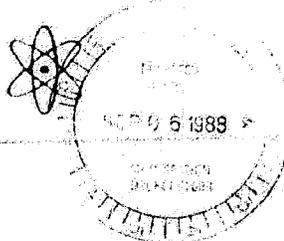


ATTACHMENT A

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Ferret
Exploration
Company of
Nebraska, Inc.



SEP 1988
RECEIVED

RETURN ORIGINAL TO PDR, HQ.

August 31, 1988

Mr. Gary Konwinski
U.S. Nuclear Regulatory Commission
Uranium Recovery Field Office
Box 25325
Denver, Colorado 80225

Dear Gary:

Enclosed is a copy of the transcript of the public hearing held on August 23, 1988 by the EPA regarding the Chadron aquifer exemption. Once you've had a chance to review this material, I'd be happy to discuss it with you.

Sincerely,

Stephen

Stephen P. Collings
Vice President

cc: Ralph Knode

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Controlled By Mary C. Hood

FILED IN 100-1196

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BEFORE THE ENVIRONMENTAL PROTECTION AGENCY
UNITED STATES OF AMERICA

IN THE MATTER OF A PUBLIC HEARING TO RECEIVE COMMENTS
ON THE REQUEST BY THE NEBRASKA DEPARTMENT OF
ENVIRONMENTAL CONTROL TO EXEMPT PORTIONS OF THE
CHADRON AQUIFER FROM CLASSIFICATION AS AN UNDERGROUND
SOURCE OF DRINKING WATER UNDER 40 CFR 146.4

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings on the
above-entitled matter held on the 23rd day of August,
1988, at the hour of 7:13 p.m. at Fort Robinson,
Nebraska, with Ms. Patricia Miller presiding and
before Harold Owens, Section Chief, Underground
Injection Control Program, and Angela Ludwig, Nebraska
UIC State Coordinator.

COPY



A P P E A R A N C E S

1
2 For Ferret Exploration
3 Company:

Mr. RICHARD L. FANYO
Attorney at Law
Welborn, Dufford, Brown &
Tooley
1700 Broadway, Suite 1100
Denver, Colorado 80290

4
5
6 For The Western Nebraska
7 Resources Council:

Mr. ANDY REID
Attorney at Law
Route 1
Chadron, Nebraska 69337

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9
10 I N D E X

PAGE

11 Statement by Mr. Richard Sommers
12 Statement by Mr. Andrew Reid
13 Statement by Ms. Phyllis Girouard
Statement by Mr. Cecil Avey
Statement by Mr. Jack Honerkamp

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1 door. Please pick one up. It will brief you a little
2 bit on the proceedings here today. And also we have a
3 map of the portion of the aquifer that's proposed for
4 exemption behind us. If any of you make statements,
5 feel free to use that.

6 The notice of the hearing was published in
7 the Federal Register on July 21st. Unfortunately, it
8 had the wrong date for the hearing and a correction
9 was published on August 16th. Local newspapers also
10 ran notification of the hearing. The Chadron Record
11 published the hearing date on July 5th. The Crawford
12 Clipper published the hearing date on July 21st, and
13 the following newspapers published the date for this
14 hearing on July 22nd. It was the Alliance Daily Times
15 Herald, the Scottsbluff Star Herald, the Sidney
16 Telegraph and the Omaha World Herald. We have proof of
17 publication within our records. I just want to make
18 that a matter of information for the public hearing
19 today.

20 The comment period for written comments is
21 scheduled to be extended until -- scheduled to go to
22 September 5th. We had a request for an extension of
23 that. And if anyone would like to comment on the
24 proposal to extend the date for written comments,
25 please say so this evening. One date that we are

1 considering is September 22nd, which would be 30 days
2 from today. So if anyone has comments, please say
3 that.

4 Also, by way of response to any statements
5 that are made tonight, when EPA's decision on the
6 aquifer exemption is made, it will be published in the
7 Federal Register and all interested parties will
8 receive a copy of the decision.

9 By brief explanation of why we are here
10 tonight, the Safe Drinking Water Act charges EPA with
11 protecting underground sources of drinking water. In
12 the regulations at 40 Code of Federal Regulations at
13 Section 144.7 and 144.6 provide that in certain
14 circumstances, an exemption can be made to let
15 injection activity take place into aquifers which
16 otherwise are described as underground sources of
17 drinking water.

18 One of the exemptions is for mining by
19 injection of certain minerals. And that does include
20 uranium in certain circumstances, and subsequently
21 that's classified as Class II injection -- Class III
22 injection activity.

23 Specifically, 40 CFR 146.4 states, and it's
24 in the fact sheet, that reasons why an exemption can
25 be granted are because the aquifer does not currently

1 serve as a source of drinking water and it cannot now
2 or will not in the future serve as a source of
3 drinking water because, one, it is mineral hydrocarbon
4 or geothermal energy producing or can be demonstrated
5 by a permit application as part of a permit applicant's
6 permit application for Class II or III operation to
7 contain minerals or hydrocarbons that, considering the
8 quality and location, are expected to be commercially
9 producible; two, it is situated at a depth or location
10 which makes recovery of water for drinking water
11 purposes economically or technologically impractical;
12 three, it is so contaminated that it would be
13 economically or technologically impractical to render
14 that water fit for human consumption, or, four, it is
15 located over a Class III well mining area subject to
16 subsidence or catastrophic collapse or the total
17 dissolved solid content of the groundwater is more
18 than 3,000 and less than 10,000 milligrams per liter
19 and it is not reasonably expected to supply a public
20 water system.

21 EPA will use this criteria in determining
22 whether the portion of the aquifer requested to be
23 exempt is appropriate for exemption.

24 Back in September of 1983, the State held a
25 hearing to determine whether the State would exempt

1 the aquifer. The original exemption request was
2 submitted to EPA by the Nebraska Department of
3 Environmental Control on March 28, 1984. Subsequently,
4 in June of 1984, EPA held its initial hearing to
5 determine whether to exempt a portion of the aquifer.

6 The decision was made on February 7th of 1985
7 to exempt 6.7 acres of the total 3,000 acres that were
8 requested to be exempted.

