

# KELLY HART & HALLMAN LLP

301 CONGRESS AVENUE, SUITE 2000  
AUSTIN, TEXAS 78701

Telephone: (512) 495-6400  
Telecopy: (512) 495-6401  
Writer's Direct Dial: (512) 495-6413  
Email Address: stephen.dickman@khh.com

201 Main Street, Suite 2500  
Fort Worth, Texas 76102  
1000 Louisiana, Suite 4700  
Houston, Texas 77002

January 30, 2009

## Via Hand Delivery

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753

CHIEF CLERKS OFFICE  
2009 JAN 30 PM 4:00  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: In re: Application of Uranium Energy Corp for Permit No. UR03075

Dear Ms. Castañuela:

Enclosed please find the original and eight copies of the Applicant's Response to Requests for Hearing regarding the above-referenced matter. Please return a file stamped copy to the waiting courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me at (512) 495-6413.

Sincerely yours,



Stephen C. Dickman

SCD/ja

Enclosures

cc: All Parties on Service List

**TCEQ DOCKET NO. 2008-1888-UIC**

2009 JAN 30 PM 4: 00

<b>IN RE: APPLICATION OF</b>	§	<b>BEFORE THE</b>	CHIEF CLERKS OFFICE
<b>URANIUM ENERGY CORP</b>	§	<b>TEXAS COMMISSION ON</b>	
<b>FOR PERMIT NO. UR03075</b>	§	<b>ENVIRONMENTAL QUALITY</b>	

**APPLICANT’S RESPONSE TO REQUESTS FOR HEARING**

Applicant, Uranium Energy Corp. (“UEC” or “Applicant”) files this Response to Requests For Hearing pursuant to 30 Texas Admin. Code (“TAC”) §55.209(d) and other applicable rules of the Texas Commission on Environmental Quality (“TCEQ” or “Commission”), and respectfully shows as follows:

**I. BACKGROUND**

On August 7, 2007, UEC filed an application for Class III Underground Injection Control (UIC) Permit No. UR03075 and an aquifer exemption for a portion of the Goliad Formation to authorize in situ recovery of uranium at the proposed UEC facility in Goliad County, approximately 13 miles north of the City of Goliad. The application was declared administratively complete on August 29, 2007 and notice of the application was subsequently mailed to landowners and mineral owners adjacent to the permit area and to interested persons and governmental agencies. A public meeting was held in the local area on January 24, 2008. The TCEQ’s Executive Director (“E.D.”) completed its technical of UEC’s application, concluded that UEC met all statutory and regulatory requirements for a Class III injection well permit, and issued a draft permit on June 4, 2008. Notices of the E.D.’s Preliminary Decision were published on June 20 and 25, 2008 and mailed to landowners and mineral owners adjacent to the permit area and to interested persons and governmental agencies. The initial public comment period ended on July 25, 2008. The E.D.’s response to public comments was issued on October 31, 2008, and all requests for hearing or reconsideration were due no later than December 8, 2008. In accordance with these standard TCEQ procedures, the TCEQ Chief Clerk received 155 written requests for hearing which appeared to be timely-filed hearing requests.

**II. LEGAL REQUIREMENTS FOR CONTESTED CASE HEARING REQUESTS**

The Commission may not grant a request for a contested case hearing unless the Commission determines that the request was filed by an “affected person.”<sup>1</sup> The Commission may not refer an issue to the State Office of Administrative Hearings (“SOAH”) for a hearing unless the Commission determines that the issue: (1) involves a disputed issue of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.<sup>2</sup> The Texas Water Code defines an “affected person” as one with a justiciable

<sup>1</sup> TEXAS WATER CODE ANN. § 5.556(c) (Vernon 2008).

<sup>2</sup> *Id.* § 5.556(d).

interest related to a legal right, duty, privilege, power or economic interest different from that of the general public.<sup>3</sup> An interest common to members of the general public does not qualify as a personal justiciable interest.<sup>4</sup>

In determining whether a person is an affected person, all factors must be considered, including but not limited to the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance limitations or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over an interest in the issues relevant to the application.<sup>5</sup>

As required by TCEQ's notice rules, the TCEQ Chief Clerk mailed notice to all landowners shown on the adjacent land ownership maps submitted with the application.<sup>6</sup> All such adjacent landowners are therefore within the class of "affected persons" as determined under the above-referenced criteria. Because the Commission has defined the "Area of Review" for Class III UIC area permits as the project area plus a circumscribing area of ¼ mile<sup>7</sup>, UEC does not object to other landowners within the ¼ mile "Area of Review" as qualifying for "affected person" status based on the TCEQ criterion concerning "distance limitations...imposed by law on the affected interest" if such hearing requestors otherwise meet the Section 55.201 requirements for submitting a valid request for hearing.

Although a person requesting a hearing may be considered an "affected person," it does not necessarily mean that a contested case hearing will be granted. In addition to being an affected person, a prospective party must submit a timely-filed request for hearing which substantially meets the following criteria:

1. The hearing requestor must give his/her name, address, daytime telephone number, and when possible, fax number. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and when possible, fax number who shall be responsible for receiving all official communications and documents for the group.

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<sup>3</sup> TEXAS WATER CODE ANN. § 5.115(a) (Vernon 2008) and 30 TEX. ADMIN. CODE § 55.203(a) (2008).

<sup>4</sup> 30 TEX. ADMIN. CODE § 55.203(a) (2008).

<sup>5</sup> 30 TEX. ADMIN. CODE § 55.203(c) (2008).

<sup>6</sup> 30 TEX. ADMIN. CODE 39.413 (2008).

<sup>7</sup> 30 TEX. ADMIN. CODE § 331.42(b)(3) (2008). The Area of Review is technically defined as an area the width of which is the lateral distance from the perimeter of the project area in which pressures in the injection zone may cause the migration of the injection or formation fluid into an underground source of drinking water, provided the circumscribing area may in no case be less than ¼ mile.

2. The hearing requestor must identify his/her justiciable interests affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he/she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public.
3. The person must specifically request a contested case hearing.
4. The hearing requestor must list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of the issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy.
5. The hearing requestor must provide any other information specified in the public notice of application.<sup>8</sup>

### III. ANALYSIS OF HEARING REQUESTS/AFFECTED PERSON STATUS

As indicated above, the Chief Clerk has identified 155 timely submitted requests for a contested case hearing. UEC has analyzed those hearing requests in the context of the applicable legal requirements and available public information concerning ownership of potentially affected properties. In addition, UEC has attached as **Exhibit 1** a map of the proposed project area plus a circumscribing area of ¼ mile outside of the proposed permit boundary to indicate the Area of Review ("AOR") for this Class III UIC injection well application. The locations of all landowners within the ¼ mile AOR are also identified on the Exhibit 1 map. UEC's response to each of these hearing requests and to those requests filed by governmental entities and associations is as follows:

#### 1. Hearing Request of Goliad County.

##### A. Goliad County Does Not Have Statutory Authority Over the UIC or Groundwater Issues Raised in its Request For Hearing.

Under TCEQ Rules, a governmental entity, including a local government and a public agency, "with authority under state law over issues raised by the application" may be considered an affected person.<sup>9</sup> Similarly, in considering whether a governmental entity is an affected person, the Commission will consider the entity's "statutory authority over or interest in the

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<sup>8</sup> 30 TEX. ADMIN. CODE § 55.201(d) (2008).

<sup>9</sup> 30 TEX. ADMIN. CODE § 55.203(b) (2008).

issues relevant to the application.”<sup>10</sup> In this case, Goliad County simply does not have any statutory authority over the UIC activities or groundwater issues that it raises in its hearing request.

Counties in Texas are political subdivisions of the State and have specifically limited powers.<sup>11</sup> Unlike a home rule city, a county may exercise only such authority as is expressly granted to it by the Texas Constitution or by statute.<sup>12</sup> If a county acts beyond its specifically-conferred statutory powers, its actions are void.<sup>13</sup> Those principal powers and duties which have been conferred on counties by the Legislature include the following:

- the power to regulate subdivision plats and subdivisions of land;<sup>14</sup>
- the power to regulate lot frontages on county roads, building and setback line limits, and major roadway widths;<sup>15</sup>
- the power to require a subdivision plat applicant to obtain an engineer’s certification of the availability of an adequate supply of groundwater;<sup>16</sup>
- the power to regulate drainage as part of a subdivision plat;<sup>17</sup>
- the power to regulate land development to minimize flood damage in order to comply with the National Flood Insurance Program;<sup>18</sup>
- the power to enter and inspect public and private property to make inspections and investigations of conditions relating to water quality under Chapter 26 of the Texas Water Code;<sup>19</sup>
- the power to enforce violations of Chapters 16, 26 or 28 of the Texas Water Code;<sup>20</sup>
- the power to establish a program for collection and disposal of household consumer and agricultural products containing hazardous constituents or substances;<sup>21</sup>
- the power to enter into developer participation contracts to construct public improvements;<sup>22</sup>
- the power to acquire and operate a water and sewer utility system to serve unincorporated areas of a county;<sup>23</sup>
- the power to implement and enforce the TCEQ’s onsite sewer system facility (septic tank) rules;<sup>24</sup>

<sup>10</sup> 30 TEX. ADMIN. CODE § 55.203(c)(6) (2008).

<sup>11</sup> *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003); *Harrison County v. City of Marshall*, 253 S.W.2d 67, 69 (Tex. Civ. App.—Fort Worth 1952, writ ref’d); *City of Laredo v. Webb County*, 220 S.W.3d 571, 576 (Tex. App.—Austin 2007, no pet.).

<sup>12</sup> *City of San Antonio*, 111 S.W.3d at 28; *Harrison County*, 253 S.W.2d at 69. See also *Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451, 453 (1948).

<sup>13</sup> *Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451 (Tex. 1948); *Galveston, H. & S. A. Ry. Co. v. Uvalde County*, 167 S.W.2d 305, 306 (Tex. Civ. App. 1942, writ ref’d w.o.m.).

<sup>14</sup> TEX. LOCAL GOV’T CODE ANN. §§ 232.001 and 232.002 (Vernon 2005).

<sup>15</sup> TEX. LOCAL GOV’T CODE ANN. §§ 232.101 - 232.107; 233.032 (Vernon 2005 and Supp. 2008).

<sup>16</sup> TEX. LOCAL GOV’T CODE ANN. § 232.0032 (Vernon 2005 and Supp. 2008).

<sup>17</sup> TEX. LOCAL GOV’T CODE ANN. §§ 232.001 - 232.003 (Vernon 2005 and Supp. 2008).

<sup>18</sup> TEX. WATER CODE ANN. § 16.311 - 16.324 (Vernon 2008).

<sup>19</sup> TEX. WATER CODE ANN. §§ 26.171 and 26.173 (Vernon 2008).

<sup>20</sup> TEX. WATER CODE ANN. § 7.351 (Vernon 2008).

<sup>21</sup> TEX. WATER CODE ANN. § 26.0135(g) (Vernon 2008)

<sup>22</sup> TEX. LOCAL GOV’T CODE ANN. § 232.105 (Vernon 2005).

<sup>23</sup> TEX. LOCAL GOV’T CODE ANN. § 412.016 (Vernon Supp. 2008).

- the power to regulate solid waste collection, handling, processing and disposal consistent with TCEQ regulations;<sup>25</sup>
- the power to abate public nuisances, remove litter, and regulate storage of refuse and unsanitary conditions.<sup>26</sup>

None of these powers, nor any of the other more insignificant statutory powers of a county not listed above, includes the authority to regulate UIC activities or the groundwater resources located within a county. As confirmation of this conclusion, one may refer to the official publication of the Attorney General of Texas entitled “County Powers and Duties,” which lists and annually updates all county powers and duties under Texas law.<sup>27</sup> A review of that publication indicates that there is nothing relating to UIC activities, and the only authority whatsoever of a county with respect to groundwater is the power of a county to require a subdivision plat applicant to obtain an engineer’s certification of the availability of an adequate supply of groundwater if the subdivision is to be served by groundwater.<sup>28</sup>

Indeed, in H.B. 3838 enacted in 2007, the Texas legislature specifically clarified that the TCEQ has “exclusive jurisdiction over and shall regulate” wells used during the development of *in situ* uranium permit applications. Although certain pre-mining geologic, hydrologic and water quality information must be provided to a local groundwater district, there is no role at all specified in the statute for a county. *See* Sections 27.023 and 27.024 of the Texas Water Code as added by H.B. 3838.

