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October 21, 2010

La Donna Castanuela, Chief Clerk
State Office of Administrative Hearings
12100 Park Circle, MC-105
Austin, Texas 78753-1808

RE: *Application of Uranium Energy Corp. for permit No. UR 03075, Aquifer Exemption and Production Area Authorization UR 03075PAA-1 in Goliad County, Texas;* SOAH Docket No. 582-0903064 and TCEQ Docket No. 2008-1888-UIC consolidated with SOAH Docket No. 582-09-6184 and TCEQ Docket No. 2009-1319-UIC

Dear Ms. Castanuela:

Enclosed please find two originals of Protestant Goliad County Groundwater Conversation District's Exceptions to Proposal for Decision in the above referenced hearing.

Please return a file marked copy of this letter in the enclosed stamped envelope. If you have any questions, please do not hesitate to contact me.

Sincerely,

Rob Baiamonte

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SOAH DOCKET NO. 582-09-3064
TCEQ DOCKET NO. 2008-1888-UIC
AND
SOAH DOCKET NO. 582-09-6184
TCEQ DOCKET NO. 2009-1319-UIC

APPLICATION OF URANIUM ENERGY CORP. FOR PERMIT NO. UR 03075 AND FOR AQUIFER EXEMPTION AND PRODUCTION AREA AUTHORIZATION UR03075PAA1 IN GOLIAD COUNTY, TEXAS	§	AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROTESTANT GOLIAD COUNTY GROUNDWATER CONSERVATION DISTRICT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION

COMES NOW, Goliad County Groundwater Conservation District ("GCGCD"), and pursuant to Judge Wilfong's letter dated October 4, 2010 file this its Exceptions to the Administrative Law Judge's Proposal for Decision in the above referenced matter. GCGCD requests that the Class III Injection Well Permit, the Aquifer Exemption and the Production Area Authorization be recommended for denial for the following reasons:

Introduction

These Exceptions to the Proposal for Decision are submitted on behalf of GCGCD, a political subdivision of the State of Texas. The primary issues of concern to GCGCD are (1) The Application for the Class III Injection Well Permit is not in the public's interest under Texas Water Code §27.051(a), (2) the Aquifer Exemption Area currently serves an underground source of drinking water for human consumption under 30 TAC §331.13(c) (1), (3) the Application for the Class III Well Permit does not take into consideration the numerous abandoned boreholes in the proposed permit area thereby not addressing vertical contamination of the overlying and underlying sands, and (4) the Application for Class III Permit does not protect groundwater quality.

Exception to VI. Issue A.

Whether the use and installation of the injection wells are in the public interest under Texas Water Code §27.051(a).

Public interest in regard to this issue includes whether UEC's mining operation or restoration will adversely impact the public interest by unreasonably reducing the amount of groundwater available for permitting by the Goliad County Groundwater Conservation District. GCGCD recognizes groundwater law in Texas is based on the common law "rule of capture" which first came about over 100 years ago. However, the rule of capture has been modified by the

legislature by enacting Chapter 36 of the Texas Water Code which creates groundwater conservation districts.

Chapter 36.101(a) provides:

> "A district may 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 the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by the chapter." (emphasis added)

This is in direct conflict with the rule of capture which allows a party to pump as much water as they want. The reason the two theories of law coexists is the rule of capture still applies in counties that are not under the jurisdiction of a groundwater conservation district.

Chapter 36 requires groundwater conservation districts to adopt management plans which are approved by the Texas Water Development Board. GCGCD's management plan DOES restrict groundwater usage to ½ acre foot per acre per year. GCGCD disagrees with the Judge's conclusion, on page 24, that there is no law that prohibits one party from pumping so much water that it decreases the amount of groundwater available to others. There is such authority given to groundwater conservation districts in Chapter 36. That is exactly the intent of the legislature when it enacted Chapter 36 creating groundwater conservation districts. The mandate was to protect and conserve the use of groundwater on a sustainable basis, thereby meeting the state's water demands for the future. The legislature was well aware of the rule of capture when it passed Chapter 36 and recognized it would not serve Texas' future well, therefore it created groundwater conservation districts to manage groundwater on a local basis in conjunction with regional groundwater districts and the state's overall water plan. GCGCD is not aware of any groundwater district in the state that does not restrict groundwater use. The rule of capture only applies in counties where there is no groundwater district. Since Goliad County has a groundwater district the rule of capture does not apply in this case.