9 The reason EPA limited the decision to 6.7
10 acres were because EPA wanted to get additional
11 information on the impacts after producibility in the
12 region due to mining; secondly, there was no permit
13 action pending which clearly demonstrated the future
14 extent of production capabilities or radionuclide
15 concentrations beyond the 6.7 acres, and, third,
16 public comment suggested that limiting the area of the
17 exemption to the portion of the aquifer on which the
18 permittee had provided an application for actual
19 injection activities would be appropriate.

20 Ferret Exploration Company has been mining in
21 the 6.7-acre area and has finished mining in one well
22 spot and restored it and submitted information on the
23 restoration to the Nebraska Department of
24 Environmental Control and the Nuclear Regulatory
25 Commission. This information is available and it was

1 part of the package that was available for public
2 review.

3 They have subsequently resubmitted a permit
4 application asking for additional acreage for
5 commercial mining permit. And the Nebraska Department
6 of Environmental Control has repitioned EPA to
7 consider expanding the aquifer exemption.

8 Now, this is a long-winded explanation of
9 what it is we are looking at. And if you would direct
10 any comments you have to whether EPA should expand the
11 area aquifer exemption, we would appreciate it.

12 In a separate action, the Nebraska Department
13 of Environmental Control will address the specific
14 permit issues, and those are not issues that we are
15 currently looking at. If you would like to make a
16 statement, this is going to be an informal hearing.
17 There will be no cross-examination, although we might
18 wish to ask a few questions clarifying any statements
19 to make sure that we get all the information that we
20 need.

21 Please try to limit your comments to 15 or 20
22 minutes. And if you have a written presentation for
23 your comments, we would like a copy of it.

24 And with that, I will call the first person
25 to make a comment. And if you would come up here and

1 sit in the chair and address the audience as well as
2 us so everyone can hear, we would appreciate it.

3 Richard Sommers.

4 MR. SOMMERS: I just have a few comments
5 about this whole procedure.

6 I believe we were told at the state permit
7 hearing that the company would be required to restore
8 both well fields, both the large and the small well
9 field, in order to gain a commercial permit. And
10 somehow that changed in the process so that only the
11 small well field was required to be restored. And our
12 expert hydrogeologists have told us that you cannot
13 transfer the technology from restoring the small well
14 field to a large well field and show that you can do
15 it on a large scale like a commercial mine would be.

16 Another point is that Ferret Nebraska has
17 only been required to submit 10 percent of their well
18 logs to the State of Nebraska to determine the geology
19 of the proposed exempted area. I think I feel like if
20 the data is there and it's available to prove what the
21 geology is like in the exempted area, it's at least
22 reasonable that the State or the EPA see all of the
23 data that is available to prove what we are getting
24 into.

25 Also, it's been impossible for the State to

1 allow third parties to see the information that might
2 prove to us and prove to the citizens of the area that
3 what is really happening here is safe and that -- and
4 we can believe what various people have tried to tell
5 us about the mining.

6 These reports include geological data, well
7 completion reports and mechanical reports for the
8 wells that prove their integrity.

9 I guess we feel like the exemption area
10 should be limited to whatever the company needs for
11 five years of activity since they will only get a
12 state permit for five years of activity, and that
13 would be considerably less than 3,000 acres. And it
14 would also avoid an exemption for areas of the aquifer
15 for which Ferret does not hold a lease.

16 And finally, I believe that the whole
17 activity goes counter to the Department of
18 Environmental Control's groundwater protection
19 strategy. I am sure you are familiar with that
20 document.

21 Thank you.

22 HEARING OFFICER MILLER: Thank you.

23 Lee Hallsted.

24 I should have asked Mr. Sommer to state who
25 he represents.

1 MR. SOMMERS: I represent the Western
2 Nebraska Resources Council from Crawford.

3 HEARING OFFICER MILLER: Thank you.
4 Mr. Hallsted, could you tell us who you
5 represent?

6 MR. HALLSTED: Okay. I have a well in
7 Crawford at 314 Paddock one-half block west of the
8 Catholic church in Crawford, Nebraska.

9 The first test, Gary Gibbons of Scottsbluff
10 took of my well water, I do not have the papers on
11 that, it was 6 percent. In January of 19 and 86, it
12 was seven zero -- 70.0. Now, I don't know. It didn't
13 say percent.

14 Then the next one was April 8th, 19 and 84.
15 It went to 15.3. Now, the last one that I have is
16 dated 23rd of March, '87. Now, this one in particular,
17 the gross has got the word "uranium" on it. So it has
18 kept going up.

19 I did have one, and I don't know where it is,
20 that was 28 percent. I say percent. 28 point. I do
21 not know. It would take a chemist to tell you what
22 all these figures are. Anyway, that part uranium or
23 the gentleman here helps me can be a series of other
24 things. Only the one says uranium. If you wish to
25 see it, you may.

1 Thank you.

2 HEARING OFFICER MILLER: Mr. Hallsted,
3 how deep is your well?

4 MR. HALLSTED: My well is 40 feet deep.
5 The pump is down 35. Where the submerged pump is is
6 down 35 feet.

7 HEARING OFFICER MILLER: Are you now
8 using it as a source of drinking water?

9 MR. HALLSTED: Pardon?

10 HEARING OFFICER MILLER: Do you use the
11 well as --

12 MR. HALLSTED: Yes, before the State
13 tells me to not use it. But that time, I had the
14 water from my well pumped in, piped into my kitchen on
15 the cold-water side.

16 I get fouled up a little once in a while. I
17 have had a broken hip last year and do not remember
18 anything during the month of July or August. So it
19 bothers me a little at times. Is that all?

20 HEARING OFFICER MILLER: That's fine.

21 Thank you.

22 Jack Honerkamp?

23 MR. HONERKAMP: Can I speak later,
24 please?

25 HEARING OFFICER MILLER: That's fine.

1 Sam Welsh. Can you please state your
2 affiliation, if any? Your name?

3 MR. WELSCH: Okay. I am here
4 representing myself. My name is Sam Welsh.

5 I guess I would just, I think Rich Sommers
6 said it as -- raised the main points that I would like
7 to be considered most strongly, that they're asking
8 for exemption in an area much larger than is necessary
9 for the five years. The same facts about why is the
10 small well field the only one that's being required to
11 be restored? Why isn't the large one also required to
12 be restored before they ask for this exemption?