Thus, Goliad County does not have any legal authority over the aquifer or over injection wells within the County. Furthermore, Goliad County has not shown that it owns or leases any groundwater or groundwater rights in the Goliad Formation aquifer that is the subject of UEC’s application, nor has Goliad County asserted that it owns or operates any wells in the subject aquifer. The aquifer simply lies within the County boundaries – but this geographical circumstance is wholly insufficient to confer “affected party” status on the County. Under TCEQ Rules, the County must show some statutory authority over the issues raised in the application, and the County has not shown, and cannot show, any such statutory authority.

Although Goliad County might contend that its authority under Texas Water Code §§ 26.171, 26.173 and 7.351 should be construed as giving it authority over groundwater quality issues in the County, such an interpretation of the statute would clearly be erroneous. Those sections of the Water Code merely authorize a county to make investigations to determine whether permitting requirements for discharges of effluent to public water under Chapter 26 have been met. In addition to this limited power to investigate and determine whether Chapter 26 violations are occurring, the County has the power under Section 7.351 of the Water Code to bring a civil enforcement lawsuit for a violation of Chapters 16, 26 and 28 of the Water Code. By specifying a county’s power to enforce these three specific Chapters of the Water Code and

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<sup>24</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 366.001 – 366.071 (Vernon 2001 and Supp. 2008).

<sup>25</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 361.154 – 361.162, 363.111 – 363.112; 364.001 – 364.016 (Vernon 2001).

<sup>26</sup> TEX. HEALTH & SAFETY CODE ANN. § 343.011 – 343.025; 365.017; 365.034 (Vernon 2001 and Supp. 2008).

<sup>27</sup> This publication is available on the Attorney General’s web site: <http://www.oag.state.tx.us/newspubs/publications.shtml>

<sup>28</sup> TEX LOCAL GOV’T CODE ANN. § 232.0032 (Vernon 2005).

deliberately omitting Chapters 27 and 36, the legislature has made its intent clear: a county shall have no powers relating to underground injection activities which are regulated under Chapter 27 of the Water Code, nor relating to protection of groundwater resources within the County under Chapter 36 of the Water Code. Moreover, the Texas legislature has explicitly provided that nothing in Chapter 26 is intended to affect the powers and duties of TCEQ and the Railroad Commission of Texas with respect to injection wells under Chapter 27 of the Water Code.<sup>29</sup>

Because Goliad County has no statutory authority over UIC activities nor over regulation of groundwater, under 30 TAC §55.203(c)(6) it cannot be considered an “affected person” in this case.

B. Goliad County Has No Personal Justiciable Interest Different From That of the General Public.

The Texas Water Code states that an “affected person” for purposes of a TCEQ hearing means “a person who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the administrative hearing.”<sup>30</sup> Furthermore, “[a]n interest common to members of the general public does not qualify as a personal justiciable interest.”<sup>31</sup> The County admits that its issues of concern relate to the “public interest” and to the interests of “the citizens of Goliad County” and fails to identify any propriety economic or legal interest of the County that would be affected by the granting of the application. Accordingly, the County as a political subdivision of the State does not have a personal justiciable interest different from that of the general public. Therefore the County’s is not an “affected person” entitled to obtain a contested case hearing.

The fact that one of the statutory criteria for granting a UIC permit is “whether the use or installation of the injection well is in the public interest”<sup>32</sup> does not mean that a county can become an “affected person” in a UIC permitting case merely by asserting that it is acting in the public interest. If that were true, any city, town, water district, municipal utility district, or organization claiming to speak for the public could be deemed an affected person in a Chapter 27 UIC permit case. Analogously, it is clear that the compliance history of a permit applicant is a relevant issue in a contested case hearing – but merely asserting compliance history as an issue of concern does not confer “affected person” status on a person who does not otherwise meet the statutory and regulatory criteria for being considered an affected person. Clearly, the “public interest” statutory criterion for issuing a Chapter 27 permit should not be interpreted to confer “affected person” status on the County if the County does not otherwise meet the statutory requirements for being an “affected person.”

Goliad County also asserts that the quality of the groundwater in the County is “crucial to the future of Goliad County and its citizens in terms of attracting more residents/citizens and more businesses” and that a loss of groundwater resources “will diminish the value of the

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<sup>29</sup> TEX. WATER CODE ANN. § 26.135(a) (Vernon 2008).

<sup>30</sup> TEX. WATER CODE ANN. § 5.115(a) (Vernon 2008)..

<sup>31</sup> Id.

<sup>32</sup> TEX. WATER CODE ANN. § 27.051(a)(1) (Vernon 2008).

property for hunting, ranching and eco-tourism.”<sup>33</sup> However, such assertions of adverse economic impacts do not accord the County a personal justiciable interest in this case. Counties – unlike states – cannot sue on behalf of their citizens under the doctrine of *parens patriae*.<sup>34</sup> Further, a Texas county can take no proprietary actions, only governmental actions.<sup>35</sup>

The bare allegation that the granting of the permit would result in adverse impacts on the County’s economy is too speculative to confer standing. In *City of Rohnert Park v. Harris*, 601 F.2d 1040, 1048 (9<sup>th</sup> Cir. 1979), the court considered a lawsuit brought by a city alleging that a proposed development would hurt its future revenues. The court held the city had no standing, stating that the injury was too speculative. See also *Brazoria County v. Hartford Casualty Ins. Co.*, No. Civ.A. G-04-691, 2005 WL 1364837, \*3 (S.D. Tex. June 7, 2005) (county had no standing because allegation of harm was not concrete and particularized). Similarly, the future economic prospects of the County are not tied to any governmental authority held by Goliad County, and the purported interest of the County is too generalized, speculative and indistinguishable from the general public’s interest.

As the Fifth Circuit recently held in *Garzes v. Lopez*, 281 Fed. Appx. 323 (5<sup>th</sup> Cir. 2008), “courts refuse to recognize standing based on economic harm that is merely a consequence of an injury suffered by another party.” According to its hearing request dated December 5, 2008, the County claims, without citation to supporting legal authority, that it has broad authority to request a contested case hearing “under the context of ‘county business’ which includes the economic future of Goliad County.” In its hearing request of July 25, 2008, the County also claims that it will suffer an economic harm as a consequence of an injury suffered by County residents. Such indirect harm (even if it were not speculative), however, does not confer standing. Courts have repeatedly held that even a state’s assertion that its tax base will be eroded does not allege the direct type of harm needed to establish standing. See e.g., *State of Iowa ex rel. Miller v. Block*, 771 F.2d 347, 353 (9<sup>th</sup> Cir. 1985); *Commonwealth of Pennsylvania v. Kleppe*, 533 F.2d 668 (D.C.Cir. 1976).

Finally, it is well established under the TCEQ’s “affected person” criteria and under longstanding Commission practice that economic devaluation of a landowner’s property as a result of the granting of a TCEQ permit is insufficient grounds for a contested case hearing. This principle should be applied in this case to reject the County’s assertion of impairment of its economic prospects as a grounds for requesting a contested case hearing. Because Goliad County has not demonstrated that it has a personal justiciable interest in UEC’s application different from that of the public, and because the County has no statutory authority over the issues raised by the application, the County cannot be an “affected person.” Consequently, the Commission should deny the County’s request for hearing.

### C. Hearing Issues Raised by the County.

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<sup>33</sup> Goliad County request for hearing dated July 25, 2008 at pages 4 and 6.

<sup>34</sup> *City of Safe Harbor v. Birchfield*, 529 F.2d 1251, 1256 n. 7 (5<sup>th</sup> Cir.1976); *Brazoria County*, \*3.

<sup>35</sup> See *Jefferson County v. Bernard*, 148 S.W.3d 698, 700 (Tex. App.–Beaumont 2004, no pet.); *Hencerling v. Texas A & M Univ.*, 986 S.W.2d 373, 374-75 (Tex. App.–Houston [1st Dist.] 1999, pet. denied).

As discussed above, because the County has not shown, and cannot show, that it is an affected person under the TCEQ's regulatory criteria for governmental agencies, UEC believes that the County is not entitled to a contested case hearing on any of the issues it raises in its hearing requests. Nevertheless, UEC will address the six "primary issues of concern" that the County has identified in its hearing request of December 5, 2008. These six issues are (1) public interest issues (consisting of compliance history and feasible alternatives); (2) impacts on groundwater quality; (3) whether the aquifer qualifies for UIC exemption; (4) the adequacy of UEC's baseline groundwater quality and aquifer restoration proposals; (5) the adequacy of UEC's geologic and groundwater characterization; and (6) adequacy of UEC's financial assurance proposals. The County also stated a broad policy concern that all applications related to the project should be consolidated.

The first of the County's identified issues of concern (i.e., compliance history and feasible alternatives) are relevant under Chapter 27 of the Water Code, and UEC has no objection to these issues being referred to SOAH. However, the scope of these issues, as defined by the County, is inappropriate in light of applicable regulations. First, while UEC's compliance history in the State of Texas during the past five years is relevant, compliance history of UEC's affiliated entities or corporate officers, directors and management is not relevant or appropriate for referral to SOAH.<sup>36</sup> Second, in evaluating feasible alternatives, the "no action" alternative should be defined to mean methods of mining uranium other than the *in situ* methods proposed in the pending application (e.g., surface mining).

The issues numbered 2 through 6 above are all addressed in UEC's response to other hearing requester's issues as set forth in subsequent sections of this filing and are incorporated by reference here. Since the County's generalized concern that all related agency approvals should be consolidated in the present docket is not a "relevant and material disputed issue of fact" as required for a hearing request under TCEQ's rules,<sup>37</sup> this issue is not appropriate for referral to SOAH. As acknowledged by the Executive Director in his Response to Comments, under TCEQ's Chapter 33 rules, the question of whether to use a consolidated permit to authorize activities under more than one TCEQ program area is at the option of the applicant, and UEC has not elected that option in this case.<sup>38</sup> Indeed, the TCEQ rule on obtaining a coordinated review of all applications and a single hearing on all permits only allows such a consolidation to occur if the applications for all permits are filed within a 30-day period. In this case, the various UEC applications that the County requests for consolidated review and hearing were filed over a period of time greatly exceeding 30 days. More specifically, for example, the Radioactive Material License application was filed more than a year after the Class III injection well permit application. In addition, the technical review process for the various applications are at very different stages. For example, although the Class III application is ready to proceed to hearing (or final decision), the staff reviewing the Radioactive Material License application has up to 600 days to complete their technical review; to date, this review is just getting started.

The County has also made a generalized request that "all the statute provisions and rules applicable to Class III Underground Injection Wells and Aquifer Exemptions be referred to

<sup>36</sup> See 30 TEX. ADMIN. CODE §60.1(b) and (c) (2008).

<sup>37</sup> 30 TEX. ADMIN. CODE § 55.201(d)(4) (2008).

<sup>38</sup> See RTC Response to Comment No. 2 at page 9.

SOAH.”<sup>39</sup> This request is insufficient under TCEQ rules which require a hearing requester to “list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request.”<sup>40</sup> The TCEQ rule concerning the form of hearing requests makes clear that the reason for this requirement is to “facilitate the commission’s determination of the number and scope of the issues to be referred to hearing. . . .” Consequently, the County’s request that all statutes and rules applicable to Class III UIC wells be referred to SOAH is completely at odds with the applicable regulatory requirements. Moreover, the County has had ample opportunity to review the pending application and identify its list of concerns and the basis for its concerns. For these reasons, the Commission should only consider the specific issues that have been properly raised by the County and should reject the County’s request to refer to SOAH “all Class III and aquifer exemption issues arising under applicable statutes and rules.”

The County also argues that in the federal lawsuit filed by Goliad County against UEC, UEC “filed papers with the Court” indicating that the issues set out in the federal litigation could and should be addressed in TCEQ proceedings, and therefore all such federal lawsuit issues should be the subject of the SOAH hearing in this case.<sup>41</sup> UEC did in fact correctly state in its Motion to Dismiss the federal lawsuit that the only relief sought by the County in its suit was a court order prohibiting UEC from obtaining the TCEQ permit being sought in this TCEQ docket (as well as attorneys fees).<sup>42</sup> UEC also correctly stated that the County asserted identical grounds for its claims in both the lawsuit and its contested case hearing requests and that “the issues that the Plaintiffs are now asking this Court to resolve are already pending before the TCEQ in an ongoing administrative proceeding mandated by state law and approved by the EPA for the specific purpose of determining whether or not particular applicants should be allowed to have injection well permits and, if so, on what terms.” Stating that the underlying issues raised by protestants/plaintiffs are the same in both proceedings is a far cry from asserting that the same *claims* should be considered in both, particularly when certain claims—such as nuisance and nuisance per se—are outside TCEQ’s jurisdiction. Issues that may be referred to SOAH are those determined under TCEQ rules and procedures, not those determined by the County in its (erroneous) interpretation of statements made by UEC in a wholly separate legal forum.

