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Vic McWhorter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 14, 2015

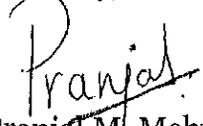
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **URI, INC.**
TCEQ DOCKET NO. 2015-1268-UIC

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,


Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-1268-UIC

APPLICATION BY URI, INC.	§	
FOR RENEWAL AND MAJOR	§	BEFORE THE TEXAS
AMENDMENT OF CLASS III	§	COMMISSION ON
INJECTION WELL AREA	§	ENVIRONMENTAL QUALITY
PERMIT NO. UR02827	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this Response to Requests for Hearing and Request for Reconsideration in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Background of Facility

URI, Inc. (URI or Applicant) operates the Kingsville Dome uranium mine in Kleberg County under Class III injection well area permit no. UR02827. URI applied to the TCEQ for renewal of its Class III injection well area permit No. UR02827 by an application dated September 24, 2012. URI also submitted an application dated December 12, 2012 for a major amendment of the permit to revive the authority to construct and operate injection wells for the mining of uranium. URI subsequently revised its applications to amend the permit range table to include pre-mining groundwater information from wells in Production Area 3 and to revise well plugging methods in the closure plan. The Kingsville Dome Mine is located approximately eight miles southeast of the city of Kingsville and four miles east of the town of Ricardo at 641 FM

1118. The mining operation uses the “in situ” solution mining technique to remove uranium from the subsurface using injection and recovery wells.

B. Procedural Background

TCEQ received Applicant’s application for renewal of its Class III injection well area permit No. UR02827 on September 28, 2012. On December 17, 2012, TCEQ also received Applicant’s application for a major amendment of the permit to revive the authority to construct and operate injection wells for the mining of uranium. The renewal and major amendment applications were processed and reviewed together. Both applications were declared administratively complete on March 19, 2013. The Notice of Receipt of Applications and Intent to Obtain Renewal and Major Amendment of Class III Injection Well Area Permit was issued on March 22, 2013 and published on July 7, 2013 in the *Kingsville Record and Bishop News*. After completion of the technical review by the Executive Director (ED), the Notice of Applications and Preliminary Decision for Renewed and Amended Class III Injection well permit was mailed on March 4, 2015 and was published on April 8, 2015 in the *Kingsville Record and Bishop News* and on April 24, 2015, in the *Corpus Christi Caller Times*. The public comment period for these applications ended on May 26, 2015. The Chief Clerk mailed the Response to Comments and ED’s Decision on July 14, 2015. The deadline to request a contested case hearing was August 13, 2015 and the TCEQ received approximately 29 timely hearing requests including a hearing request from Kelberg County (the County). The County also requested reconsideration of the ED’s decision. Two hearing requestors submitted more than one hearing requests through different mailing addresses. In addition to the County, the following individuals submitted hearing requests:

Candelario Q. Benavente
Heralico Benavente

Blanca Garcia
Ferman Garza

Maria Del Rosario Benavente
Sabina Benavente
Marie Bippert
Will Bippert
Bruce C. Cumberland
Dale Cumberland
Elizabeth Cumberland
Robert De La Rosa
Rolando De La Rosa
Armando Garcia
Beto Garcia

Jeanette Cumberland Hix
Nerio Martinez
Olga Martinez
Diana B. Medina
Richard Scott Medina, Sr.
Carlos Ortegon
Daniel Ortegon
Norma Garza Ortegon
Alfonso R Ramos
Eleuterio L. Saenz
Mark M Walsh

For the reasons stated herein, OPIC recommends that the hearing requests from Kelberg County and 25 other individuals be granted. OPIC further recommends denial of the County's request for reconsideration.

II. APPLICABLE LAW

This application was declared administratively complete on July 1, 2013. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEXAS WATER CODE (TWC) § 5.556).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the

hearing request; and provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

An “affected person” is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. Id. Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.203(b). Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions 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 or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Further, a group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or 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.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

The Commission shall grant an affected person’s timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises

disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

III. DISCUSSION

A. Request for reconsideration

The County's hearing request also requested reconsideration of the ED's decision on these applications. Under 30 TAC § 50.139, any person may file a request for reconsideration. The request must include the reasons why the ED's determination should be reconsidered by the Commission. The County has stated numerous issues and concerns about the application that are within the Commission's jurisdiction. As discussed further below, OPIC recommends that these issues be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. However, at this point in the process prior to further development of the record through a contested case hearing, OPIC cannot conclude whether the applications should be granted or denied in light of the County's concerns. Therefore OPIC must recommend denial of the request for reconsideration. OPIC further discusses the hearing requests below.