13 Another question I would have is, where has
14 been the new hearings on the new information that
15 should be required before the Nebraska DEC allows
16 another 3,000-acre exemption? It was not permitted at
17 the time five years ago. There should be new
18 information available now for a new hearing. I think
19 there seems to be a step or two that's been skipped in
20 this whole process that got us here today without
21 going through the necessary state hearings.

22 The whole question, I think, you know, to
23 many of us it's quite offensive, the entire idea of
24 exempting a portion of an aquifer that is used by the
25 people in the area for drinking water or that there

14
1 is -- and there are wells outside this exemption area
2 that are being used by people.

3 The aquifer does not recognize the boundaries.
4 The water flows regardless of the boundaries we might
5 draw on a map. How does the aquifer exemption of a
6 portion of that affect the neighboring water supply?
7 I don't think that's been satisfactorily answered to
8 the people in this area.

9 In fact, when we exempt a portion of an
10 aquifer, are we not writing off and contaminating the
11 entire area? I think it's -- we're being somewhat
12 deceived when we talk about restoration when it's not
13 being proven to us, that information is not available
14 for the public. If it's really being done well, what
15 is there to hide from the public?

16 I think I will let more people talk. That's
17 all.

18 HEARING OFFICER MILLER: Thank you.

19 Andrew B. Reid.

20 MR. REID: My name is Andy Reid. I am a
21 lawyer for Western Nebraska Resources Council, and I
22 am speaking on behalf of the council and myself.

23 We haven't had enough time really to get
24 together and go over the information. So those parts
25 that the Resources Council don't agree with I am going

1 to have to attribute to myself as a landowner and
2 father and business person in the area.

3 I have got a lot of comments and I will try
4 to put them generally, you see this big stack here.
5 I am just going to leaf through it but I am not going
6 to -- these aren't all my notes.

7 The first comment I have, and it's something
8 Angela Ludwig and other staff from EPA I am sure are
9 familiar with, we had some difficulty in getting the
10 EPA records that are in addition to those that they
11 had on file with the NDEC at Chadron State College.
12 We had some difficulty getting those.

13 We finally received them in the mail
14 yesterday. And I had to go through them most of the
15 day -- I got them at eleven o'clock yesterday and I
16 have been going through them ever since. So part of
17 my presentation will be uncoordinated.

18 This is also information that we had hoped to
19 distribute to the public and to other members of our
20 organization so that they could use it in their
21 comments.

22 As you have seen already from the people who
23 preceded me, they didn't have a lot of information to
24 go on. Their comments were short and very general.
25 And I think that's a direct result of not having a

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sufficient amount of information.

We did ask that the EPA consider postponing this hearing until a later date to allow us time to disseminate the information and to analyze it and so that we could have a real public debate and public discussion about this.

There is a good turnout here. Obviously, there is some concern about this on both sides. Certainly there are people that are in favor of it that have -- that see some revenue to the community and don't feel that the adverse environmental impacts make that unacceptable for them.

But then there are many others, including the organization I represent, that are very concerned about the adverse environmental impacts. And we needed an opportunity to look through this and we didn't have it.

We ran into the same process with the State Department of Environmental Control. We had previously requested records and they lost our payment for copies and refused to give us records until they received payment again. After that whole process, they finally let me see the records down at the Chadron State College and then they refused to let me copy them.

1 . It turns out the person in charge has gone
2 until September 1st and now it appears that she is
3 leaving her position. I am speaking of Pam French.

4 So there has been some real problems in terms
5 of the public's access to all of this. And I think
6 the hearing is basically meaningless today for the
7 general public because of other problems that have
8 occurred both from the state level and from the level
9 of the EPA.

10 So that's my first general comment.

11 The second one I have is that -- I am not
12 going to re-cover what we went through three or four
13 years ago, but it's important to mention a few things
14 that highlight that process.

15 One that you need to keep in mind, and I am
16 speaking in terms of what our position is as a
17 conservation organization, is that you need to keep in
18 mind that the underground source of drinking water is
19 considered to be a very special resource and it's a
20 very protected resource. And in essence, it's treated
21 as a wilderness area in the sense that it's meant to
22 be protected for future generations, or I like to call
23 it the endangered species act for water. And in that
24 sense, it's meant to identify certain water sources
25 that are special because they're high quality, they're

1 unusual, they're high quality, they have special
2 characteristics that sets them apart for use as
3 drinking water by the public. And because of that,
4 the Federal Government passed the Safe Drinking Water
5 Act to protect these resources.

6 Now, in the Safe Drinking Water Act, there
7 were no provisions whatsoever for exempting these
8 resources. There is not a word in the act empowering
9 the EPA or any other federal agency giving them the
10 authority to exempt any underground source of drinking
11 water.

12 Now, it's our position the EPA summarily took
13 this authority on in 1980 when James Watt came on
14 board as Secretary of the Interior and Ann Gorsuch was
15 head of the EPA. Initially the exemption was meant to
16 pretty much grandfather in oil wells and other
17 polluters of the aquifers at that time so that it
18 didn't take their wells and take some of their ongoing
19 production.

20 That was eventually expanded. If you review
21 the legislative history on this, it was eventually
22 expanded by the EPA into covering a general exemption
23 of this.

24 So we have a general objection to the whole
25 proceeding as violate -- as in violation of the Safe

1 Drinking Water Act, it's intent and purpose; that the
 2 exemption regulations of the EPA are improper and
 3 illegal and that the exemption regulations ^{by} and the
 4 state program which has to be approved by the federal
 5 agency are both improper and illegal and violate the
 6 intent, purpose of the Safe Drinking Water Act and of
 7 our Congress.