GCGCD also recognizes that it may not have any authority to restrict groundwater use within the proposed permit area, but it certainly has such authority outside the permit area. That is GCGCD's concern. If water tables drop outside the permit area GCGCD will be forced to reduce groundwater permitting surrounding the proposed permit area. This is not in the public interest. GCGCD will manage the groundwater, to the best of its ability, on a sustainable basis to the determent of the surrounding landowners if the circumstances require it to do so. The bottom line is UEC gets to benefit and surrounding landowners bear the cost.

Exception to VIII. Issue C

Does the application adequately and accurately describe baseline conditions of the groundwater in the proposed permitted area under applicable requirements of 30 TAC Chapter 331?

The issue is whether or not UEC has described baseline groundwater quality in the *proposed permitted area*, not just the mineralized zones. All the evidence indicates the water samples were taken in or near the ore bodies, no water samples were taken in the hundreds of acres in the eastern part of the permit area and the southern part of the permit area. The issue is whether or not the water samples adequately and accurately describe baseline conditions of groundwater in the *entire proposed permit area*, not just the mineralized zone. This cannot be emphasized enough. GCGCD contends that since UEC only obtained water quality data from the mineralized zones it should not be allowed to extend this targeted sampling and apply it across the *entire* permit area to say the *entire* permit area exceeds drinking water standards. There is no basis in science to allow this. There is no data indicating the concentrations of uranium and radium-226 is in excess of the drinking water standard in the permit area outside the mineralized zones. There are hundreds of acres of groundwater within the proposed permit area that were never tested and no one can state whether or not uranium and radium-226 levels are in excess of drinking water standards. UEC has failed to meet it burden on this issue, therefore the permits should be denied.

Exception to X. Issue E

Has the Applicant demonstrated that the proposed exempted aquifer meets the applicable criteria of 30 TAC §331.13?

The aquifer exemption was drawn to exclude the Braquet wells, downgradient of the eastern portion of the aquifer exemption area, even though the B Sand ore body extends past the monitoring well ring for B Sand in the PAA-1 permit. Applicant is giving up mining that ore in order to exclude a source of drinking water for human consumption. It is quite clear the only purpose for drawing the aquifer boundary was not based on hydrology or geology, just to circumvent the intent of the rule.

Based on the hydraulic properties of the B Sand, water within the proposed exemption area will reach the Braquet wells within a period of about two years, and therefore the source of drinking water to these wells is clearly obtained from within the proposed aquifer exemption boundary *within the time frame of the proposed mining operation.* GCGCD takes exception to the idea that the source of drinking water is *only* determined at the "snapshot" time the application is filed, but the totality of the project should be considered. If not, the intent of the aquifer exemption is meaningless. As was pointed out, a water well one foot outside the aquifer exemption boundary would receive its water from the exemption area, but is not considered. This interpretation defies logic and science. The plain meaning of the rule requires a well one foot from the exemption boundary to be considered. That well is getting it source of water from the exemption area, this is undisputed. The mining project is projected to last eight years and during that period the Braquet wells *will* receive water from the exemption area. Again, this is undisputed. GCGCD believes the intent of the aquifer exemption is to protect sources of drinking water for human consumption now and during the mining process. To believe otherwise means a well one foot outside the aquifer exemption boundary can be contaminated. This belief renders the rule meaningless.

GCGCD recommends the aquifer exemption be denied because UEC has not meet the requirements of 30 TAC §331.13(c) (1).

Exception to XI. Issue F

Is the application sufficiently protective of groundwater quality?

GCGCD has proven there is a real problem protecting the groundwater quality with a lack of analysis of the abandoned boreholes and the lack of monitoring in the mine permit area, specifically Sand A.