## **2. Hearing Request of Goliad County Groundwater Conservation District**

Like Goliad County, the hearing request of Goliad County Groundwater Conservation District (“the District”) is by a governmental entity, and therefore the hearing request must be evaluated in terms of whether the District has authority under state law over issues relevant to the application.<sup>43</sup> As with a county, a groundwater conservation district can exercise only those powers expressly granted to it by law. Furthermore, under Section 5.115 of the Texas Water Code and TCEQ rules, an affected person must have a personal justiciable interest that would be

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<sup>39</sup> Goliad County hearing request of December 5, 2008 at pg. 2.

<sup>40</sup> 30 TEX. ADMIN. CODE § 55.201(d) (2008).

<sup>41</sup> Goliad County hearing request of December 5, 2008 at pg. 3.

<sup>42</sup> See UEC’s Motion to Dismiss at page 25 in the case of *Goliad County, Texas and Craig and Luann Duderstadt v. Uranium Energy Corp.*, Civil Action No. 06:08-cv-00018 in the U.S. District Court for the Southern District of Texas, Victoria Division. UEC’s Motion to Dismiss is currently pending with the federal Court as is UEC’s Motion for Summary Judgment.

<sup>43</sup> 30 TEX. ADMIN. CODE § 55.203(b) and (c)(6) (2008).

affected by the hearing whereas “an interest common to members of the general public does not qualify as a personal justiciable interest.” Therefore, the District must have some personal or proprietary economic or legal interest that would be affected by the requested hearing, and the District cannot demonstrate such personal justiciable interest by merely purporting to act on behalf of the citizens of the District or relying on the need to protect the public interest.

A. Goliad County GCD Does Not Have Statutory Authority Over the UIC or Groundwater Issues Raised In Its Request For Hearing.

Under the District’s enabling legislation, the District has all the powers and duties of a groundwater conservation district created under Article 59, Section 16 of the Texas Constitution including the powers of a groundwater conservation district set forth in Chapter 36 of the Texas Water Code.<sup>44</sup> A groundwater conservation district is statutorily authorized to make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of groundwater within its boundaries in order to prevent degradation of water quality or prevent waste of groundwater.<sup>45</sup> Under its enabling legislation, the District is also expressly authorized to “investigate any groundwater pollution with the intention of locating its source and report its findings to adjacent districts and appropriate state agencies.”<sup>46</sup> In addition, a groundwater conservation district is expressly authorized to acquire property and facilities; purchase surface water and groundwater; condemn property within the district’s boundaries; make surveys of groundwater and groundwater facilities; conduct research projects; adopt a management plan; require the filing of reports and records; require well permits; regulate spacing and production of groundwater wells; require capping of open or uncovered wells; publicize groundwater information and data; enter and inspect property; and take enforcement actions with respect to these powers and functions.<sup>47</sup>

In light of this specific listing of statutory powers and duties, a groundwater conservation district has no express regulatory authority over UIC activities nor any express authority to protest permitting actions pending at other state agencies. Indeed, in H.B. 3837 and H.B. 3838 enacted in 2007, the Texas legislature specifically addressed the role of a local groundwater districts in the regulation and permitting review of Class III uranium injection and exploration wells: both pieces of legislation make it clear that a groundwater district has no role other than to be provided with certain reports and information developed in the uranium exploration and permitting process. Sections 27.023 and 27.024 of the Texas Water Code, as added by H.B. 3838, provide that TCEQ has exclusive jurisdiction over wells used during the development of in situ uranium mining permit applications and that an applicant for an in situ uranium mining area permit is only required to share certain geologic, hydrologic and water quality data with a local groundwater district. Similarly, Sections 131.353 and 131.354 of the Texas Natural Resources Code, as added by H.B. 3837, explicitly state that the Railroad Commission of Texas (“RCT”) has exclusive jurisdiction over uranium exploration permits and that the holder of a RCT uranium exploration permit is only required to report to a local groundwater district the

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<sup>44</sup> See, H.B. 3651 in the 2001 Legislative session.

<sup>45</sup> TEX. WATER CODE ANN. § 36.101(a) (Vernon 2008).

<sup>46</sup> H.B. 3651 (2001), Section 15(c)(4).

<sup>47</sup> See generally the listing of powers and duties of a groundwater conservation district as set forth in Sections 36.010 through 36.124 of the Texas Water Code.

total amount of water produced from each well.<sup>48</sup> Obviously, the Legislature spent some time considering the role of groundwater districts with respect to uranium exploration and permitting of *in situ* uranium mining operations during the 2007 legislative session. And, after such consideration, the Legislature decided to explicitly state and carefully limit the role of groundwater districts in this area.

**B. Goliad County Groundwater Conservation District Has No Personal Justiciable Interest Different From That of the General Public.**

The District has never asserted that it owns any property, minerals, groundwater wells or groundwater rights which would be affected by the application. The District's basis for seeking a contested case hearing is that it believes the hearing is necessary in order to help accomplish the District's "duty under [its enabling legislation] to protect the quality and quantity of the Gulf Coast Aquifer water supplies that underlie Goliad County for the maintainability and sustainability of the Goliad County economy and quality of life of its residents."<sup>49</sup>

While UEC acknowledges that the District's enabling legislation gives the District an interest in protecting the quality and quantity of groundwater in Goliad County, UEC disagrees that the District may demonstrate its justiciable interest by purporting to protect the "maintainability and sustainability of the Goliad County economy and quality of life of its residents." Such asserted interest is not a personal justiciable interest of the District, but rather is an interest common to members of the general public. Therefore under Section 5.115(a), the District has not asserted a personal justiciable interest. For the same reasons discussed with respect to Goliad County, the economic prospects and quality of life of the District's residents are not tied to any governmental authority the District has, and such stated interests are too generalized, speculative and indistinguishable from the general public's interest.

Because the Goliad County Groundwater Conservation District does not have express legislative authority to spend district funds on protesting a permitting action at another state agency, it would be reasonable for the Commission to find that the District as a governmental entity is not an affected person. Nevertheless, UEC acknowledges that the Commission could also reasonably determine that the District has some "statutory authority over or interest in the issues relevant to the application,"<sup>50</sup> i.e., the issues relating to groundwater impacts. In such case, the relevant and material disputed issues of fact raised by the District during the public comment period which would be appropriate for referral to the State Office of Administrative Hearings ("SOAH") consist of the following are issues 2-10, as summarized in Section IV below.

**3. Hearing Request of Goliad County Farm Bureau**

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<sup>48</sup> A uranium exploration well is subject to a local groundwater district's rules for registration, production and reporting only if the well is used for monitoring or rig supply purposes and the cumulative amount of water produced from the wells located in the exploration area is more than 40 acre-feet per year. TEX. NAT. RES. CODE ANN. § 131.354(b) and (c) (Vernon 2007).

<sup>49</sup> See the District's letter of July 9, 2008 to TCEQ, page 1.

<sup>50</sup> 30 TEX. ADMIN. CODE § 55.203(c)(6) (2008).

Goliad County Farm Bureau (“Farm Bureau”) is a non-governmental private association of farmers and ranchers managed by its members and funded by voluntary dues from its members. As a private group or association, the Farm Bureau may request a contested case hearing only if the Farm Bureau meets all of the following requirements for “associational standing:”

1. one or more members of the association would otherwise have standing to request a hearing in their own right;
2. the interests the association seeks to protect are germane to the organization’s purpose; and
3. neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>51</sup>

The Farm Bureau’s request for hearing dated July 23, 2008 does not satisfy the first condition because the Farm Bureau has not identified any individual member of the association that has standing to request a hearing in his or her own right. The Farm Bureau’s request for hearing does not satisfy the second condition because the Farm Bureau has not shown how any of the issues raised in its request for hearing relates to the organization’s purpose. Indeed, the Farm Bureau has not shown the scope of its organizational purposes, although presumably they involve protection of farming and ranching activities and interests. Concerning the third condition, the Farm Bureau has not even attempted to show whether participation of its individual members are required for conduct of the hearing. Without a clear demonstration that the Farm Bureau meets each of the three stated conditions for associational standing, the Farm Bureau’s request for contested case hearing should be denied.

#### **4. Hearing Request of Coastal Bend Sierra Club**

As a non-governmental private association, Coastal Bend Environmental Coalition/ Coastal Bend Sierra Club (“the Environmental Coalition”) must meet the three prong-test for associational standing as described above.<sup>52</sup> However, the Environmental Coalition’s request for hearing dated July 23, 2008 does not satisfy the first condition because the Environmental Coalition has not identified any individual member of its group that has standing to request a hearing in his or her own right. Although the Environmental Coalition has not stated its organizational purposes, it may be presumed that they encompass protection of the environment in and around the Coastal Bend of Texas. As such, there is no showing that disputed issues of fact concerning the proposed UIC project in Goliad County, situated over 50 miles from the Coastal Bend of Texas, reasonably relate to the Environmental Coalition’s organizational purposes of protecting the environment in the Coastal Bend area. Concerning the third condition, the Environmental Coalition has not even attempted to show whether participation of its individual members are required for conduct of the hearing. Without a clear demonstration that the Environmental Coalition meets each of the three stated conditions for associational standing, the Environmental Coalition’s request for contested case hearing should be denied.

#### **5. Hearing Requests of Landowners Within the Area of Review**

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<sup>51</sup> 30 TEX. ADMIN. CODE § 55.205 (2008).

<sup>52</sup> *Id.*

Of all persons who filed a request for hearing or public comments, 12 appear to be located in or near the Area of Review and 7 of these requested a contested case hearing. UEC responds to each of those hearing requestors as follows:

#### 5.1 Raymond and Karen Arnold

In their hearing request dated July 17, 2008, the only issues of fact that the Arnolds raise are:

- whether the proposed mining is in the recharge zone of the Gulf Coast Aquifer (Evangeline component);
- whether the water in the aquifer is deposited in unconfined sand and clay layers; and
- whether the land within the project area and “surrounding area” serve as a source of drinking water for human consumption.

Since the Arnolds’ land appears to be within the Area of Review and since these three issues are relevant and material to the Commission’s decision on the application, UEC has no objection to the hearing request of the Arnolds. UEC also has no objection to referral to SOAH of these three issues although the latter two issues are subsumed within the broader groundwater issues raised by the Goliad County Groundwater Conservation District. The Arnolds’ issues appear as issues 1, 2 , 4-6 in Section IV below.

#### 5.2 Craig and Luann Duderstadt

In their hearing request dated July 15, 2008, the only issues of fact that the Duderstadts raise are:

- whether UEC’s exploration activities have contaminated their water wells;
- whether the alleged contamination of their water wells will require removal of cattle from their ranch resulting in loss of their agricultural tax exemption; and
- whether the proposed mining is in the recharge zone of the Gulf Coast Aquifer (Evangeline component).

Since the Duderstadts’ land appears to be within the Area of Review and since the third of the three above-identified issues is relevant and material to the Commission’s decision on the application, UEC has no objection to the hearing request of the Duderstadts and referral of the third issue to SOAH. However, the first two of the above-identified issues are not relevant and material to the Commission’s decision on the present application since they concern the uranium exploration activities authorized under Permit No. 123 issued by the Railroad Commission of Texas (the “RCT”).<sup>53</sup> Indeed, the RCT has already investigated the Duderstadts’ allegations of water well contamination from UEC’s exploration activities and determined that there is no connection between UEC’s exploration activities and alleged contamination of the Duderstadts’ wells. See RRC letters dated April 20, 2007, September 5, 2007 (with attached memorandum), and February 29, 2008 attached as **Exhibit 2**. Indeed, in a recent deposition in the federal lawsuit filed by Goliad County against UEC, the County’s primary groundwater expert, Dr.

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<sup>53</sup> See, 30 TEX. ADMIN. CODE § 55.201(d)(4) (2008).

Bruce Darling, testified that “those wells to me are outside of the area that I think could be demonstrated that was impacted by any of the activity within the proposed mining area.” See attached **Exhibit 3** consisting of excerpts of Dr. Darling’s deposition testimony on this issue. Accordingly, the first two of the above issues raised by the Duderstadts should not be referred to SOAH for a hearing.

### 5.3 Darwyn and Waynell Duderstadt

In their public comments dated July 12, 2008, Darwyn and Waynell Duderstadt do not specifically request a contested case hearing, only a public meeting. Accordingly, this hearing request does not meet the requirements of the Commission’s rules for obtaining a contested case hearing.<sup>54</sup>

Furthermore, the only issue of fact that Darwyn and Waynell Duderstadt raise is the alleged contamination of the water well owned by their son, Craig Duderstadt. Because the allegedly contaminated well is not owned by Darwyn and Waynell Duderstadt, they have no personal justiciable interest in the outcome of this case and they are therefore not an “affected person.”<sup>55</sup> Finally, for the reasons stated above in connection with the hearing request of Craig and Luann Duderstadt, the issue of water well contamination resulting from UEC’s uranium exploration activities under RCT Permit No. 123 is not relevant or material to the Commission decision on the present application. Accordingly, the hearing request of Darwyn and Waynell Duderstadt should be denied and no issues raised therein are appropriate for referral to SOAH.