8 The second point I would like to make is that
 9 there is an agency that's meant to basically regulate
 10 the nuclear industry, and that's the Nuclear
 11 Regulatory Commission. It was designed in essence to
 12 work with the nuclear industry to help develop our
 13 nuclear resources.

14 There was another agency that was set up to
 15 protect our environmental resources, and that's the
 16 Environmental Protection Agency. It's not the mining
 17 protection agency. And it's the same with the
 18 Nebraska Department of Environmental Control. It's
 19 not the -- it's not the Nebraska department on mining.

20 Too often it seems like the public, and I am
 21 speaking for our organization particularly, seems to
 22 get left out in the process. In the past four- or
 23 five-year period since the last exemption, there have
 24 been many meetings between the U.S. EPA, the
 25 Department of Environmental Control, Wyoming Fuel,

1 which is the predecessor for Ferret, and Ferret and
 2 other people involved in this. And uniformly, we get
 3 left out of the process. The public isn't notified of
 4 the decisions made in the back rooms and we are very
 5 concerned about being left out of that process.

6 What happens then is that once the decision
 7 is made, there is a hearing scheduled where they can
 8 take public comment and it's -- the burden is put on
 9 the public to pretty much reverse the trend, reverse
 10 the railroad and try to get things going in a
 11 different direction.

12 Now, in my mind, the EPA is a public agency.
 13 Its first commitment should be protecting the public
 14 resources, not protecting the mining and facilitating
 15 the mining industry.

16 The third policy question I would like to
 17 talk about generally is that these laws that the
 18 Congress and the State Legislature set up, and I am
 19 speaking particularly about Title 122 of the
 20 regulations for the State of Nebraska, the Nebraska
 21 Department of Environmental Control regulations for
 22 underground injection control, set out a procedure
 23 whereby the public can have an opportunity to review
 24 what is before them. It gives you an opportunity to
 25 get your lawyer and get your experts and to get their

1 experts under oath and ask them questions and get some
2 answers.

3 I don't think at this process today you're
4 going to find EPA giving you any answer. They're not
5 here to give you answers; they're here to take
6 comments. They expect you to already have enough
7 information that you can make comments.

8 In my mind, that's ludicrous, especially
9 where you haven't had a state proceeding in order to
10 get the information that you need.

11 The proceeding we had three or four years ago
12 was under similar circumstances where it caught us off
13 guard with the short notice. Here in this case not
14 only did they have the minimum 30-day notice which was
15 published on July 21st, but now they tell us that the
16 proper notice wasn't even published until August 15th.
17 It's real questionable whether or not, again, this is
18 a legal proceeding.

19 The notice provisions are important. These
20 are considered to be minimum notices, which means it's
21 suggested that you give a notice in excess of that in
22 order to protect the public. The public has due
23 process rights. You have rights to due process. If
24 they take the water out here, that's a resource that
25 belongs to you and I.

1 We have a right to be heard. We have a right
2 to find out what's going on. We have a right to
3 examine the experts, and we are not -- we're being
4 denied that right by these proceedings.

5 Now I would like to get into some more
6 specific comments, the first one being that the 3,000-
7 acre exemption that was approved four years ago was
8 approved under regulations that have been changed
9 twice. And I doubt if the EPA has even looked at the
10 regulations to see whether or not the provisions that
11 they are going under have been changed and to see
12 whether or not the same regulations would apply to the
13 current exemption.

14 Likewise, it's my understanding that some of
15 the UIC regulations, the federal UIC regulations, have
16 been changed since 1983.

17 The exemption in 1983 was approved by the
18 director, Dennis ^{Graham}~~Seaborn~~, of the Nebraska Department of
19 Environmental Control. Under the state law -- and I
20 am saying most of this not only to inform you but also
21 to make a record so that everyone knows what our
22 objections are. But under the state law, the
23 Environmental Control Council, the ECC, is the one
24 that has the authority to make program revisions, to
25 pass rules and regulations.

1 The director of the Nebraska Department of
2 Environmental Control has no authority to make a
3 program revision of the Nebraska Underground Injection
4 Control Program. He has no authority to grant the
5 3,000-acre exemption. He is merely an administrator.
6 His duties are limited to enforcement and
7 administration of the rules and regulations, not to
8 the promulgation of the rules and regulations.

9 Those are limited to basically a public body,
10 a body which is composed of members from the general
11 public as well as other members from the state
12 agencies called the Environmental Control Council.
13 And that's very clear by law.

14 So to begin with, the 3,000-acre exemption is
15 void. And I am handing the EPA's attorney a copy of
16 those state statutes, and I have underlined the
17 relevant provisions.

18 The second point I would like to note is that
19 under the EPA regulations, I am speaking specifically
20 of 40 CFR Section 145.32 B.3, it requires EPA to
21 approve or disapprove an aquifer exemption application
22 that's been sent up from the state. And these are the
23 regulations which I am saying are illegal to begin
24 with anyway, and, in the second place, they haven't
25 even complied with their own regulations.

1 Nowhere in EPA regulations do they have the
2 authority to postpone a decision. Here they have
3 postponed a decision for three or four years. In my
4 mind, that's outrageous. There are things that have
5 changed in terms of technology. There is new
6 information that's been gained that wasn't before the
7 state agency at the time that the public hearings were
8 held.

9 The main force, the whole point of having the
10 state be the primary body in this deliberation is so
11 that the public can have a hearing before the body
12 that is dealing with it.

13 There is -- just to digress quickly, is that
14 there is a procedure that was set up under the Safe
15 Drinking Water Act that allows the State to administer
16 the Act rather than the Federal Government. The State
17 does not set up a program. The Federal Government
18 administers the Act.

19 Once the State sets up a program and that
20 program gets approved by the Federal Government, then
21 the State has what's called primacy. They're the ones
22 that administer the program.

23 Well, they administered the program three or
24 four years ago and gave a 3,000-acre exemption. EPA
25 did not approve that three or four years ago. Now EPA

1 is saying, well, they can go ahead and approve it
2 without that state proceeding today.