B. Determination of affected person status

Kleberg County

By a letter dated August 13, 2015, attorney David Frederick requested a contested case hearing in this matter on behalf of the County. The hearing request states that the County has a commitment to preservation and protection of the health and safety of the County citizens and the control of possible groundwater contamination arising from excursions of contaminated groundwater from the mine or failure to responsibly restore aquifer conditions to approximately pre-mining conditions. The County owns groundwater wells and is concerned about contamination of these wells by the Applicant's mining activities.

Pursuant to 30 TAC §55.203(b), governmental entities, including local governments, with authority under state law over issues contemplated by the application may be considered affected persons. Pursuant to Chapter 26 of the TEX. WATER CODE, county governments have statutory authority to protect their groundwater supplies from contamination, including the ability to bring a civil action in district court to prohibit discharges of contamination into or adjacent to waters of the state. TWC Chapter 26, Subchapter D. Prohibition Against Pollution; Enforcement, and Subchapter E. Authority of Local Governments. The County's request states an interest in protecting its citizens and its natural resources from the effects of polluted groundwater. This interest is recognized by statute. Accordingly, County is an affected person pursuant to 30 TAC §§55.203(b) and 55.203(c)(6). The request is based on concerns about groundwater pollution which are within the Commission's jurisdiction and which may be addressed in a hearing on the pending application. 30 TAC § 55.203(c)(1). Therefore OPIC finds that the County has a personal justiciable interest because it is a governmental entity with statutory authority over groundwater quality issues, and groundwater quality issues are clearly relevant to the application. Therefore, the County is an affected person under 30 TAC § 55.203(b) and (c) (6).

Individual Hearing Requestors claiming to have nearby water well

The hearing requestors listed below state that they live within a mile from the mine and have a water well near the mining area. Each of these requestors expresses a concern about contamination of their water wells and/or drinking water. According to the map prepared by the ED, these individuals either reside or own property less than one mile from the proposed site. Their requests are based on concerns about water pollution which are within the Commission's jurisdiction and which may be addressed in a hearing on the pending application. 30 TAC §§ 55.203(c)(1) and (2). Also, a reasonable relationship exists between an interest claimed and the TCEQ's regulation of the Applicant's proposed activities. 30 TAC § 55.203(c)(3). When combined with their proximity to the proposed mining operation, their water quality interest qualifies as a personal justiciable interest that is not common to members of the general public. 30 TAC § 55.203(a). Therefore, OPIC finds that the following hearing requestors qualify as affected persons in this matter:

Marie Bippert
Will Bippert
Armando Garcia
Beto Garcia
Blanca Garcia
Ferman Garza
Robert De La Rosa

Nerio Martinez
Olga Martinez
Carlos Ortegon
Daniel Ortegon
Norma Garza Ortegon
Alfonso Ramos

Individual Hearing Requestors claiming to have mineral interests

The hearing requestors listed below state that they have surface and/or subsurface ownership interests, including mineral interests in land within the boundaries of the proposed production area. Each has expressed concerns about the effect of pollution from the proposed mining activities on the use and enjoyment of their property and possible contamination of groundwater. According to the map prepared by the ED, these individuals own property on or

within the permit area boundary. Their requests are based on concerns about groundwater contamination which are within the Commission's jurisdiction and which may be addressed in a hearing on the pending application. 30 TAC §§ 55.203(c)(1) and (2). Also, a reasonable relationship exists between an interest claimed and the TCEQ's regulation of the Applicant's proposed activities. 30 TAC § 55.203(c)(3). Given their concerns about the effect of contamination on their mineral interests and their concerns about groundwater, the requestors have a personal justiciable interest that is not common to members of the general public. 30 TAC § 55.203(a). Therefore, OPIC finds that the following hearing requestors qualify as affected persons in this matter:

Bruce C. Cumberland
Dale Cumberland
Elizabeth Cumberland

Jeanette Cumberland Hix
Eleuterio L. Saenz

Other individuals complaining about water contamination

The hearing requestors listed below have expressed concerns about the water contamination and groundwater quality. Their requests are based on concerns about groundwater contamination which are within the Commission's jurisdiction and which may be addressed in a hearing on the pending application. 30 TAC §§ 55.203(c)(1) and (2). Also, a reasonable relationship exists between an interest claimed and the TCEQ's regulation of the Applicant's proposed activities. 30 TAC § 55.203(c)(3). According to the map prepared by the ED, these individuals either reside or own property less than one mile from the proposed site. Given their proximity to the mining operation, their water quality interest qualifies as a personal justiciable interest that is not common to members of the general public. 30 TAC § 55.203(a). Therefore, OPIC finds that the following hearing requestors qualify as affected persons in this matter:

Heraclio Benavente
Sabina Benavente

Diana B. Medina
Richard Scott Medina, Sr.