First, the abandoned boreholes. The evidence was abundant that between Moore Energy and UEC there were hundreds and hundreds of boreholes that were not even considered in evaluating pathways across confining layers. There are so many penetrations into the mine permit area with no analysis of the effect. This goes totally against whether the application is protective of groundwater.

Dr. Galloway could not even give an opinion on what a 20 year abandoned borehole might look like. Dr. Bennett opined that the earth's own forces would push the sides of the borehole together thereby filing in the void. Using Dr. Bennett's theory the sands on each side of the borehole would line up and there would be communication across the sand. Nothing in the borehole would seal the borehole which will allow mining fluids to travel vertically as well as horizontally. During mining operations the sands will be under increased pressure thus increasing the likelihood migration of these mining fluids via the boreholes.

Another plausible theory is the abandoned borehole is similar to a vault and may or may not be a vertical pathway for communication between the confining layers. There is NO data indicating the boreholes act as a barrier or partial barrier to migration of mining fluids. The point is there are so many boreholes and *no* data on how a borehole would react under mining conditions. GCGCD believes *some* testing should be done. This is just too important an issue to leave to opinions that have no data to support them. UEC has the modeling capability to run such a scenario. Pump tests can be performed to determine how an abandoned borehole would react under mining conditions. In the PAA-1 there are 61 abandoned boreholes alone. It is a big question whether or not these boreholes are potential pathways between the confining layers and GCGCD believes the applications do not sufficiently protect groundwater quality because there is no analysis of this issue.

Second, the lack of monitoring wells. GCGCD's witness, Mr. Blandford attached to his direct testimony as Exhibit C a map he put together showing the A Sand monitoring wells (OMWs 1-9) and the B Sand monitoring wells (BMWs 1-22), a copy is attached to this response for the court's convenience. What GCGCD wants to point out is there are no monitoring wells in the A Sand downgradient or to the right of OMWs 6, 8 & 9. There are 6 abandoned boreholes downgradient. If mining fluids migrate vertically upward from B Sand to A Sand during mining through one or more boreholes there is no monitoring in place downgradient that will detect an excursion, if it occurs. It follows that there will be no clean-up of the excursion as well. Any possible

contamination of A Sand would flow pass the BMWs and out of the aquifer exemption area undetected. Consequently, existing monitoring requirements for A Sand are insufficient. This is unacceptable and is not protective of groundwater quality.

GCGCD agrees there should be additional testing regarding the transmissivity of the Northwest Fault. GCGCD suggests UEC should be required to develop an aquifer testing plan that describes in detail how the pump test will be performed. The plan should include test duration and monitor wells selected. The pump test should be conducted for a sufficient period of time to significantly stress the aquifer units across zones of reduced hydraulic conductivity, the fault. Since there was a response detected for the 24-hour testing period, the new test should be conducted for at least 72 hours if the monitoring wells and pumping rates are the same. GCGCD recommends all parties or their agents are present during the testing.

GCGCD also recommends multiple sands be monitored on each side of the fault as part of UEC plan. Specifically, water levels in Sands A, B and C should be monitored on each side of the fault, because the nature of vertical communication at and across the fault is unknown, and existing data appears to indicate that there is hydraulic communication. The plan should not only evaluate the communication within the same sand across the fault, but also different sands across the fault, since offset at the fault could lead to this type of scenario.

Exception to XII. 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?

It is absolutely essential the abandoned boreholes be evaluated in order to accurately describe the hydrology of the mine permit area. GCGCD just reiterates its Exception to Issue F here.

Exception to XXIII. Issue R

Whether mining fluids will migrate vertically or horizontally and contaminate an USDW (underground source of drinking water).

As stated earlier, there are many abandoned boreholes that have not been figured into any analysis. There is evidence that a 1% bleed may not be sufficient to control an excursion, both of these issues will affect vertical and horizontal migration. The data collected and analysis preformed by UEC is non-existent and there is no assurance that vertical and horizontal contamination won't occur, thereby contaminating an USDW.

This court expressed concerns about the lack of an engineering study of borehole transmissivity. GCGCD recommends this study be included as a part of the Proposal for Decision to the TCEQ Commission on remand.