3 And the importance here is that EPA is merely
4 meant to be a reviewing agency, not the trial agency,
5 not the body that is supposed to hear and review the
6 evidence, to compile the evidence. It's merely
7 supposed to review what was before the state agency
8 and decide whether or not that state decision was
9 sufficient and justifies the exemption. And now what
10 they have done is they have taken information that
11 they have gathered over three or four years on their
12 own and are making their own independent trial, their
13 own independent review without giving the public a
14 chance to participate in it. And that participation
15 would come at the state level. And that in my mind is
16 blatantly illegal.

17 Section 145.31E of the EPA regulations say
18 that the approval time is limited to 90 days. They
19 have to make a decision within 90 days. It certainly
20 does not give them three or four years to make a
21 decision.

22 So this proceeding is illegal for that reason.
23 The EPA does not have jurisdiction to hold this
24 hearing, informal or otherwise.

25 Section 146.4 sets up the EPA criteria for

1 aquifer exemption. Again, these criteria are illegal
2 but we will go ahead and run through the ones that
3 they are using real quickly and make some comments
4 here.

5 146.4 B.1 requires that it be shown that the
6 facility is commercially producible. Now, under the
7 state regulations, it only requires that it be shown
8 that it's producible, that it can produce minerals,
9 not that it's commercially producible. It's a crucial
10 difference.

11 For that reason, the showing that was before
12 the Department of Environmental Control that they
13 could produce uranium does not meet the requirement of
14 the federal regulations that it be commercially
15 producible. There needs to be some proof that it's
16 economically feasible.

17 Now, if you review the EPA file, and I have
18 done the best I can in the last 24 hours to do that,
19 you will find out that what -- in terms of the
20 economics of the mine, they are relying on their
21 predictions, their speculation. It was pure
22 speculation at the time because they hadn't mined an
23 ounce of uranium.

24 They're relying on speculation from 1983 to
25 make their determination whether or not this mine was

1 economically feasible. They furnished no more
2 information to EPA about whether or not this is
3 economically feasible.

4 What they have said is that we did a
5 feasibility study. We, we are talking Ferret, did a
6 feasibility study in 1987, and they haven't furnished
7 to my knowledge that feasibility study to either the
8 State or EPA, because I have requested it and haven't
9 received it.

10 And they keep referring to their
11 feasibility study of 1987, but it hasn't been
12 furnished to any agency. To my knowledge, EPA hasn't
13 requested it, and I am kind of surprised they haven't.
14 So there has been no proof.

15 Furthermore, I would note that the EPA
16 information that I have indicates that the mine is a
17 joint venture between the government of South Korea
18 and the government of West Germany and that they're
19 taking their profits in terms of ore that they're
20 receiving from here.

21 So, in other words, they are not selling the
22 ore. West Germany and South Korea are coming over
23 here mining our backyard, shipping the ore overseas to
24 run the nuclear power plants that they have over there.
25 They are not selling it on the open market. And I am

1 also wondering why that information hasn't been
2 previously disclosed to us.

3 Furthermore, I don't think it's been publicly
4 recognized, although it's in their information that
5 you can look at -- by the way, I get that information
6 about West Germany and South Korea from the background
7 notes that I received that aren't with the information
8 that's with the NDEC but was with the information that
9 the EPA kept for themselves in Kansas City.

10 The other point you should realize is that
11 the -- they lost their bond. They had to get an
12 \$850,00 bond in order to do their previous mine. They
13 lost that bond. The bonding company refused to renew
14 their bond.

15 To my knowledge, there hasn't been any
16 investigation by either the state or the federal
17 agency into why they lost their bond and why the
18 agency refused to renew their bond and why they can't
19 obtain another bond.

20 So what they have done instead is that they
21 have gone to a Canadian bank and asked for a line of
22 credit. And there is every indication that the State
23 and the EPA, well, certainly the State is willing to
24 let them by with a line of credit from a Canadian bank.

25 HEARING OFFICER MILLER: I'm sorry. Can

1 I ask you to try to wrap up your summary in about five
2 minutes or so?

3 MR. REID: Okay. I will do that.

4 MR. HONERKAMP: Can I get give him my 15
5 minutes? You can take my name out of the file there.

6 HEARING OFFICER MILLER: That would be --

7 MR. REID: I will try to do it in five
8 minutes. If I take more than that, Jack can finish up.

9 HEARING OFFICER MILLER: One more thing:
10 Can you try to keep your comments on the exemption
11 process?

12 MR. REID: That's what I thought I was
13 commenting on.

14 I would note that one of the exemption
15 requirements is that in order to be exempted, they
16 have to show that the aquifer cannot now or will in
17 the future serve as a source of drinking water.

18 Well, we all know that it's currently serving
19 as a source of drinking water. There are over a half
20 dozen people that now use the Chadron Formation as
21 their sole source of drinking water.

22 Now, they may not be within the two-mile
23 survey area from the pilot plant, but they are
24 certainly within a quarter mile of that survey area,
25 and there are certainly quite a few wells north of

1 Crawford.

2 One thing we aren't told is that the ore body
3 from what I have seen goes underneath the town of
4 Crawford. What they have done is they have
5 gerrymandered their exemption area to avoid the town
6 of Crawford and to avoid the wells north of Crawford
7 that use this water.

8 The Chadron Formation comes to the surface at
9 the White River, and there are artesian wells in the
10 Chadron Formation and people get their water from
11 there. They use it for irrigating and livestock as
12 well and also domestic use. And to my mind, they
13 should come under the Clean Drinking Water Act. And
14 we would argue that, too, when you're talking about
15 human consumption, you are talking about consumption
16 of crops and we are talking about consumption of beef.

17 The other point I would like to note is that
18 in the last three or four years, three or four years
19 ago, radium and radon and uranium wasn't a widely
20 known problem in drinking water. In the last four or
21 five years, it's become one of the main problems, one
22 of the main contaminants for drinking water.

23 As a result of that, the research has
24 exploded. It's just gone bananas trying to find ways
25 to deal with the radium and uranium. And because of

1 that, there are several new technologies that have
2 developed in the last three or four years. And we
3 will share that with EPA because they apparently are
4 not aware of those technologies themselves, even
5 though it's ongoing research in at least two major
6 universities that I am aware of.