### 5.4 Brenda Jo Hardt

In her hearing request dated July 12, 2008, the issues of fact that Ms. Hardt raises are:

- whether Goliad County has a confined aquifer;
- whether UEC’s use of groundwater will adversely affect the quantity or quality of her groundwater;
- whether UEC’s proposed operations will destroy her cow/calf operation;
- whether there is adequate data to show that drinking water wells outside the aquifer exemption area will be adversely affected by UEC’s proposed project;
- whether there will be harmful concentrations of radon in the air as a result of UEC’s proposed project;
- whether UEC purposefully left 74 boreholes open and unplugged in order to contaminate the groundwater and produce lower baseline quality groundwater results;
- whether UEC went back and properly plugged boreholes allegedly left open by UEC;
- whether UEC’s RCT compliance history justifies denial of the present permit; and
- whether uranium is an outdated and dangerous energy source.

Since Ms. Hardt’s land appears to be within the Area of Review and since the first four of the above-identified issues are relevant and material to the Commission’s decision on the application, UEC has no objection to the hearing request of Ms. Hardt. UEC also has no

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<sup>54</sup> 30 TEX. ADMIN. CODE. § 55.201(d) (2008).

<sup>55</sup> See, 30 TEX. ADMIN. CODE § 55.203(a) (2008).

objection to referral to SOAH of these first four issues. However, for the reasons discussed above, the three issues concerning UEC's uranium exploration activities under RCT permit No. 123 are not relevant and material to the Commission's decision on the present application and therefore should not be referred to SOAH. The issue of whether there will be harmful concentrations of radon in the air as a result of UEC's proposed project is an issue squarely and solely addressed in UEC's application for a radioactive material license and therefore it is not an appropriate issue for referral to SOAH in this case. The issue of whether uranium is an outdated and dangerous energy source is also not relevant or material to this case. Ms. Hardt's first four issues are included in Section IV below as issues 2, 3, 5, and 9-11.

### 5.5 Ernest Hausman

In his hearing request dated July 13, 2008, the issues of fact that Mr. Hausman raises are:

- whether water is deposited in unconfined sand and clay areas;
- whether UEC's proposed mining operations in the aquifer recharge zone will contaminate his groundwater with radioactive materials;
- whether UEC's use of groundwater will adversely affect the quantity or quality of his groundwater;
- whether UEC's drilling of uranium exploration holes adjacent to his property caused sand to enter the aquifer and contaminate his water well.

Since Mr. Hausman's land appears to be within the Area of Review and since the first three of the above-identified issues are relevant and material to the Commission's decision on the application, UEC has no objection to the hearing request of Mr. Hausman. UEC also has no objection to referral to SOAH of these first three issues. However, for the reasons discussed above, the last issue concerning UEC's uranium exploration activities under RCT permit No. 123 is not relevant and material to the Commission's decision on the present application and therefore should not be referred to SOAH. Mr. Hausman's first three issues appear as issues 1-3, 5 and 10.

### 5.6 Margaret A. Rutherford

In her hearing request dated January 24, 2008, the issues of fact that Ms. Rutherford raises are:

- whether UEC's proposed mining operations will contaminate her drinking water wells;
- whether UEC's uranium exploration activities and UEC's alleged failure to plug exploration boreholes have contaminated or will contaminate her drinking water wells;
- whether UEC's uranium exploration boreholes have been marked;
- whether gamma radiation contamination of soil will impact Coletto Creek and Reservoir.

Since Ms. Rutherford's land appears to be within the Area of Review and since the first of the above-identified issues is relevant and material to the Commission's decision on the application, UEC has no objection to the hearing request of Ms. Rutherford. UEC also has no objection to referral to SOAH of the first issue. However, for the reasons discussed above, the next two issues concerning UEC's uranium exploration activities under RCT permit No. 123 are

not relevant and material to the Commission's decision on the present application and therefore should not be referred to SOAH. The last issue concerning possible impacts of gamma radiation is addressed in UEC's application for a radioactive material license and therefore it is not an appropriate issue for referral to SOAH in this case. Ms. Rutherford's sole relevant issue is subsumed in issues 3 and 5 in Section IV below.

#### 5.7 Mr. and Mrs. Thomas Anklam (Southern Comfort Ranch)

In their hearing request dated October 4, 2007 and in a follow-up public comments letter dated July 22, 2008, the Anklams raised the general issue of potential pollution of water, air and soil. The discussed in particular the issue of whether the proposed permit would adversely impact their goat ranching operation as a result of groundwater contamination. They also protested the proposed aquifer exemption. Since the Anklams' land appears to be within the Area of Review and since the groundwater issues are relevant and material to the Commission's decision on the application, UEC has no objection to the hearing request of Ms. Rutherford. UEC also has no objection to referral to SOAH of the groundwater issues. The Anklams' issues regarding impacts on groundwater quality, the aquifer exemption, and impacts on their goat ranching operation are included in Section IV below as issues 2-5, and 9-11.

#### 5.8 Dorothy Lude

Even though Ms. Lude appears to be within the Area of Review, she only submitted public comments, not a request for a contested case hearing. Therefore, there is no request for hearing for the Commission to consider.

#### 5.9 Otto Bluntzer

Even though Mr. Bluntzer appears to be within the Area of Review, he only submitted public comments, not a request for a contested case hearing. Therefore, there is no request for hearing for the Commission to consider.

#### 5.10 Jim Bluntzer, M.D.

Even though Dr. Bluntzer appears to be within the Area of Review, he only submitted public comments, not a request for a contested case hearing. Therefore, there is no request for hearing for the Commission to consider.

#### 5.11 Ricki McKinney

Even though Ms. McKinney appears to be within the Area of Review, he only submitted public comments, not a request for a contested case hearing. Therefore, there is no request for hearing for the Commission to consider.

#### 5.12 St. Peter's Lutheran Church of Ander

Even though St. Peter's Lutheran Church appears to be located within the Area of Review, the President of the Church Council only submitted public comments, not a request for a contested case hearing. Therefore, there is no request for hearing for the Commission to consider.

## 6. Hearing Requests of Landowners Not Within the Area of Review

Of the 155 hearing requests, 148 came from individuals not located within the ¼-mile Area of Review. These individuals reside from 3.6 miles to over 25 miles from the permitted project area. Accordingly, UEC objects to the hearing requests of any persons located outside of the ¼-mile Area of Review since those persons fail to satisfy the criterion of "distance restrictions or other limitations imposed by law on the affected interest."<sup>56</sup> Accordingly, for those individuals outside the ¼-mile Area of Review:

- a reasonable relationship does not exist between the legal interest claimed and the activity regulated;<sup>57</sup>
- nor is there a likely impact of the regulated activity on the health and safety of the hearing requestor, or on use of the hearing requestor's property;<sup>58</sup>
- nor is there a likely impact of the regulated activity on use of the impacted natural resource by the hearing requestor.<sup>59</sup>

Therefore, the hearing requests of the 148 individuals located outside the Area of Review (or any of the should be denied because such persons fail to meet the criteria for "affected persons" as defined by TCEQ Rules at 30 TAC § 55.203.

## IV. RELEVANT AND MATERIAL ISSUES OF FACT FOR REFERRAL TO SOAH

Assuming that the Commission finds that UEC's application should be referred to SOAH for a contested case hearing, UEC respectfully requests that the SOAH hearing be limited to the following relevant and material issues of fact raised by qualified hearing requestors, as discussed above:

1. Whether the proposed mining is in the recharge zone of the Gulf Coast Aquifer (Evangeline component).
2. Whether the Gulf Coast Aquifer is a confined aquifer in the areas of Goliad County where UEC will conduct UIC activities.
3. Whether mining fluids will migrate vertically or horizontally and contaminate an USDW .
4. Whether there are any USDWs within the injection zones proposed by UEC.

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<sup>56</sup> 30 TEX. ADMIN. CODE § 55.203(c)(2) (2008).

<sup>57</sup> 30 TEX. ADMIN. CODE § 55.203(c)(3) (2008).

<sup>58</sup> 30 TEX. ADMIN. CODE § 55.203(c)(4) (2008).

<sup>59</sup> 30 TEX. ADMIN. CODE § 55.203(c)(5) (2008).

5. Whether any USDWs within Goliad County will be adversely impacted by UEC's proposed in situ uranium mining operations.
6. Whether UEC has properly characterized the baseline quality of water within the permit area .
7. Whether UEC's proposal for restoration of groundwater to baseline levels as contained in the permit application is reasonable and adequate.
8. Whether UEC's proposed financial assurance and financial assurance mechanisms are acceptable under TCEQ rules.
9. Whether UEC's methodology and calculations of groundwater quality excursion parameters are in compliance with TCEQ rules.
10. Whether UEC's proposed in situ uranium mining operation or groundwater restoration activities will adversely impact the public interest by unreasonably reducing the amount of groundwater available for permitting by the District.
11. Whether UEC's proposed operations will adversely affect cattle ranching operations in the Area of Review.
12. UEC's compliance history in Texas over the past five years.
13. Whether there is a "practical, economic and feasible alternative to an injection well reasonably available" within the meaning of that term as set forth in TEX. WATER CODE § 27.051(d)(2).

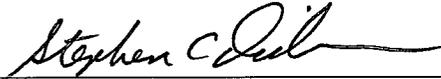
UEC respectfully requests that the Commission reject for referral to SOAH the following issues as raised by one or more hearing requestors or public commenters since they are not relevant and material to the Commission's decision on the application:

- alleged contamination of groundwater as a result of exploratory drilling for uranium as regulated under RCT Permit No. 123;
- impacts of granting the proposed permit and aquifer exemption on the economic value of surrounding land;
- impacts of granting the proposed permit and aquifer exemption on aesthetic values of the surrounding land;
- whether uranium is an outdated and dangerous energy source;
- whether other in situ uranium mining operations in Texas have returned the water table to pre-mining conditions;
- whether TCEQ should require an environmental impacts study or other additional studies before continuing to process the permit application and aquifer exemption request.

Notwithstanding the positions taken by UEC with respect to the pending hearing requests, UEC fully reserves its rights to object to and challenge the standing of any person or

entity appearing before SOAH seeking party status should this matter be referred for a contested case hearing. Should this application be referred for a contested case hearing, UEC further requests that the period of time between the preliminary hearing and the presentation of a proposal for decision before the Commission not exceed six (6) months. Finally, UEC requests that any and all requests for reconsideration and all requests for hearing not expressly identified by UEC herein as legitimate and proper be denied.

