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UNITED STATES OF AMERICA

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	Docket No. 40-8838-MLA
)	
U.S.ARMY)	ASLBP No. 00-776-04-MLA
)	
(Jefferson Proving Ground Site))	October 2, 2007

SURREPLY OF INTERVENER SAVE THE VALLEY, INC.

Pursuant to 10 C.F.R. § 2.1207(a)(2) and the Scheduling Order issued by the Atomic Safety and Licensing Board ("Board") on May 15, 2007, as amended on August 28, 2007, Intervener Save the Valley, Inc. ("Save the Valley" or "STV") hereby submits its Surreply to the Replies of the Army and the Staff, filed on September 25, 2007. This Surreply is supported by the Surrebuttal Testimony of Charles Norris, Diane Henshel, and James Pastorick, which is being filed herewith in response to the Rebuttal Testimony of the witnesses for the Army and the Staff, also filed on September 25, 2007.

I. Major Issue Sets Among the Parties

STV submits that the Replies and Rebuttal Testimony of the Army and the Staff show that the major issue sets among the Parties remain essentially the same as those which were described in STV's Reply on September 18, 2007, with one notable exception. STV is gratified that its expressed concerns regarding the *ad hominem* attacks previously made against its expert witnesses have been responded to affirmatively by the other Parties and the exchanges among the Parties, while still sharp, are now focused on the issues and not on personalities. STV acknowledges and appreciates what it considers to be the improved tenor of the debate.

TEMPLATE = SECY-055

SECY-02

Moreover, STV does detect some adjustments and clarifications in the positions of the other Parties which do both narrow and refocus, slightly, what STV still perceives to be major differences on the four substantive issue sets previously described in its Reply. STV will devote the remainder of this Surreply to reframing those four issue sets in light of the additional information and perspective provided by the Replies and Rebuttal Testimony of the Army and the Staff and the Surrebuttal Testimony of STV.

I. Purpose of Field Sampling Plan:

“Adequate” Site Characterization vs. “Additional” Site Characterization

STV continues to differ with the Army and the Staff as to whether the purpose of the Field Sampling Plan (FSP) is JPG DU site characterization which would be “adequate” to support a completed restricted release decommissioning plan by 2011 or merely “additional” JPG site characterization activities sufficient to support a five-year delay in the submission of a decommissioning plan. The standard of “adequacy” which STV and its expert witnesses believe should be applied is whether completion of the FSP as designed would result in JPG DU site characterization within five years sufficient to support a restricted release decommissioning plan and the associated Safety Evaluation Report (SER) and Environmental Impact Statement (EIS). STV continues to believe that this is the correct legal standard for evaluating the “adequacy” of the FSP pursuant to 10 C.F.R. § 40.42 given the regulatory context established by the factual circumstances at the JPG DU site and the already protracted history of JPG DU site decommissioning activities.

STV recognizes that the Base Realignment and Closing (BRAC) process makes funding JPG decommissioning difficult, especially in a time of tightening federal fiscal constraints. STV also recognizes that the Nuclear Regulatory Commission (NRC) faces special legal and political constraints in regulating

the Department of the Army. However, STV believes, strongly, that adoption of the considerably lower standard of “adequacy” for JPG DU site characterization being proposed by the Army and the Staff is legally and technically unwarranted and would be perceived by the leadership of the local community as a “bait and switch” tactic by the Army which would constitute a breach of faith by the federal government with the local community. To reiterate what STV said in its Reply and Rebuttal because the Replies and Surrebuttal Testimony of the Army and the Staff show that it has not happened yet, a sea change is still needed in the focus of the site characterization, from “let’s wait and see whether we must have this information to calculate the RESRAD numbers” to “if we’re going to leave this much uranium and this much ordnance on this site forever, we want to be very, very certain we haven’t overlooked *anything* that may threaten our neighbors or everyone’s environment.”