7 Both of those technologies deal with the
8 removal the radium and the removal of uranium from
9 groundwater using methods that are economically
10 feasible for small communities. And when I say small
11 communities, I am talking of communities down to 700
12 people.

13 So they would be ways of cleaning up the
14 Chadron Formation so that the City of Crawford could
15 use that water.

16 One thing they haven't mentioned and I am
17 wondering if they gave notice to the Ogallala Sioux
18 tribe. The Ogallala Sioux Tribe has treaty rights to
19 the White River. They have treaty rights to the water
20 the city of Crawford uses. Is there going to be a
21 treaty fight if this water gets used up? What happens
22 if we have a few dry years and the town of Crawford
23 doesn't have this water to draw from?

24 It gets its water from a little creek over
25 here. It doesn't have any wells of its own. What

1 will happen?

2 It needs the Chadron Formation to look at.
3 And it seems to me they need to update their
4 information before they can consider an acre, let
5 alone 1,000 acres.

6 One point on the proposed Chadron Aquifer
7 exemption: That map is inaccurate. The new map
8 that's been submitted by Ferret knocks off, oh, maybe
9 five, six hundred acres of that.

10 Well, let's see. Maybe 400 acres of land
11 there belongs to Tom Brott. They have included Tom
12 Brott's land in there. They don't have a lease on his
13 land. They figure they indicated -- one point I would
14 like to note is that the area that they have now cut
15 off comes right against the ore body right here.

16 Their own scientists say they need at least a
17 quarter-mile buffer area between the ore body, between
18 the areas that they want to mine and the water
19 resources, between members of the public so that they
20 don't run a risk of contaminating them. Now they are
21 going to mine right up to the back door of somebody
22 who refuses to lease to them.

23 I would also note that this discovery of
24 uranium in the Brule water -- and your well, Mr.
25 Hallsted, is in the Brule, that -- and EPA scientists

1 from the records I saw were concerned about this.
2 That they are finding uranium in the Brule water.

3 The Brule is the aquifer above the Chadron.
4 And what we have been told ever since they started in
5 there is there was no movement between the Brule and
6 the Chadron. Well, now they are discovering uranium
7 in the Brule.

8 Well, how did the uranium get up in that
9 water? It got there because there is movement from
10 the Chadron to the Brule. I haven't seen any
11 investigation of that.

12 Their own scientists, EPA's own scientists,
13 said there is not enough information on that to
14 explain that uranium up there. They also recommended
15 that there should be some cross sections completed
16 within the exempted area so that they can determine
17 whether or not there is further faulting.

18 Specifically, there is a -- there are
19 comments that were submitted by Timothy L. Hamsden,
20 who is the Director of the Office of Groundwater
21 Protection for EPA, where he states his very concern
22 that the White River fault and some of the other faults
23 in there start and begin abruptly. And he is saying
24 to him he didn't see enough information to show there
25 weren't other faults within the so-called exemption

1 area.

2 I am going to skip through this real quick
3 because I don't want to take up my neighbor's time.
4 So I will try to end it.

5 But one thing I want to note is that this is
6 the proposed ten-year mining plan right here. If you
7 can see this, which you can't, but there is a big 19
8 here. This is one section of land. That's this
9 Section 19 right here.

10 For ten years, they're only planning to mine
11 within this one area right there. Why do they have to
12 exempt this entire area to do that?

13 On top of that, within this mining area they
14 will have well spot patterns. And if you review the
15 previous exemption, the exemption was basically
16 limited to the area around the monitor wells within
17 the well spot patterns. On the first year, they will
18 mine no more than ten acres according to Ferret's own
19 information.

20 And by the way, that ten acres will include
21 their well field number one which they said that they
22 could mine out in two years and they are on the fourth
23 year now and they still haven't -- and they say they
24 still have another year to go.

25 But I think that your records -- EPA's own

1 records demonstrate that, even using their 20-year
2 plan, that they plan to mine no more than 1,280 acres.
3 There is no reason to exempt part of the aquifer that
4 they had no intentions of mining. There is no -- and
5 that they can't prove that they can mine, and there is
6 no reason -- and I demand to know by what authority
7 EPA has to exempt the aquifers that do not meet the
8 criteria of being contaminated.

9 This area here that the State exempted
10 contains -- all of this area here contains water that
11 is below the contamination level, that's below the
12 five picocuries per liter contamination of radium that
13 they were using as the standard to determine where
14 this was, where the ore body was.

15 This water out here is useable. It's useable
16 right up to the ore body. And in fact, there are
17 pockets within the ore bodies that's useable and that
18 can be cleaned up. And EPA has no authority to do
19 that.

20 I am winding up here.

21 I guess in closing -- I have a lot of
22 information here. Anyone here who would like to look
23 through it, feel free. We would be glad to share
24 whatever information we have and point out what we
25 consider to be the highlights.

1 We haven't been told how they are going to
2 transport this. And I am sure they know that. NDEC
3 and the Department of Environmental Control requested
4 that information quite a while ago, in 1986. We still
5 haven't been furnished with that information.

6 We haven't been furnished with background
7 geology which we have requested. And to our knowledge,
8 EPA has gone to look at that but they don't have that
9 information in their files. So I really question
10 whether or not they can make any independent
11 determination.

12 Finally, I would like to know, is -- why EPA
13 has chosen not to do an environmental assessment or an
14 environmental impact statement. NRC is already
15 indicating that they don't intend to do an environ-
16 mental impact statement on this.

17 It seems kind of strange when you get a
18 document from EPA. This one is dated March 30th, 1988.
19 And on that document it says, quote -- I will hold it
20 up here. It says, "This Chadron Aquifer qualifies
21 under the exemption under 40 CFR 146." And this is
22 the entire 3,000 acres. And here is the answer. They
23 have answered it. They say, yes, it does. And they
24 have checked the reasons why it does. And it says,
25 "It has been demonstrated that this portion of the

1 Chadron Aquifer meets the criteria of 146.4."

2 In other words, the determination has already
3 been made. The determination was made last March and
4 they are holding the hearing today and the hearing
5 from the public today.

