

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

November 15, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. 512/239-5533

Re: SOAH Docket No. 582-09-3064; TCEQ Docket No. 2008-1888-UIC; Application of Uranium Energy Corporation for Class III Injection Well Permit No. UR03075, for Aquifer Exemption, and for Production Area Authorization No. 1 in Goliad County, Texas

Dear Mr. Trobman:

This responds to the exceptions to my Proposal for Decision (PFD) filed by the Executive Director (ED) and Uranium Energy Corporation (UEC).

In summary, the ED and UEC contend that a remand for UEC to conduct a Northwest Fault pump test and to receive additional evidence regarding that pump test, is unnecessary because: (1) such pump test and determination whether the Northwest Fault is sealed or transmissive is not required by TCEQ rules for the issuance of a Class III injection well mine permit; and (2) the area proposed to be mined pursuant to the initial production area authorization will not involve the Northwest Fault. They further contend that a pump test to determine whether the Northwest Fault is transmissive will only be required if, and when, UEC applies in the future for a production area authorization to mine in close proximity to the Northwest Fault.

Although I find the arguments supporting the ED's and UEC's exceptions persuasive, I also find them inconsistent with: (1) the scope of Issue G as referred by the Commission, and (2) the manner in which the issue was litigated.

Issue G: Does the application adequately characterize and describe the geology and hydrology in the proposed permit area, including fault lines, under the applicable rules?

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The 21 issues referred to SOAH for a contested case hearing, including Issue G, were referred with respect to the Class III injection well mine permit application, not the application for a production area authorization. Issue G focuses on the characterization of the geology, hydrology, and fault lines in the proposed permit area, not the proposed production area. The answer to Issue G bears directly on other issues – whether the application is sufficiently protective of groundwater -- will the applicant be able to comply with rule requirements – whether mining fluids will migrate vertically or horizontally and contaminate an underground source of drinking water (USDW) – whether any USDW's in Goliad County will be adversely impacted by the proposed *in situ* mining.

In its direct case, UEC presented the expert testimony of Dr. Philip Bennett to specifically address whether fluids will migrate vertically along faults in the mine permit area. He opined that “[t]here is no evidence suggesting there is present-day movement of fluids along the faults mapped in the Mine Permit Area.” He based his opinion on a four-hour Northwest Fault pump test performed by UEC. If, as the ED and UEC now contend, consideration of whether the Northwest Fault is transmissive or sealed is irrelevant to the determination whether a mine permit should be issued, then it begs the question: why was the evidence presented for that purpose? Further, when Mr. Murry testified at the hearing concerning the “messy” graphical depiction of the 24-hour Northwest Fault pump test – that it showed hydraulic connectivity across the fault – in direct conflict with the testimony of Dr. Bennett concerning the same graph, the ED made no attempt, through re-direct or otherwise, to indicate that any uncertainty regarding the characterization of the Northwest Fault was irrelevant.

The Commission's further guidance would be helpful. If the Commission adopts the recommendations of the ED and UEC, in their exceptions to the PFD, that the characterization of the Northwest Fault is not required with respect to the “proposed permit area,” but only at some time in the future if, and when, UEC applies for a production area authorization to mine in close proximity to the Northwest Fault, then the Commission should enter an order as recommended by the ED. On the other hand, if the Commission decides that adequate characterization of the Northwest Fault, including whether it is transmissive, is relevant to the application for a Class III injection well mine permit, then the docket should be remanded to SOAH in accordance with the recommendation in the PFD.

With regard to the exceptions submitted by Goliad County and Goliad County Groundwater Conservation District, I recommend no changes to the PFD.

Sincerely,


RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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REGARDING:

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DOCKET NUMBER:

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