II. Results of the Field Sampling Plan:

Detection and Mapping of the Mobility in the Environment of DU at Low Concentrations

Closely related to Issue Set I, STV also continues to differ with the Army and the Staff as to whether the FSP’s sampling procedures must be able to detect and map the mobility in the environment of DU at low concentrations. STV and its expert witnesses strongly believe that it is necessary for the FSP’s sampling procedures to be able to detect and map the mobility in the environment of DU at low concentrations. This is because, from STV’s perspective, mobility in the environment of DU at low concentrations is both a present reality and a future inevitability. The only truly open questions are how much, how fast, and by what specific pathways that mobility is now and will in the future be occurring. Thus, “adequate” site characterization must be able to support not only peak radiation dose calculations to humans in the near term, but also direct, indirect, and cumulative environmental and public health impacts

from both radioactivity and toxicity attributable to JPG DU for at least 1,000 years.

In this regard, STV believes that there may be some degree of recognition on the part of both the Staff and the Army's contractor that the data collection, analysis and interpretation techniques currently employed in the Environmental Radiation Monitoring (ERM) Program are not be appropriate for the FSP. STV's relief at this apparent recognition is considerably reduced, however, by the absence of any indication that the FSP Addendum addressing those techniques in detail is being expedited and by the stated conclusion in the testimony that the techniques being successfully employed in Europe are beyond the technical capabilities of the U.S. Army and its contractors. From STV's perspective, this fundamental defect *must* be corrected for the FSP to be evaluated as "adequate" for its intended purpose.

III. Methodology of the Field Sampling Plan:

Characterization Data Determined by Complete, Detailed Site Sampling and Modeling or by Bounded Peak Dose Calculations

Closely related to Issue Sets I and II, STV still differs with the Army and the Staff as to whether the FSP need only collect, analyze and interpret characterization data to support bounded peak dose calculations instead of complete, detailed site sampling and modeling. STV and its expert witnesses believe emphatically that the FSP must be able to support complete, detailed site sampling and modeling and not merely bounded peak dose calculations in order to be "adequate" for its intended purpose. This is because, from STV's perspective, adequate site characterization must be able to support not only peak radiation dose calculations to humans in the near term, but also direct, indirect, and cumulative public health and environmental impacts from both radioactivity and toxicity attributable to JPG DU for at least 1,000 years.

In this context, STV acknowledges that the Staff has apparently recognized in its September 25 filing that there is a need for computer modeling in addition to RESRAD to simulate the karst hydrogeology which dominates the JPG DU site. However, STV also expresses its grave concern that this welcome recognition is largely vitiated by the accompanying statement that the definition of the additional modeling and the collection of the additional site-specific data required to support the additional modeling can wait until the Army prepares its decommissioning plan. From STV's perspective, complete, detailed characterization of the karst hydrogeology is the single most critical component of JPG DU site characterization and it should not be deferred to the indefinite future.

Moreover, STV must acknowledge its disappointment that the Army's response to STV's rebuttal testimony that the presence of UXO at the JPG DU site is not a valid reason to have a suboptimal site characterization plan was to move to strike the STV testimony. From STV's perspective, this action evidences not only the Army's continued attachment to a classic "red herring" as an issue but also its unwillingness to have both sides of that issue heard by the Board. As the STV testimony shows, UXO should not be a significant issue with respect to the design of the FSP. But, if the Army's witnesses testify that it is, then STV's witnesses should be permitted to testify that it is not.

IV. Evolution of the Field Sampling Plan:

The Ability of the FSP to Change Sufficiently in the Future to Resolve Present Inadequacies

Closely related to Issue Sets I, II and III, STV also continues to differ with the Army and the Staff as to whether the FSP may reasonably be expected to change sufficiently in the future to resolve the inadequacies STV challenges in the Plan as currently defined. STV and its witnesses believe that the FSP as currently defined may *not* reasonably be expected to change sufficiently in the future to resolve its

challenged inadequacies. This is because the testimony has been consistent that the Army expects the Plan to change significantly only in response to Staff Requests for Additional Information (RAIs) and the Staff has repeatedly stated that it does not believe that the goal of the FSP is to achieve JPG DU site characterization within five years sufficient to support a restricted release decommissioning plan and the associated SER and EIS.