6 This is the determination on the 3,000 acres.
7 And it goes on to tell why it was determined that this
8 aquifer should be exempted. EPA has already made the
9 determination to exempt this aquifer.

10 Now, if they limit it, it will only be
11 limited because of the public comment that they have
12 and the public pressure that is put on EPA to limit
13 the exemption.

14 I personally do not think they have the legal
15 jurisdiction or the authority to exempt anything. And
16 certainly they have no authority to exempt more than
17 what they use in the five-year period of the permit.
18 And my suggestion would be that you can't -- how can
19 you draw an analogy of a well field that is a hundred
20 times larger than that pilot plant?

21 That was a 40-foot-by-40-foot pilot plant or
22 well field. How can you compare a 40-foot-by-40-foot
23 well field with a 400-foot-by-400-foot well field and
24 say that we can -- if we can restore that one which is
25 smaller than this room, we can restore the -- we can

1 restore the one that is up to 30 or 40 acres large?
2 I guess that's about all I have. And again,
3 we would appreciate anyone who is interested in this
4 to contact us. We do feel like there should be an EIS.
5 NRC did not do an EIS, or NRC, the Nuclear Regulatory
6 Commission, never did an EIS on the aquifer exemption.
7 They did an EIS on the above-ground facility. To my
8 knowledge, there has not been an EIS or an EA done on
9 the 6.7-acre exemption area or the 3,000-acre area.
10 And EPA's rationale on that is the permit which is
11 submitted by Ferret can be used as a substitute, as a
12 functional, quote, functional equivalent of an EIS.
13 But normally an EIS is prepared by a government agency,
14 not the one that's trying to get the permit.

15 Thank you.

16 HEARING OFFICER MILLER: Thank you.

17 Phyllis R. Girouard.

18 MS. GIROUARD: My name is Phyllis
19 Girouard. I am here on behalf of the Western Nebraska
20 Resources Council and also on behalf of myself.

21 In addition to reaffirming everything that
22 has been said before, there is a few things that I
23 want to focus on.

24 I have been the person, I think, that in the
25 last four years has been trying to get the information,

1 trying to get it for the Western Nebraska Resources
 2 Council, trying to get it for the public, trying to
 3 get it for Andy as their attorney, trying to get it
 4 for myself when I was acting as their attorney. And
 5 it has been one of the more frustrating experiences in
 6 my life.

7 I am not going to go over all the details of
 8 what it's been like. I want to indicate, though, what
 9 it means to me.

10 There has been a tremendous amount of
 11 difficulty in getting information for the Resources
 12 Council to use and for the public to have in time for
 13 the public to be adequately prepared for these
 14 hearings. It has been totally impossible to get the
 15 information in time for people who we would like to
 16 use as our experts to have an opportunity to review
 17 that material and to give that information to us, to
 18 the public and to the public agencies who need that
 19 material and should, I would think, welcome it as an
 20 independent source.

21 The second problem that we have had is, even
 22 where we have been able to get documents, even though
 23 belatedly, we have not been able to get some of the
 24 primary data that our experts have felt are critical
 25 for them to make an independent evaluation.

1 Now, what this means is that the DEC and the
2 EPA is relying on somebody else's interpretation of
3 that data. And that somebody else is Ferret.

4 Now, Ferret is not a disinterested person.
5 Ferret has every interest in the world in making their
6 data appear to be favorable to them. I am not saying
7 that's what they are doing. But I am saying that
8 looking at it objectively, with the only information
9 that the agency has is coming through Ferret, there is
10 some questions that have to be raised.

11 Now, if everything is going as well as we are
12 told in the newspapers that it is going, why in the
13 world has Ferret Nebraska refused to release to our
14 experts the primary data so they can make an
15 independent evaluation? Why in the world is Ferret
16 only turning over 10 percent of some of their data and
17 why is it Ferret is choosing which 10 percent to turn
18 over?

19 I would strongly urge that the EPA not take
20 any action at all on this aquifer exemption request
21 until a number of things have happened: number one,
22 that every drop of primary data that has been
23 generated during the pilot project by Ferret be turned
24 over to EPA for their review and for their experts'
25 review and be turned over to the western Nebraska

1 Resources Council and to any other interested persons
2 so that they and their experts can review those things.

3 Two, all data that EPA is using in making
4 their determination -- and I am going to assume that
5 we are talking about a clean slate and not a pre-made
6 determination last March -- that all data that they
7 have be equally available to the Western Nebraska
8 Resources Council and to their experts and to the
9 public and anybody else who would like to know and
10 that all of that be made available sufficiently in
11 advance of any determination that experts have an
12 opportunity to look these things over.

13 I would also ask that the hearing record be
14 kept open so these things can happen, the hearing
15 record be kept open so that even the relatively minor
16 amount of data that we have so far been able to get
17 gets communicated to our experts.

18 As Andy has indicated, there are some new
19 technologies available and we would like EPA to have
20 the benefit of that information. The record will need
21 to be kept open a sufficient amount of time for that
22 to happen.

23 I would also like to -- and in saying all
24 this, I in no way intend to waive the arguments that
25 were made as to the EPA's jurisdiction to be hearing

1 this at this point, by the way. I think all the
2 arguments that were made about this proceeding being
3 improper are totally correct.

4 The other matter I want to point out is that
5 we have been told one thing and something else has
6 happened. We were told that there will be two well
7 fields that will be restored. Not only has the large
8 well field not been restored, but from the amount of
9 ore that was taken out of that well field and from the
10 fact that it was sold to NPPD, it sounds awful close
11 to me like a commercial mining venture.

12 Now, it sounds to me as though there is a lot
13 of shortcuts being taken. We have a hearing now
14 without benefit of the preceding state hearing. We
15 have a well field that was meant to be used to
16 illustrate the technology. Instead it was used to
17 produce uranium ore in commercial quantities and it
18 was sold for that purpose without a commercial permit.