Respectfully submitted,



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Monica Jacobs  
State Bar No. 24007433  
Stephen C. Dickman  
State Bar No. 05836500  
KELLY HART & HALLMAN, LLP  
301 Congress Avenue, Suite 2000  
Austin, Texas 78701  
Telephone: (512) 495-6405  
Facsimile: (512) 495-6401  
*Attorneys for Uranium Energy Corp*

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 30<sup>th</sup> day of January 2009 , a true and correct copy of the foregoing document was sent by hand delivery, facsimile and/or regular mail to the following:

**FOR THE EXECUTIVE DIRECTOR:**

Shana Horton, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
PO Box 13087 Austin, TX 78711-3087  
Fax: (512) 239-0606

Donald Redmond, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
PO Box 13087 Austin, TX 78711-3087  
Fax: (512) 239-0606

David H. Murry, Technical Staff  
Texas Commission on Environmental Quality  
Waste Permits Division, MC-130  
PO Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-2007

**FOR PUBLIC INTEREST COUNSEL:**

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
PO Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-6377

**FOR OFFICE OF PUBLIC ASSISTANCE:**

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
PO Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-4007

**FOR ALTERNATIVE DISPUTE  
RESOLUTION:**

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
PO Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-4015

**FOR THE CHIEF CLERK:**

LaDonna Castanuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
PO Box 13087  
Austin, TX 78711-3087  
Fax: (512) 239-3311

**REQUESTER(S):**

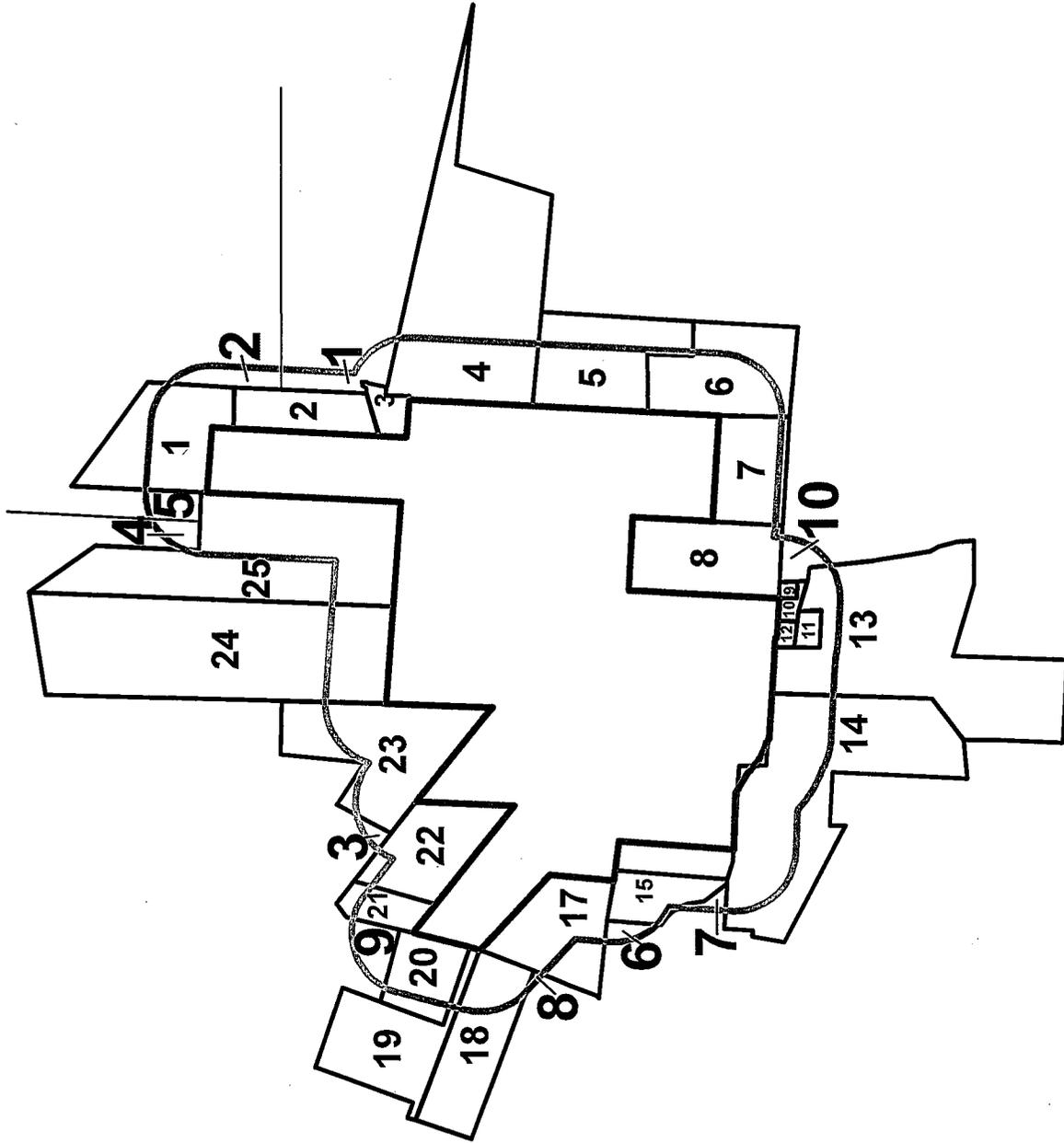
Rob Baiamonte  
Attorney at Law  
PO Box 1091  
Goliad, TX 77963  
Fax: (361) 645-1711

James Blackburn  
Blackburn & Carter  
4709 Austin St.  
Houston, Texas 77004  
Fax: (713) 524-5165

TEXAS  
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QUALITY  
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\_\_\_\_\_  
Stephen C. Dickman

# **EXHIBIT 1**



Black numbers correspond with table 1.1 Adjacent Surface Ownership  
 Purple numbers correspond with table 1.2 Nonadjacent Surface Ownership within 1/4 mile

**Surface Ownership**



**Legend**

- Adjacent Property
- Area of Review 1/4 Mile
- Permit Boundary



**Surface Ownership**  
 Map by: M. Bell  
 Date: January 30, 2009  
 Original dimensions: 11"Wx8.5"H

**Table 1.1 Adjacent Surface Ownership**

Adjacent Tracts	Surface Owners	Acres	Interest	Survey
1	James Bluntzer 1260 Bluntzer Road Goliad TX 77963 361-645-8129	80.925	1.0000	A-69
2	Margaret B. Rutherford 1256 Bluntzer Road Goliad TX 77963 361-645-2083	37.721	1.0000	A-69
3	Margaret B. Rutherford 1256 Bluntzer Road Goliad TX 77963 361-645-2083	11.130	1.0000	A-69
4	Joseph R. Jacob 213 N. Church Goliad TX 77963 361-645-3519	263.000	1.0000	A-251 A-118
5	Otto Bluntzer, Jr. 95 Mariposa Drive Rochester NY 14624	81.249	1.0000	A-251
6	Mary Bluntzer Gray PO Box 876 Craig CO 81626	81.249	1.0000	A-251
7	Diana Schrade Slafka 12800 Plymouth Circel Anchorage AK 99516 907-344-3506	52.740	0.5000	A-70 A-129
	Sharon Schrade Bryan 8847 Wood Lane Madisonville TX 77864 936-348-5642	52.740	0.5000	A-70 A-129
8	Diana Schrade Slafka 12800 Plymouth Circel Anchorage AK 99516 907-344-3506	80.200	0.5000	A-70 A-129
	Sharon Schrade Bryan 8847 Wood Lane Madisonville TX 77864 936-348-5642	80.200	0.5000	A-70 A-129

9	Jon Arlis Adickes 14691 FM 1346 St. Hedwig TX 78152 210-667-1848	1.500	0.3333	A-184
	Laura Sue Adickes Rogers Route 2, Box 272 Canyon TX 79015 806-488-2313	1.500	0.3333	A-184
	Amy Lynn Adickes Wilburn Route 3 Goliad TX 77963 361-645-1827	1.500	0.3333	A-184
10	June Bethke 1593 E. FM 1961 Goliad TX 77963 361-645-2708	7.922	1.0000	A-184
11	St. Peter's Lutheran Church 1545 E. FM 1961 Yorktown, TX 78164 361-645-2922	0.138	1.0000	A-184
12	St. Peter's Lutheran Church 1545 E. FM 1961 Yorktown, TX 78164 361-645-2922	4.460	1.0000	A-184
13	Harold Baecker 135 N. Mesquite Victoria TX 361-578-3738	229.860	0.2562	A-184
	Nancy Gerhardt 3210 Knoll Manor Kingwood TX 281-360-2102	229.860	0.6082	A-184
	Glen Baecker 1451 FM RD 1961 Goliad TX 77963 361-645-8719 361-645-1021	229.860	0.1356	A-184
14	Randy Liesman 215 E. Edgewood San Antonio, TX 78209 210-826-0358	200.310	0.5000	A-129 A-200

	Bruce D. Liesman 215 E. Edgewood San Antonio, TX 78209 210-826-5362	200.310	0.5000	A-129 A-200
15	Pam Long PO Box 222 Goliad TX 77963 361-564-2214	28.126	1.0000	A-129
16	Jo Nell Martin 641 Crestview Drive Victoria TX 77905 361-578-3926	28.126	1.0000	A-129
17	William & Diana Cheek 4617 Cobblestone Corpus Christi TX 78411 361-986-1211	84.360	1.0000	A-129
18	Vergie Bitterly 1804 E. Locust Victoria TX 77901 361-573-6147	70.411	1.0000	A-129 A-495 A-289
19	Deanna Wacker 1703 E. Locust Victoria TX 77901 361-573-3625	70.411	1.0000	A-129 A-495 A-289
20	Cecilia Gleinser Edwards 50 PR 5711 Gonzales TX 78629 830-672-8373	36.139	1.0000	A-129
21	Thomas & Mary Anklam 14859 N. US Hwy 77a-183 Yorktown TX 78164 361-564-9152	20.000	1.0000	A-129
22	Michael & Kay Walker 5964 FM 1351 Goliad TX 77963 361-645-1925	64.330	1.0000	A-129
23	Craig Layne Duderstadt 722 Duderstadt Road Yorktown TX 78164 361-564-2081	100.000	1.0000	A-129
24	Ernest & Frances Hausman Revocable Living Trust 103 Oxford Drive San Antonio TX 78213 210-344-1448	261.370	1.0000	A-69

25	Diana Schrade Slafka 12800 Plymouth Circle Anchorage AK 99516 907-344-3506	193.100	0.5000	A-69
	Sharon Schrade Bryan 8847 Wood Lane Madisonville TX 77864 936-348-5642	193.100	0.5000	A-69

**Table 1.2 Non-Adjacent Surface Ownership Within 1/4 Mile**

Non-Adjacent Tract	Surface Owners
1	McDonald, Olivia 1116 Meadowcreek El Campo, TX 77437 Property address: Not Available (N/A)
2	Wesselman, Marlene 1596 Pontchartrain Dr. Okemos, MI 48864 Property address: 1258 Bluntzer Rd.
3	McKinney, Ricki C. 107 Tampa Dr. Victoria, TX 77904
4	Friedrichs, William Lloyd 71 Sentry Rd. Victoria, TX 77904 Property address: N/A
5	Friedrichs, Alois Clyde #5 West Lake Forest Ct. Conroe, TX 77384 Property address: N/A
6	Schley, Bonnie Lynn 1945 Golly Rd. Cuero, TX 77954-5717 Property address: 240 E FM 1961
7	W. A. Wimberly III Et Al. PO Box 513 Goliad, TX 79963-0513 Property address: 239 E FM 1961
8	Bruns, Dwane 11638 FM 622 Goliad, TX 77963 Property address: 14280 N. US Hwy 183
9	Jolly, Majorie Gleinser 1315 FM 622 Victoria, TX 77905-3110 Property address: N/A
10	Orr, Weldon S. ET UX 1742 E FM 1961 Goliad, TX 77963 Property: 1684 E FM 1961

## **EXHIBIT 2**



# RAILROAD COMMISSION OF TEXAS

## SURFACE MINING AND RECLAMATION DIVISION

April 20, 2007

James B. Blackburn, Jr., Attorney  
Blackburn Carter, P.C.  
4709 Austin  
Houston, Texas 77004

RE: Uranium Energy Corporation (UEC)  
Uranium Exploration Permit No. 123  
Complaint on Exploration Activities  
Goliad County, Texas

Dear Mr. Blackburn:

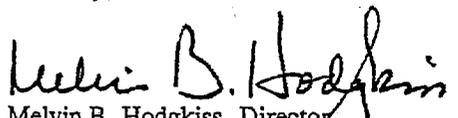
By letter dated February 5, 2007, you filed a complaint regarding UEC's uranium exploration activities in Goliad County under Uranium Exploration Permit No. 123. I informed you by letter dated February 12, 2007, and again by letter dated February 28<sup>th</sup> that to satisfactorily complete our investigation of the alleged ground-water contamination, it was necessary that you supply further information. No requested clarifying information has been forthcoming.

An assessment of the information provided in your February 5, 2007, letter was conducted by Tim Walter, P.G., a ground-water hydrologist employed in this Division. Mr. Walter has concluded from the available information that no ground-water contamination has occurred as a result of the drilling activities. It is known that water movement within an aquifer is one of the major concentrating mechanisms for several compounds of uranium and other radioactive elements. The mobility of uranium in aquifer environments such as that in northern Goliad County is extremely slow because: (1) ground-water movement itself is quite slow; and (2) the uranium must be oxidized from its normal, insoluble quadrivalent form to a soluble (and, hence, mobile) hexavalent form by oxygen-rich meteoric waters. Once movement begins, the oxidized uranium that is dissolved in the ground water can travel a short distance downgradient along the flowpath, where it is almost immediately re-precipitated due to the relatively more reduced environment along that flowpath. Therefore, transport of uranium within the aquifer occurs at extremely slow rates, on the order of tens of feet over a period of thousands of years, not the few months alleged in your letter. It is not plausible that the mobility of any uranium materials has been substantively affected by the drilling activities conducted by UEC. I conclude that the likely source of ground-water radioactivity generically identified in the analyses included in your complaint filing stems from natural sources in contact with the sampled wells themselves.

