 471
Crownpoint, NM 87313

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

Wm. Paul Robinson
Chris Shuey
Southwest Research and Information
Center
P.O. Box 4524
Albuquerque, NM 87106

Bernadine Martin
P.O. Box #370
Crownpoint, NM 87313

Grace Sam
Marilyn Sam
P.O. Box 800
Gallup, NM 87323

Dated at Rockville, Md. this
30 day of January 1997

Adria T. Byrdson
Office of the Secretary of the Commission