STV has received no reassurance in this regard at all from the Reply and Rebuttal Testimony of the other Parties. Of special but far from exclusive concern is the expected deferral of the karst modeling and data collection issues to the future JPG DU site decommissioning plan rather than a near-term addendum to the FSP. Also of special concern is the absence of any commitment by the Army and the Staff to a prompt addendum describing FSP sampling data collection, analysis, and interpretation techniques that would detect and map the mobility in the environment of DU at low concentrations. Without the critical karst characterization in process and the required data collection, analysis and interpretation techniques in place, the FSP sampling procedures will simply not provide the data required to inform the Plan's evolution in the needed ways. These important, tangible examples illustrate the very limited flexibility which really exists for the FSP to evolve in the future to address its present inadequacies given the Army's and Staff's highly limiting views of the Plan's intended purpose and the crucially incomplete picture the Plan as now designed will provide of DU mobility in the JPG site's complex hydrogeology.

V. Details of the Field Sampling Plan:

Specific Unresolved Technical Issues with Respect to Particular FSP Components

As STV reads the Rebuttal Testimony of the Army and Staff witnesses, several technical issues between the Parties have been clarified to a certain extent, but none have been completely resolved.

Specifically, the following major technical issues remain outstanding:

1. The Staff has acknowledged that the seepage run studies sought by STV might yield useful data that could be obtained in the future, but still maintains that there is no immediate need for the studies to assist in determining additional sampling well placements, which the Staff states will be located using the same aerial photograph and EI methodology used in the initial placements. Neither the Staff nor the Army has yet acknowledged that seepage run studies are also needed to enable stream gauging sites to be placed in locations that will collect the data required for reliable interpretation of how much precipitation recharge infiltrates into the aquifers under the site.

2. The Staff has acknowledged the importance of the DU site's karst hydrogeology to adequate site characterization, but has stuck to its position that no additional characterization measures or data are required during the five-year term of the FSP to enable adequate karst characterization and its appropriate integration into the current conceptual model and eventual computer simulation for the entire DU site.

3. Both the Staff and the Army continue to adamantly reject *any* air sampling or additional biota sampling beyond the deer sampling already performed. With respect to the additional biota sampling, STV has recently been advised that there may be an alternative worth consideration in that other agencies have collected biota samples which are still available and might be used for FSP purposes also.

4. The Staff continues to defend the Kd model as a reasonable way to simulate uranium sequestration at the JPG site notwithstanding the complexity of the site hydrogeology, including the site-wide presence of carbonate aquifers and alkaline ground water under the varied, unconsolidated surficial sediments.

5. The Staff and the Army both continue to avoid addressing the pressing issues associated with

the clear inadequacies of the ERM Program data collection, analysis and interpretation techniques to meet the very different needs of the FSP.

VI. Conclusion

Notwithstanding the Reply and Rebuttal Testimony of the Army and the Staff, STV maintains its position that the Army's FSP is inadequate for its intended purpose with respect to the planned decommissioning of the JPG DU site for the reasons and in the respects outlined in this Surreply and accompanying Surrebuttal Testimony and previously explained in STV's Reply and Initial Statement of Position, as well as the accompanying initial and rebuttal testimony of STV witnesses Norris, Henshel and Pastorick.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael A. Mullett", is written over a rectangular area with a light gray, textured background.

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

Docket No. 40-8838-MLA

U.S.ARMY)

ASLBP No. 00-776-04-MLA

(Jefferson Proving Ground Site))

October 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Surreply of Save the Valley, Inc. and the Surrebuttal Testimony of Charles Norris, Diane S. Henshel, Ph.D., and James Pastorick" have been served this 2nd day of October, 2007, upon the following persons by electronic mail and by U.S. Mail, first class postage prepaid.

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October 2, 2007

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Re: Surreply and Surrebuttal Testimony of Save the Valley, Inc.

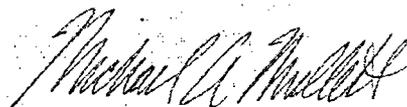
In the Matter of the U.S. Army (Jefferson Proving Ground Site), Docket No. 40-8838-MLA,
ASLBP 00-776-04-MLA

Dear Secretary:

Enclosed please find for filing in the above-referenced docket the original and two conformed copies of the above-referenced filing, along with the related Certificate of Service.

Thank you for your assistance in this matter.

Respectfully submitted,



Michael A. Mullett
Attorney for Save the Valley, Inc.

cc: Service List – Docket No. 40-8838, ASLBP 00-776-04