In addition, the court again expressed concern about Texas' historical acceptance of a 1% bleed to control mining fluid migrations in lieu of an engineering-based study. UEC has access to a state-of-the art hydrogeological model in place that can run that scenario. UEC can run this

model showing injection wells, production wells and their proximity to abandoned boreholes to determine if a 1% bleed is appropriate or if a higher bleed will be required. Since a higher bleed can substantially affect the water balance under operational conditions, why not require of UEC at least an estimate of what the bleed will be at this specific site, developed using their groundwater model that UEC asserts will assist them with optimizing capture of mining fluids and reclamation of contaminated groundwater? GCGCD recommends the court include this analysis in its Proposal for Decision to the TCEQ Commission on remand.

Conclusion

In summary, the mine permit, the PAA-1 and the aquifer exemption should be denied. GCGCD does have the authority and power, as given to it by the legislature, to regulate groundwater use outside the mine permit area. The rule of capture does not apply to Goliad County. This has not been challenged in the courts and the two theories of law are in harmony with each other. The rule of capture only applies in counties that are not under the jurisdiction of a groundwater district. The legislature created groundwater conservation districts in 1995. They were aware of the rule of capture when they created Chapter 36. It was the intent to let the local citizens decide, by election, to create a groundwater district. If the majority of the citizens voted for the district it put the citizens under the authority of the groundwater district, as set out in Chapter 36. This authority requires the district to create and implement a management plan that conserves and protects the groundwater. GCGCD's plan *does* restrict usage of groundwater and said plan was approved by the Texas Water Development Board.

It is quite apparent the aquifer exemption is not appropriate. The boundary was drawn to exclude the Braquet wells. The problem with drawing the exemption boundary line to exclude a couple of wells is the groundwater does not stop at the aquifer exemption boundary. The aquifer *is* a source of drinking water for human consumption right now, not only for the Braquet wells, but for the wells downgradient of the mining project. Contamination will move downgradient from the aquifer exemption area and contaminate downgradient wells, this is the science. To believe the well has to be within the aquifer exemption area to serve as a source of drinking water skews the intent of the rule and ignores the science.

There are so many possible pathways for mining fluids to communicate with underlying and overlying sands through abandoned boreholes that have not been considered rendering the hydrology data inaccurate. These artificial penetrations are pathways that should be considered. There are literally hundreds of old (drilled in 70's and 80's) and new boreholes (drilled by UEC) in the mine permit area that has not been taken into consideration. Hundreds of possible pathways with no hydrologic data and analysis. UEC must be able to demonstrate, with engineered-based data, that these boreholes will not play a role in the mining process. UEC has not done this and the permits should be denied.

In the alternative, GCGCD recommends the court include in the Proposal for Decision an engineered-based study on the abandoned boreholes and the amount of bleed necessary to contain mining fluids. Additionally, GCGCD recommends the court require UEC to conduct a pump test on the Northwest Fault that includes UEC developing an aquifer testing plan that describes in detail how the pump test will be performed. The plan should include test duration and monitor

wells selected. The pump test should be conducted for a sufficient period of time to significantly stress the aquifer units across zones of reduced hydraulic conductivity, the fault. The new test should be conducted for at least 72 hours if the monitoring wells and pumping rates are the same. GCGCD recommends all parties or their agents are present during the testing.

GCGCD also recommends multiple sands be monitored on each side of the fault as part of UEC plan. Specifically, water levels in Sands A, B and C should be monitored on each side of the fault, because the nature of vertical communication at and across the fault is unknown, and existing data appears to indicate that there is hydraulic communication. The plan should not only evaluate the communication within the same sand across the fault, but also different sands across the fault, since offset at the fault could lead to this type of scenario.

Respectfully submitted,
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CERTIFICATE OF SERVICE

On this the 21st day of October, 2010, a true and correct copy of the foregoing instrument was served on all attorneys and parties of record by the undersigned via the method noted below.