Rolando De La Rosa

Requestors concerned about their poor health

Candelario Q. Benavente's hearing request mentions that he lives near the digging. The map prepared by the ED shows that he resides within permit area boundary. The hearing request states he would be adversely affected by the proposed activities because he is elderly and of poor health. Maria Del Rosario Benavente's hearing request mentions that she lives near the digging. The map prepared by the ED shows that she resides within permit area boundary. The hearing request states that she would be adversely affected by the applications because she is of poor health. Because of their locations relative to the permitted activities and the stated concerns about adverse impacts on their health, OPIC finds that Candelario Q. Benavente and Maria Del Rosario Benavente are affected persons.

Requester for whom OPIC lacks sufficient information

Mark Walsh's hearing request states concerns about the possible reduction in the quality of water in the Goliad Aquifer in Kleberg County. He is concerned about decreased available water for livestock and agricultural use. His mailing address is listed in his hearing request. However, his location cannot be traced on the map prepared by the ED. Without further information about Mr. Walsh's location relative to the facility, OPIC is unable to determine whether he has a personal justiciable interest. Therefore, based on the information presently available, OPIC cannot recommend granting the hearing request of Mr. Walsh.

C. Issues raised in the hearing request

1. Whether the proposed actions under URI's applications would contaminate the groundwater at Garcia Hill?
2. Whether the proposed actions under URI's applications would contaminate water wells?

3. Whether the proposed actions under URI's applications would interfere with the use and enjoyment of nearby property?
4. Whether the proposed actions under URI's applications would affect the health and safety of nearby residents?
5. Whether the proposed actions under URI's applications would negatively impact the value of the neighbor's land or property and cause any financial harm to the neighbors?
6. Whether the Applicant has demonstrated that the groundwater quality will be restored to pre-mining levels?

D. Which issues raised in the hearing request are disputed

All of the issues raised in the hearing request are disputed.

E. Whether the dispute involves questions of fact or of law

The disputed issues involve questions of fact.

F. Whether the issues were raised during the public comment period

Eleuterio Saenz filed the only timely comments on the application. He raised the issue of whether URI has allowed permitted activities to contaminate groundwater and whether continued operations under the renewed and amended permit would continue to cause groundwater contamination.

G. Whether the hearing request is based on issues raised solely in a public comment which has been withdrawn

The hearing requests are not based on issues raised solely in a public comment which has been withdrawn.

H. Whether the issues are relevant and material to the decision on the application

In order to refer an issue to the State Office of Administrative Hearings ("SOAH"), the

Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. See 30 TAC §§ 55.201(d)(4), 55.209(e)(6) and 55.211(c)(2)(A).

Relevant and material issues are those governed by the substantive law under which this permit is to be issued. See *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs.”)

The Commission is responsible for the protection of water quality under the TWC Chapter 26, 27 and 30 TAC Chapters 305, 307, and 30. TWC Chapter 27 requires the Commission to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and to prevent the underground injection that may pollute fresh water. Therefore the issue concerning groundwater contamination raised during the comment period is relevant and material.

The Commission does not have jurisdiction to address issues concerning decreasing value of the land or properties or other related financial harm to the requesters as a part of this permitting process. Therefore, issue no. 5 related to negative impact on the value of the neighbor's land or property or any other related financial harm is not relevant and material.

I. Issue for Referral

In light of the discussion above concerning the sole issue raised during the comment period, OPIC recommends that the Commission refer the following disputed issue of fact to SOAH for a contested case hearing:

1. Whether URI has allowed permitted activities to contaminate groundwater and whether continued operations under the renewed and amended permit would continue to cause groundwater contamination.

IV. MAXIMUM EXPECTED DURATION OF HEARING

Commission Rule 30 TAC § 55.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

V. CONCLUSION

For the reasons stated above, OPIC recommends granting the hearing requests from Kleberg County and the individuals listed below:

Candelario Q. Benavente
Maria Del Rosario Benavente
Heralico Benavente
Sabina Benavente
Marie Bippet
Will Bippet
Bruce C. Cumberland
Dale Cumberland
Elizabeth Cumberland
Rolando De La Rosa
Robert De La Rosa
Alfonso Ramos
Armando Garcia

Beto Garcia
Blanca Garcia
Ferman Garza
Jeanette Cumberland Hix
Nerio Martinez
Olga Martinez
Diana B. Medina
Richard Scott Medina, Sr.
Carlos Ortegon
Daniel Ortegon
Norma Garza Ortegon
Eleuterio L Saenz

OPIC recommends the issues listed in Section III. I above be referred to SOAH for a hearing with a duration of nine months. OPIC also recommends denial of the County's request for reconsideration and denial of the hearing request of Mark Walsh.

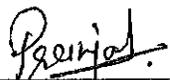
Respectfully submitted,

Vic McWherter
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Pranjal M. Mehta

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