In summary, I have determined from the available evidence that no condition exists to warrant further enforcement action by the Commission with regard to ground-water issues. The Commission's investigation of your complaint has not revealed any practice or activity within the approved permit area that has adversely affected the wells identified in your complaint or the related aquifer, or is out of compliance with the Texas Uranium Mining Regulations (16 TEXAS ADMIN. CODE §11.1 et seq.); therefore, I consider investigation of the ground-water issues of your complaint to be closed.

Should you have any questions concerning this decision, please feel free to call me.

Sincerely,

  
Melvin B. Hodgkiss, Director  
Surface Mining and Reclamation Division

MBH/TGW/flj  
File Reference No. 0703609



# RAILROAD COMMISSION OF TEXAS

## SURFACE MINING AND RECLAMATION DIVISION

September 5, 2007

Art Dohmann, President  
Goliad County Groundwater Conservation District  
P O Box 562  
Goliad, TX 77963

RE: Water-Well Investigation Request, Letter Received July 13, 2007  
Uranium Energy Corporation  
Uranium Exploration Permit No. 123

Dear Mr. Dohmann:

Review of the information submitted by letter received on July 13, 2007, alleging possible effects to eight private wells in the vicinity of Uranium Exploration Permit No. 123, has been completed. Based on the attached review by our Staff hydrogeologist, I conclude that insufficient data exist at present to warrant further investigation of these alleged effects. Although the provided data indicate minor variations in ground-water constituents and water level in two samples obtained approximately five months apart from several wells, such changes are not indicative of, nor likely to be the result of the uranium exploration activities conducted in the area.

In addition, you mention concerns raised in a report describing a ground-water model created by Daniel B. Stevens & Associates, Inc. Although you indicate in your letter that the model addresses uranium exploration activities, this does not appear to be an accurate representation. The model only addresses a hypothetical ground-water modeling effort for mining of uranium via in situ leaching; therefore, the report was not considered pertinent to the complaint regarding uranium exploration activities and was not considered.

To date, the Commission's investigation of your complaint has not revealed any practice or activity at UEC's Uranium Exploration Permit No. 123 that is out of compliance with the Texas Uranium Mining Regulations or the Uranium Surface Mining and Reclamation Act. We consider this investigation to be closed.

If you have any questions regarding this evaluation and decision, feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "John E. Caudle".

John E. Caudle, P. E.  
Surface Mining and Reclamation Division

JEC/TGW/flj  
Enclosure  
xc: Randy Reneau, UEC  
File Reference No. 0719402



**RAILROAD COMMISSION OF TEXAS**  
SURFACE MINING AND RECLAMATION DIVISION  
MEMORANDUM

To: John E. Caudle, P.E., Acting Director *JEC*  
From: Tim Walter, P.G., Hydrologist  
Subject: Goliad County Groundwater Conservation District Water-Well Complaint  
Uranium Energy Corporation (UEC)  
Uranium Exploration Permit No. 123  
Date: September 5, 2007

**INTRODUCTION**

By letter dated July 9, 2007, the Division received a complaint from Art Dohmann, President of the Goliad County Groundwater Conservation District (GCGCD), requesting that the Commission evaluate water-quality issues in wells located in the vicinity of recent exploration activities. The drilling activities conducted under Uranium Exploration Permit No. 123 are located in Goliad County immediately east of US 183 and north of FM 1961. In this complaint, Mr. Dohmann indicates that the water from three wells adjacent to and/or down-gradient of the exploration activities exhibit high levels of radionuclides that result from uranium decay and that wells on five residences up-gradient of the activities experienced degradation of quality concurrently with the exploration drilling. The well locations are depicted on Attachment 1.

**COMPLAINT SUMMARY AND HISTORY**

Following is a summary of the concerns expressed in this ground-water quality complaint.

1. Wells at five residences upgradient of the uranium exploration activities experienced water quality issues following the exploration drilling, specifically water chemistry changes between samples obtained prior to and after the primary period of exploration to date.
  - a) Tom Anklam:
    - 1) increase in SO<sub>4</sub> from 38 mg/L on 12/18/06 to 47 mg/L on 04/26/07
    - 2) increase in Na from 99 mg/L on 12/18/06 to 124 mg/L on 04/26/07
    - 3) water from filter housing had Fe of 5.55 mg/L on 04/26/07
  - b) Aldon Bade:
    - 1) increase in Cl from 178 mg/L on 12/19/06 to 190 mg/L on 04/26/07
    - 2) increase in SO<sub>4</sub> from 60 mg/L on 12/19/06 to 70 mg/L on 04/26/07
    - 3) increase in Na from 105 mg/L on 12/19/06 to 128 mg/L on 04/26/07
    - 4) increase in Fe from <0.01 mg/L on 12/19/06 to 0.678 mg/L on 04/26/07
  - c) Reta Brown:
    - 1) increase in Fe from 0.03 mg/L on 01/03/07 to 0.056 mg/L on 04/26/07
  - d) Ted Long:
    - 1) no substantive changes
  - e) Craig Duderstadt:
    - 1) increase in Cl from 95 mg/L on 12/15/06 to 110 mg/L on 04/26/07
    - 2) increase in SO<sub>4</sub> from 27 mg/L on 12/15/06 to 42 mg/L on 04/26/07
    - 3) increase in nitrate from 11 mg/L on 12/15/06 to 12.5 mg/L on

04/26/07

- 4) increase in Ca from 135 mg/L on 12/15/06 to 169 mg/L on 04/26/07
- 5) increase in Na from 68 mg/L on 12/15/06 to 84 mg/L on 04/26/07
- 6) increase in Mg from 8.3 mg/L on 12/15/06 to 9.22 mg/L on 04/26/07

2. Water quantity changes were also identified by Mr. Dohmann in the two wells located on the Craig Duderstadt property, as follows:

Craig Duderstadt Wells, Water-Level Depth (ft BTOC)		
Date	Old Well	New (Deep) Well
12/15/2006	48.0	
03/29/2007		59.0
Early April 2007	51.0	
04/15/2007		58.0
04/26/2007	50.8	
05/02/2007		52.8
05/26/2007	50.8	52.55
06/30/2007	50.9	53.0

3. A ground-water flow and transport model prepared by Daniel B. Stevens & Associates, Inc. was also provided. The report alleges to raise questions about the suitability of the area of the Gulf Coast Aquifer in Goliad County for exploration for and in situ mining of uranium.

#### DATA EVALUATION

In Uranium Exploration Permit No. 123, area in Goliad County, the unit associated with uranium deposition is the Goliad Formation, with the target zone apparently at depths between 300 and 500 ft as determined from UEC's drilling depths within the permit area. The Goliad Formation consists entirely of Cenozoic (Miocene-age) clastic sediments that strike in a northeast-southwest direction and dip to the southeast, toward the Gulf of Mexico, at a rate of ½-1½ degrees. Wells on the five residences listed above are located hydrologically upgradient of the mining activities.

No baseline (prior to any exploration drilling under Uranium Exploration Permit No. 123) water-quality data appear to be available for the subject wells, nor has any well completion information been provided (except for depth information for the two Duderstadt wells). The Duderstadt wells are the closest wells to any UEC exploration holes, located approximately 1,350 ft north-northwest of boreholes that, according to information submitted by UEC in March 2007 pursuant to Notice of Violation 080A, were drilled and cased as monitoring wells in mid-December 2006. Most exploration boreholes downgradient of the five residences were drilled and plugged during the period October 2006 to February 2007.

#### *Ground-Water Quality*

From the available data, the water-quality changes were evaluated as follows:

1. Anklam well:  
SO<sub>4</sub><sup>2-</sup>: Analyses show a sulfate concentration of 42 mg/L in December 2006 and 47 mg/L in April 2007. Irrespective of the discrepancy between the lab-sheet data and the change alleged in the report provided by Mr. Dohmann, little can be assessed from the variations in sulfate.

Sulfate is a common constituent of Gulf Coast aquifer sediments and can be expected to vary substantially due to several influences, including seasonal changes and droughts.<sup>1</sup>

Na<sup>+</sup>: The provided analyses indicate a sodium concentration of 124 mg/L in April 2007. Although the GCGCD indicates that the well water had a sodium concentration of 99 mg/L in December 2006, no sodium analyses are indicated on the lab sheets provided.

Fe<sup>2+</sup>: Water from the filter housing had an iron concentration of 5.55 mg/L. No baseline iron levels are available, nor any information on procedures used in the collection of this sample. In general, analyses of filter sediment samples are of limited use in determining water quality at the wellhead because the water sample is not obtained after purging and is unlikely to be representative of the iron content (or other constituents) in the well water.

The total dissolved solids (TDS) concentration in the December 2006 sample was 562 mg/L, while in the April 2007 sample TDS measured 467 mg/L. Both concentration levels fall well within an acceptable range for domestic use.

2. Bade well:

SO<sub>4</sub><sup>2-</sup>: Analyses show a sulfate concentration of 60 mg/L in January 2007 and 70 mg/L three months later, in April 2007. Again, little can be assessed from this variation in sulfate concentration. Sulfate is a common constituent of Gulf Coast aquifer waters and can be expected to vary substantially due to several influences, including seasonal changes and droughts.

Na<sup>+</sup>: The provided analyses indicate a sodium concentration of 105 mg/L Na in January 2007 and 128 mg/L Na in April 2007. Since sodium is also a ubiquitous component of Gulf Coast aquifer waters, it also can be expected to vary substantially both seasonally and as a result of droughts.

Fe<sup>2+</sup>: Concentration analyses for iron indicate a level of <0.01 mg/L in January and 0.678 mg/L in April 2007. Iron can exist in ground water in both a particulate and dissolved form; therefore, the sampling procedures need to be documented in order to beneficially evaluate the problem. No information on procedures used in the collection of these samples were provided, including statistically derived detection limits; therefore, the significance of the analysis differences cannot be assessed. In addition, no baseline iron concentration range for the aquifer is available.

Cl<sup>-</sup>: Analyses indicate an increase in chloride from 95 to 110 mg/L over the three-month period from January to April 2007. The magnitude of this difference falls well within the typical expected seasonal range for chloride.

TDS concentration decreased from 685 mg/L to 566 mg/L over the same period, remaining within an acceptable range for domestic use.

3. Brown well:

Fe<sup>2+</sup>: Iron concentration was measured at 0.03 mg/L in December 2006 and at 0.056 mg/L in April 2007. As with the Bade well, this difference is minimal and its significance cannot be determined. These levels of iron are not likely to leave an iron-precipitate stain (<0.3 mg/L Fe).<sup>2</sup>

TDS concentration in December 2006 was measured at 693 mg/L and in April 2007 at 516 mg/L. Both values fall within an acceptable range for domestic use.

---

<sup>1</sup> For sulfate and other parameters addressed in this evaluation, natural seasonal variation estimated from qualitative review of Goliad County historic ground-water quality data available at <http://www.twdb.state.tx.us/publications/reports/GoundWaterReports/GWDatabaseReports/GWdatabaserpt.htm>

<sup>2</sup> Driscoll, F. G., 1986, Groundwater and Wells, Johnson Screens, St. Paul, MN, 55112, p.98; American Groundwater Trust, at <http://www.agwt.org/info/pdfs/ironproblems.pdf>; and McKee, J. E. and Wolf, H. W., 1963, Water Quality Criteria, California State Water Resources Control Board, reprint June 1, 1976, p.202.

4. Long well:

No changes were noted in the complaint. TDS concentration in the December 2006 analysis was 684 mg/L. In the April 2007 sample, the TDS concentration was 526 mg/L.

5. Duderstadt deep well:

SO<sub>4</sub><sup>2-</sup>: Analyses show a sulfate concentration of 27 mg/L in December 2006 and 42 mg/L in April 2007. As with the other wells evaluated, little can be assessed from this variation in sulfate concentration. Sulfate can be expected to vary substantially as a result of seasonal influences and droughts.

Na<sup>+</sup>: The provided analyses indicate a sodium concentration of 61 mg/L in December 2006 and 84 mg/L in April 2007. As described above, sodium can typically be expected to exhibit substantial variation due to seasonal influences and as a result of droughts.

Ca<sup>2+</sup>: Concentration analyses indicate a calcium content of 142 mg/L in December 2006 and 169 mg/L in April 2007. This difference falls well within the expected range for typical seasonal variation for calcium-laden waters.

Cl<sup>-</sup>: Analyses for the two samples indicate a chloride value of 95 mg/L in December 2006 and 110 mg/L in April 2007. The magnitude of this difference falls well within the expected range for seasonal variation of chloride levels.