/s/ Rob Baiamonte

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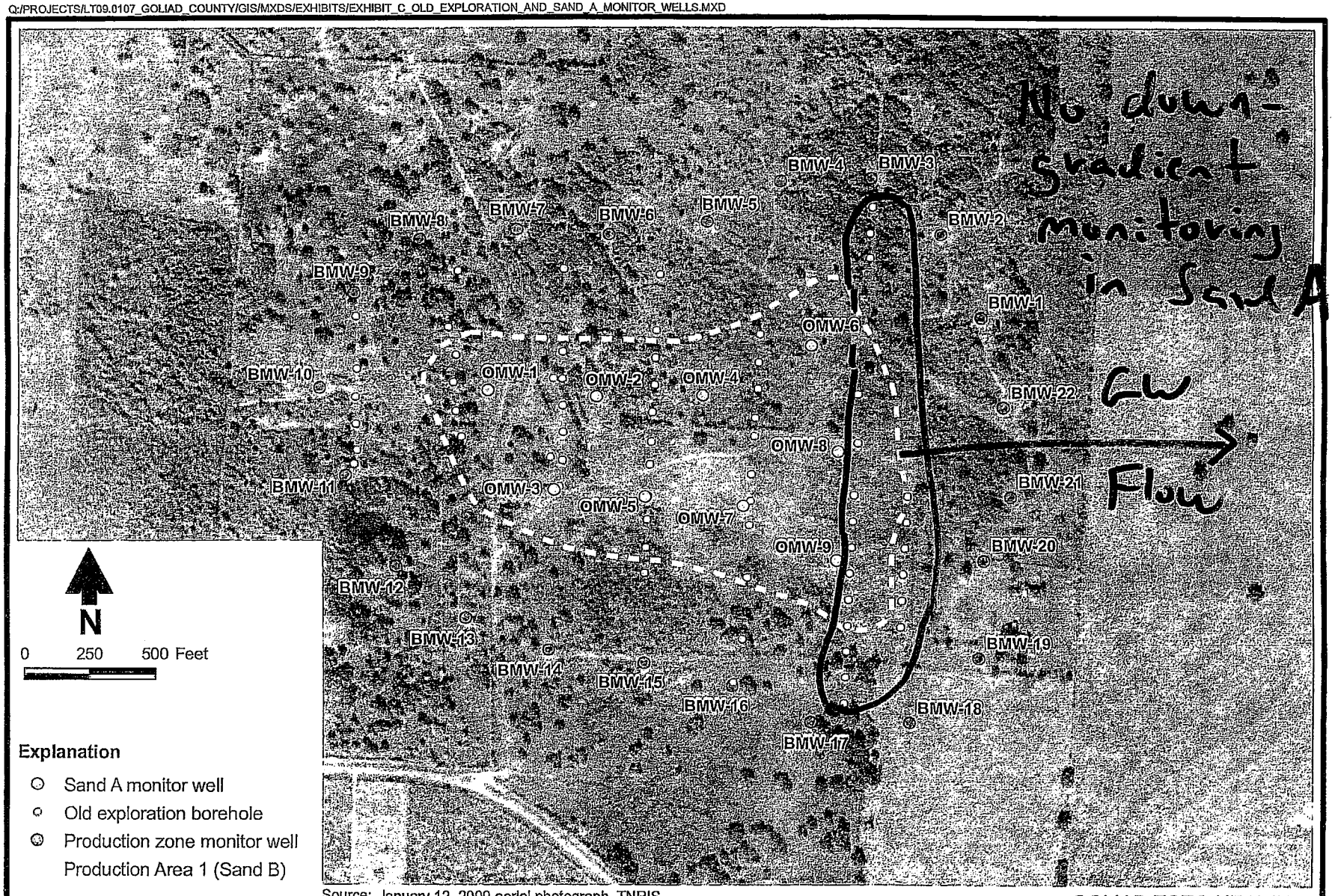

Source: January 12, 2009 aerial photograph, TNRIS
StratMap 2008-2009 Texas Ortho Imagery Program

Daniel B. Stephens & Associates, Inc.
2/17/2010
JN LT09.0107

GOLIAD TCEQ HEARING

Monitor Well and Old Borehole Locations

Exhibit GCGCD Blandford C