Mg<sup>2+</sup>: Magnesium analyses for the two samples were 8.3 to 9.22 mg/L in December 2006 and April 2007, respectively. No EPA maximum concentration levels are established for magnesium. The taste threshold concentration for magnesium in water is around 500 mg/L.<sup>3</sup>

NO<sub>3</sub><sup>-</sup>: The data indicate a nitrate concentration of 12.5 mg/L in April 2007. The report provided by Mr. Dohmann alleges an earlier nitrate level of 11 mg/L; however, the December 2006 analysis for this well does not indicate any analysis for nitrate. Irrespective of this omission, the difference is small. Increases in nitrate concentrations in shallow wells most commonly can trace their source to agronomic fertilization practices and leaching from septic tanks.<sup>4</sup>

TDS concentration decreased from 600 mg/L to 527 mg/L between December 2006 and April 2007, remaining within an acceptable range for domestic use.

Analytical data from three other wells—Bethke, Breedan and Braquet—were also provided. These wells are located downgradient from the exploration area, and water samples are indicated to contain elevated levels of uranium and/or uranium decay products. As described in the letter from the Commission on April 20, 2007 (Attachment 2), the radionuclides in the ground water from these wells is likely from natural sources, since the uranium deposits occur within the aquifer itself, which is the concentrating mechanism.

#### *Ground-Water Quantity*

In the Goliad County area, the period of primary exploration drilling (October 2006 through February 2007) encompassed the last 2 months of an 11-month+ period of lower than normal rainfall, through a 2-month period of average rainfall, and the first month of the current period of greater than average rainfall. The shallowest wells tend to be affected more severely by long-term changes in precipitation levels; therefore, it is not surprising that the older, shallower well on the Duderstadt property has experienced the greatest drop in water level.

The relative drought conditions within the Goliad County area were estimated and graphed for the exploration time period (Attachment 3), which is a graph of the estimated Palmer Drought Severity

<sup>3</sup> McKee, J. E. and Wolf, H. W., 1963, Water Quality Criteria, California State Water Resources Control Board, reprint June 1, 1976, p.211.

<sup>4</sup> U.S. Environmental Protection Agency, <http://www.epa.gov/safewater/dwh/c-ioc/nitrates.html>

Index (PDSI) during this time period. The calculated PDSI values were not easily available; however, these indices were determined from the weekly PDSI maps obtained at [http://www.cpc.ncep.noaa.gov/products/analysis\\_monitoring/cdus/palmer\\_drought/](http://www.cpc.ncep.noaa.gov/products/analysis_monitoring/cdus/palmer_drought/). The estimated values as plotted show the same trend and inflection points as would the actual PDSI index values. It appears that the 3-ft drop in water level between December 2006 and April 2007 can reasonably be attributed to drought conditions with approximately a 2 to 3-month lag in response time.

*Daniel B. Stevens & Associates, Inc. Ground-Water Model*

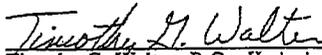
The Daniel B. Stevens & Associates, Inc. report entitled, *Evaluation of Potential Impacts Related to Proposed Uranium Mining in Goliad County, Texas*, while interesting, is not germane to issues raised in this complaint with regard to borehole exploration. No injection or pumping activities were conducted in association with exploration drilling. Staff notes that modern in situ leaching fields are designed to exploit the aquifer characteristics specific to the zone of production at a particular site. In situ mining has not commenced and, since much of the necessary information for production-field design is not yet determined, the numerous assumptions made in the Stevens model are, at best, speculative at this time.

CONCLUSIONS

As described in the foregoing, insufficient data are available to reasonably attribute the minor variations in the chemical constituents of the ground water to the exploration activities conducted in 2006 and 2007. Although the provided data indicate minor variations in ground-water constituents and water level in two samples obtained approximately five months apart, such changes are not indicative of nor likely to have been caused by the uranium exploration activities that were conducted in the area.

The overall trend demonstrated by the decrease in TDS at all five residences is consistent with effects that could be expected as a result of seasonal variation associated with precipitation levels. Continued long-term collection of water-level and water-quality data may be useful in determining any scientifically valid trends necessary to distinguish any changes caused by stresses other than seasonal and drought-induced variation.

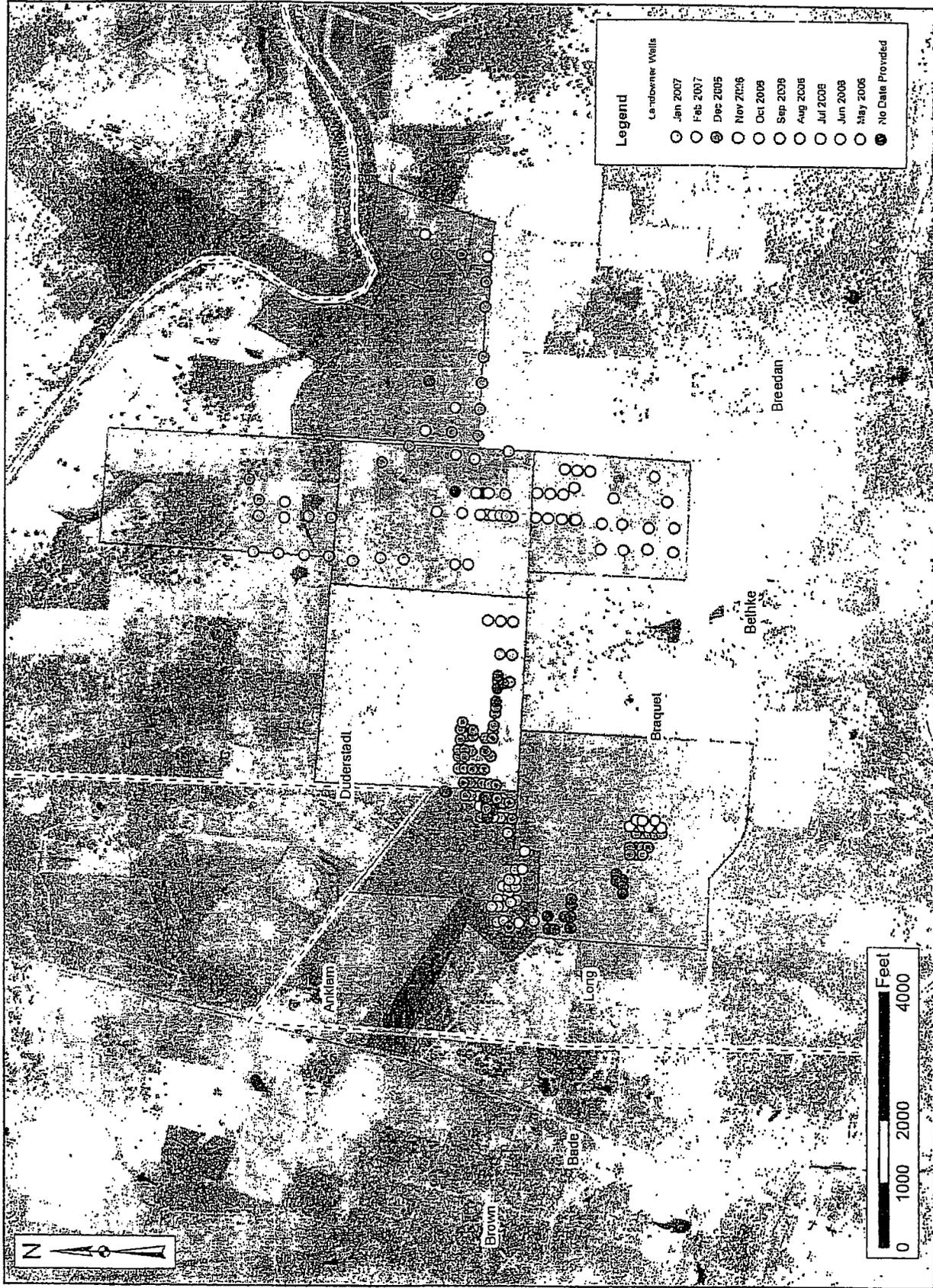
Please feel free to contact me if you have any questions.

  
\_\_\_\_\_  
Timothy G. Walter, P.G., Hydrologist

TGW/fj  
File Reference No. 0719402

ATTACHMENT 1  
MAP OF LANDOWNER WELLS ADJACENT  
TO UEC URANIUM EXPLORATION PERMIT NO. 123  
AUGUST 31, 2007

# UEC Exploration Permit No. 123 Drill Holes and Landowner Well Locations



Exploration drilling date and location information from UEC, March 2007

ATTACHMENT 2  
LETTER FROM RAILROAD COMMISSION OF TEXAS TO  
JAMES B. BLACKBURN, JR.,  
ATTY. FOR GOLIAD COUNTY GROUNDWATER CONSERVATION DISTRICT  
DATED APRIL 20, 2007



# RAILROAD COMMISSION OF TEXAS

## SURFACE MINING AND RECLAMATION DIVISION

April 20, 2007

James B. Blackburn, Jr., Attorney  
Blackburn Carter, P.C.  
4709 Austin  
Houston, Texas 77004

RE: Uranium Energy Corporation (UEC)  
Uranium Exploration Permit No. 123  
Complaint on Exploration Activities  
Goliad County, Texas

Dear Mr. Blackburn:

By letter dated February 5, 2007, you filed a complaint regarding UEC's uranium exploration activities in Goliad County under Uranium Exploration Permit No. 123. I informed you by letter dated February 12, 2007, and again by letter dated February 28<sup>th</sup> that to satisfactorily complete our investigation of the alleged ground-water contamination, it was necessary that you supply further information. No requested clarifying information has been forthcoming.

An assessment of the information provided in your February 5, 2007, letter was conducted by Tim Walter, P.G., a ground-water hydrologist employed in this Division. Mr. Walter has concluded from the available information that no ground-water contamination has occurred as a result of the drilling activities. It is known that water movement within an aquifer is one of the major concentrating mechanisms for several compounds of uranium and other radioactive elements. The mobility of uranium in aquifer environments such as that in northern Goliad County is extremely slow because: (1) ground-water movement itself is quite slow; and (2) the uranium must be oxidized from its normal, insoluble quadrivalent form to a soluble (and, hence, mobile) hexavalent form by oxygen-rich meteoric waters. Once movement begins, the oxidized uranium that is dissolved in the ground water can travel a short distance downgradient along the flowpath, where it is almost immediately re-precipitated due to the relatively more reduced environment along that flowpath. Therefore, transport of uranium within the aquifer occurs at extremely slow rates, on the order of tens of feet over a period of thousands of years, not the few months alleged in your letter. It is not plausible that the mobility of any uranium materials has been substantively affected by the drilling activities conducted by UEC. I conclude that the likely source of ground-water radioactivity generically identified in the analyses included in your complaint filing stems from natural sources in contact with the sampled wells themselves.

In summary, I have determined from the available evidence that no condition exists to warrant further enforcement action by the Commission with regard to ground-water issues. The Commission's investigation of your complaint has not revealed any practice or activity within the approved permit area that has adversely affected the wells identified in your complaint or the related aquifer, or is out of compliance with the Texas Uranium Mining Regulations (16 TEXAS ADMIN. CODE §11.1 et seq.); therefore, I consider investigation of the ground-water issues of your complaint to be closed.

Should you have any questions concerning this decision, please feel free to call me.

Sincerely,

  
Melvin B. Hodgkiss, Director  
Surface Mining and Reclamation Division

MSH/TGW/ijj  
File Reference No. 0703609

ATTACHMENT 3  
ESTIMATED PALMER DROUGHT SEVERITY INDEX  
TEXAS REGION 7 (INCLUDES GOLIAD COUNTY)  
AUGUST 31, 2007

MICHAEL L. WILLIAMS, CHAIRMAN  
VICTOR G. CARRILLO, COMMISSIONER  
ELIZABETH A. JONES, COMMISSIONER



MELVIN B. HODGKISS, P.E., DIRECTOR

## RAILROAD COMMISSION OF TEXAS

### SURFACE MINING AND RECLAMATION DIVISION

February 29, 2008

Mr. Art Dohmann, President  
Goliad County Groundwater Conservation District (GCGCD)  
P.O. Box 562  
Goliad County, Texas 77963

RE: GCGCD Letter dated January 18, 2008 (Dirty Water Wells)

Dear Mr. Dohmann:

I have received your letter dated January 18, 2008 (received on February 6, 2008), regarding your concerns over the water quality (dirty water) of six private wells. Your letter notes that five wells tested positive for iron bacteria. I have attached a few articles concerning the cause and effect of iron biofouling (iron bacteria) of water wells that may be of interest.

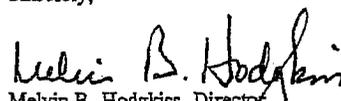
In your letter you make a statement that the hydrologist that performed our investigation of your previous water well complaint made an incorrect assessment of the water level changes in his report dated September 5, 2007. I have reviewed the report and find that our assessment of water level data is correct. A table contained on page 2 of the report presents water level readings for both the old and new Duderstadt wells from December 2006 to June 2007. Note, that between December 2006 and April 2007, the water level as measured from below the top of the casing, dropped 3 feet in the old (shallow) well. The new (deep) well experienced a 6.45-foot water level rise between April 2007 and May 2007. Our discussion in the report on pages 4 and 5 properly characterize the old Duderstadt well as experiencing the greatest drop in water level and that this can reasonably be attributed to drought conditions.

You request that the Commission immediately conduct an on-site study, including long-term monitoring, because the "dirty water" issue continues unabated. Your request is undoubtedly premised on the assumption that iron biofouling of the water wells is caused by the uranium exploration activities regulated by the Commission. Geoscientists in the Surface Mining and Reclamation Division do not believe there is any physical mechanism that would support the assumption that uranium exploration drilling could cause impacts to the hydrologic system creating specific changes in environmental conditions at the wells that would trigger iron biofouling.

The Commission does not have financial or staff resources to conduct independent ground-water investigations to determine the proximate cause of the iron bacteria problem in the private water wells. You may wish to contact the Texas Water Development Board for assistance in this regard.

Please feel free to give me a call should you have any questions.

Sincerely,

  
Melvin B. Hodgkiss, Director  
Surface Mining and Reclamation Division

MBH/EJ  
Attachments  
xc: Richard Varela, Executive Director, RCT

# **EXHIBIT 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

GOLIAD COUNTY, TEXAS; CRAIG \*  
AND LUANN DUDERSTADT, \*  
Plaintiffs \*  
VS. \* Civil Action  
\* No. 06:08-cv-00018  
\*  
URANIUM ENERGY CORP., \*  
Defendant \*

\*\*\*\*\*

ORAL DEPOSITION OF  
BRUCE K. DARLING, PH.D.  
JANUARY 14, 2009

\*\*\*\*\*

ORAL DEPOSITION OF BRUCE K. DARLING,  
PH.D., produced as a witness at the instance of the  
Defendant and duly sworn, was taken in the above-styled  
and numbered cause on the 14th day of January, 2009,  
from 10:07 a.m. to 5:07 p.m., before MARSHA EVANS,  
Certified Shorthand Reporter in and for the State of  
Texas, reported by machine shorthand, at the offices of  
Kelly, Hart & Hallman, LLP, 301 Congress Avenue,  
Suite 2000, Austin, Texas, pursuant to the Federal  
Rules of Civil Procedure and the provisions stated on  
the record or attached hereto.

Page 2

1 APPEARANCES  
2  
3  
4 FOR THE PLAINTIFFS:  
5 MR. JIM BLACKBURN  
6 BLACKBURN CARTER  
7 4709 Austin  
8 Houston, Texas 77004  
9 713-524-1012/713-524-5165 (fax)  
10  
11 FOR THE DEFENDANT:  
12 MS. MONICA JACOBS  
13 KELLY, HART & HALLMAN, LLP  
14 301 Congress Avenue, Suite 2000  
15 Austin, Texas 78703  
16 512-495-6400/512-495-6401 (fax)  
17  
18 ALSO PRESENT:  
19 Mr. Ed Janak  
20 Mr. Craig Holmes  
21  
22  
23  
24  
25

Page 4

1 BRUCE K. DARLING, PH.D.,  
2 having been first duly sworn, testified as follows:  
3 EXAMINATION  
4 QUESTIONS BY MS. JACOBS:  
5 Q. Good morning.  
6 A. Good morning.  
7 Q. We have met before. My name is Monica Jacobs,  
8 and I'm representing UEC in this proceeding. And I  
9 will be taking your deposition today. Have you had  
10 your deposition taken before?  
11 A. I have.  
12 Q. And I don't know how it worked when you had it  
13 done before, but in this case if you want to take a  
14 break at any time, you just let me know. Also, if I  
15 say anything or ask you a question that's not  
16 completely clear to you, let me know, stop me, ask me  
17 for clarification.  
18 A. That sounds like everything I have done  
19 before.  
20 Q. Good. I'm glad to hear that. I want to start  
21 by entering into the record your expert report, and I  
22 previously handed you a copy and off the record asked  
23 you to take a look at it to make sure that it looks to  
24 you like it's a complete copy. And I think you had  
25 indicated to me off the record that it did look to you

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1 like it was a complete copy; is that right?  
2 A. Certainly it appears to be a complete copy.  
3 Q. And --  
4 A. As I said, if we find something that's missing  
5 we will identify it.  
6 Q. Absolutely. Absolutely.  
7 MS. JACOBS: And there is a copy for you.  
8 MR. BLACKBURN: Thank you.  
9 Q. (By Ms. Jacobs) And let us start by looking  
10 at the second page of your expert report, which  
11 actually --  
12 MS. JACOBS: Did you mark that already?  
13 (Exhibit 1 marked)  
14 Q. (By Ms. Jacobs) And at the top of the second  
15 page, the last sentence, right before where it says  
16 basis for opinion, reads, "As such, I believe these  
17 boreholes meet the definition of injection wells." Are  
18 you with me there?  
19 A. Yes, I am.  
20 Q. Okay. And could you tell me, is that your  
21 expert opinion?  
22 A. That is my opinion.  
23 Q. Is that your opinion as an expert in this  
24 case?  
25 A. That's my opinion as an expert here, yes.

2 (Pages 2 to 5)

1 Q. Okay. And you're basing that on your legal  
 2 understanding of the definitions of these regulations?  
 3 A. Yes.  
 4 Q. Okay. Are you an attorney?  
 5 A. No.  
 6 Q. Okay. Let's move on to the basis of -- for  
 7 your opinion which is right below that. And you begin,  
 8 it appears, by describing your visit to Goliad County,  
 9 and in the second sentence you say, "My objectives were  
 10 to gather information from the Duderstadts and from  
 11 Mr. Dohmann." Are you with me?  
 12 A. Yes.  
 13 Q. "Regarding water wells in the area and to  
 14 conduct, if possible, a brief survey of the proposed  
 15 Weesatche project exploration area, specifically the  
 16 property owned by Elder Abrameit;" is that right?  
 17 A. Yes.  
 18 Q. And if you could tell me, what information did  
 19 you gather from the Duderstadts?  
 20 A. I was asked to meet with the Duderstadts  
 21 because they had complaints about what they described  
 22 as problems with their water wells, and I was asked to  
 23 meet with them to determine whether or not there was a  
 24 basis for that. The Duderstadts had alleged that the  
 25 problems with their water wells were attributed to the

1 exploration in the area, and so I had arranged to meet  
 2 with them to hear what they had to say and to get a  
 3 look at the lay of the land. I wasn't there to  
 4 formulate a final opinion. I was there just to gather  
 5 initial data, initial impressions, to hear the  
 6 Duderstadts, to talk with Mr. Dohmann, and just make a  
 7 first pass at the site as much as possible.  
 8 Q. And so what actual information did you get  
 9 from the Duderstadts?  
 10 A. Well, the Duderstadts told me that their wells  
 11 were -- filters in their wells were being clogged  
 12 continuously. They claimed that it was related to the  
 13 drilling activities. They told me that they -- how  
 14 long they had lived there. They mentioned other people  
 15 who lived in the area. They talked about Mr. Abrameit  
 16 and about Mr. Dohmann.  
 17 I didn't from the Duderstadts get  
 18 anything of a substantive nature that would allow one  
 19 to draw a firm conclusion about anything. I tried my  
 20 best not to say anything at the time that would give  
 21 the Duderstadts any hope that there was a case to be  
 22 made. As a consultant I thought it was in my best  
 23 interest and their best interest not to go beyond  
 24 anything other than listening and perhaps offering  
 25 comments about things that they might need to know in

1 order to understand how or why certain things occur in  
 2 groundwater in Texas.  
 3 Q. And so you said that they mentioned that they  
 4 had clogged filters and they were claiming that the  
 5 clogged filters were related to UEC's drilling  
 6 activities; is that right?  
 7 A. Yes, they did.  
 8 Q. And do you agree with that assessment?  
 9 A. The Duderstadts' wells really outside of the  
 10 area -- wells were outside of the area that I'm  
 11 concerned about, but I have my -- I have my doubts  
 12 certainly that it is -- problems such as that occur  
 13 regularly throughout Texas. Whether they have occurred  
 14 before with the Duderstadts I really don't know. They  
 15 told me that it hadn't occurred before. But I looked  
 16 at what they had, and knowing what I know about the  
 17 occurrence of iron in shallow aquifers in Texas, I left  
 18 with the impression that I was not convinced that a  
 19 well -- an exploration well a half mile or a mile away  
 20 would be a cause of that particular problem in that  
 21 well.  
 22 Q. And I think you said that the location of the  
 23 Duderstadts' wells is outside of the area that you are  
 24 primarily concerned with.  
 25 A. Right.

1 Q. And that area that you're primarily concerned  
 2 with would be the area that is defined by what?  
 3 A. The production area, the --  
 4 Q. Would other way of defining that be the  
 5 proposed mine permit area?  
 6 A. Yes.  
 7 Q. So would it be correct to state that the  
 8 opinions in your expert report do not address what may  
 9 or may not have affected the Duderstadts' wells?  
 10 A. That's correct. I did not address the  
 11 Duderstadts --  
 12 Q. And are --  
 13 A. -- or any of the other wells outside of that  
 14 mine permit area for the simple reason that those wells  
 15 to me are outside of the area that I think could be  
 16 demonstrated that was impacted by any of the activity  
 17 within the proposed mining area.  
 18 Q. Okay. So moving down -- I'm on the same page  
 19 of your expert report, page 2.  
 20 A. Uh-huh.  
 21 Q. More in the last paragraph towards the middle.  
 22 And there is a sentence that says, "We were on the  
 23 property approximately two hours." Do you see where  
 24 I'm at?  
 25 A. Yes.

1 SIGNATURE  
2  
3 I, BRUCE K. DARLING, PH.D., have read the foregoing  
4 deposition and hereby affix my signature that same is  
5 true and correct, except as noted on the previous page.  
6  
7  
8 BRUCE K. DARLING, PH.D.  
9 STATE OF \_\_\_\_\_  
10 COUNTY OF \_\_\_\_\_  
11 Before me, \_\_\_\_\_, on this day  
12 personally appears BRUCE K. DARLING, PH.D., known to me  
13 (or proved to me under oath or through  
14 \_\_\_\_\_) (description of identity card or  
15 other document) to be the person whose name is  
16 subscribed to the foregoing instrument and acknowledged  
17 to me that they executed the same for the purposes and  
18 consideration therein expressed.  
19 Given under my hand and seal of office this  
20 \_\_\_\_ day of \_\_\_\_\_, 2009.  
21  
22  
23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF \_\_\_\_\_  
25

1 Certified to by me on January \_\_\_\_, 2009.  
2  
3 Marsha Evans  
4 MARSHA EVANS, TEXAS CSR 5100  
5 Expiration Date: 12/31/09  
6 Firm Registration No. 241  
7 1601 Rio Grande, Suite 443  
8 Austin, Texas 78701  
9 512-499-0277  
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*The original certified E-Transcript*  
*file was electronically signed*  
*using RealLegal technology.*

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 VICTORIA DIVISION  
4 GOLIAD COUNTY, TEXAS; CRAIG \*  
5 AND LUANN DUDERSTADT, \*  
6 Plaintiffs \*  
7 VS. \* Civil Action  
8 \* No. 06:08-cv-00018  
9 \*  
10 URANIUM ENERGY CORP., \*  
11 Defendant \*  
12  
13 \*\*\*\*\*  
14 REPORTER'S CERTIFICATION  
15 DEPOSITION OF BRUCE K. DARLING, PH.D.  
16 JANUARY 14, 2009  
17 \*\*\*\*\*  
18  
19 I, MARSHA EVANS, Certified Shorthand Reporter in  
20 and for the State of Texas, hereby certify to the  
21 following:  
22  
23 That the witness, BRUCE K. DARLING, PH.D., was duly  
24 sworn by the officer and that the transcript of the  
25 oral deposition is a true record of the testimony given  
by the witness;  
That the deposition transcript was submitted on  
January \_\_\_\_, 2009 to the witness or to the attorney  
for the witness for examination, signature, and return  
to me by \_\_\_\_\_;  
That pursuant to information given to the  
deposition officer at the time said testimony was  
taken, the following includes all parties of record:  
Mr. Jim Blackburn, Attorney for Plaintiffs;  
Ms. Monica Jacobs and Ms. Diana Nichols,  
Attorneys for Defendant.  
I further certify that I am neither counsel for,  
related to, nor employed by any of the parties or  
attorneys in the action in which this proceeding was  
taken, and further that I am not financially or  
otherwise interested in the outcome of the action.