19 We have data that was presented five years
20 ago for a 6.7-acre site that's now supposed to be
21 sufficient to make a determination on a 3,000-acre
22 site. We have a request to exempt 3,000 acres when
23 3,000 acres are not needed in five years, just as we
24 had a question five years ago to exempt 4,000 acres
25 and all that was needed was 6.7 acres. And it just

1 sounds like an awful lot of shortcuts on something as
2 precious as our water supply out here.

3 And I would strongly urge EPA to not --
4 what's the word I want? -- to not bow under to the
5 pressure to do all these things so quickly, to stand
6 back and take a breath and look at these things that
7 have been pointed out to you today and will be pointed
8 out in the next few weeks and however long the comment
9 period is and to look at it real carefully and to
10 remember we are talking about a tremendously valuable
11 resource here during a very questionable kind of
12 proceeding and to make your decision based on those
13 facts.

14 Thank you.

15 HEARING OFFICER MILLER: Thank you.

16 MS. GIROUARD: Any questions?

17 HEARING OFFICER MILLER: I don't think
18 so.

19 I do have one question after all. We have
20 made an indication that we will be willing to hold the
21 comment period open until September 22nd. Is that a
22 reasonable amount of time for your purposes?

23 MS. GIROUARD: Can Mr. Reid respond to
24 that?

25 MR. REID: We have at least four experts

1 we would like to comment. We have to make copies of
2 everything that's relevant to them, essentially
3 everything we have and get it to each of the four
4 experts. They all live in various parts of the
5 country.

6 Plus, we have to give them time to go through
7 that and get further information to respond to that.

8 One of our experts has been trying to get
9 information from the Department of Environmental
10 Control, specifically, Roy Elliot, for over two years.
11 Wyoming Fuel once offered it to us and then refused to
12 give it to us and they denied it.

13 So I think if we can't get it in two years,
14 we need at least six months. And I can't see how we
15 could even begin to have any legitimate amount of time
16 without that period of time to go through the
17 information and get it to our experts.

18 HEARING OFFICER MILLER: We are not
19 prepared this evening to decide whether six months is
20 an appropriate amount of time for the purposes of
21 resolving the comment area. We will have to get back
22 to you. But it will be within a week or so. Since
23 the regional administrator is going to make some
24 determination, we have to get with him.

25 MR. REID: All right. By the way, those

1 comments are made alternatively to our objections to
2 the proceeding to begin with. We in no way wish to
3 waive our objections to this entire proceeding. What
4 we are trying to do is do the best we can on what is a
5 very difficult situation.

6 HEARING OFFICER MILLER: The next
7 statement will be from Cecil Avey.

8 MR. AVEY: My name is Cecil Avey. I
9 lived in Crawford 33 years. I was the state
10 conservation officer here for 22 years and in law
11 enforcement for the first 35 years. I live at 311
12 Anon and I had a well drilled about eight years ago in
13 my backyard which is about a hundred feet from Lee
14 Hallsted.

15 They hit water at 40 feet and they cased at
16 80 feet. And it's a good well. It's been tested
17 twice, the last time about two years ago. And it was
18 plumb good water. And I have another well on the east
19 side of Crawford over where the big garden is, the
20 flowers. If you have been on the highway, you will
21 know where it's at. We irrigate out of that.

22 Chub's hit water at 40 feet or 18 feet there
23 and cased it down 40 feet. And we have used it all
24 summer. I had two hoses on it. And it's good water
25 and it's been tested, oh, about five years ago and

1 then again two years ago. And it's plumb good water.
2 And I am not afraid of the water mixing. It doesn't
3 concern me. I am more concerned with the air than the
4 water.

5 Thank you.

6 MR. OWENS: Was that well tested for
7 radioactivity?

8 MR. AVEY: Just tested for human
9 consumption.

10 MR. OWENS: You don't know whether it
11 was tested for gross alpha or any --

12 MR. AVEY: I have got it at the house
13 but I can --

14 HEARING OFFICER MILLER: Jack Honerkamp?

15 MR. HONERKAMP: That's me. Do I have
16 any time left? I gave some of that time to Andy.

17 HEARING OFFICER MILLER: You're welcome
18 to come up and make your statement.

19 MR. HONERKAMP: Okay. Well, I will
20 make it.

21 I guess I would just like to -- I am Jack
22 Honerkamp. I am just speaking on my own behalf
23 representing myself.

24 I guess I would just like to add my own
25 personal reinforcements to the comments made by

1 Phyllis Girouard and Andy Reid;

2 I will just go over a couple points that I
3 feel are especially important to me. We have heard
4 them before but I feel like it's important to me to go
5 on record stating similar things.

6 First is I also would like to ask for an
7 extension of the hearing process and to expand the
8 hearing process to include an adversarial type hearing
9 where we do get to bring expert witnesses in and
10 cross-examine.

11 I would like to reiterate, too, that this --
12 that we are talking about what I consider a very
13 important resource to this area and to the country,
14 not just at this time in our history, but as time goes
15 by and we start to look into the future a little ways,
16 ten, twenty, thirty, forty years, in my vision of that
17 future, clean water or useable water is going to be
18 much, much, much more valuable than all the uranium we
19 can extract from it and that I would like the EPA to
20 take on that long-term vision of what is valuable to
21 this country and what is actually a valuable resource.
22 And again, in my consideration, useable water is so
23 much more valuable than any radioactive products that
24 we can withdraw from it.

25 In the exemption process, I also see -- or I

1 also feel that the whole process of exempting water
2 from the clean water -- exempting water that is
3 covered under the Clean Water Act is totally absurd.
4 The Clean Water Act was passed for the sole purpose of
5 protecting water that could be useable. And to even
6 consider changing the regulations or exempting it is
7 to me absurd.

8 Again, this water -- technology is changing.
9 This water may not be the finest water right now, but
10 as technology changes, I think the water can be
11 cleaned up to the point where it would be fine. And
12 if we take a long-term, again, a long-term look into
13 the future and we see Crawford expanding, which I hope
14 it will, that I would like to see Crawford grow and
15 become a prosperous community, we've got to look to
16 where the water is going to come from that supports
17 that prospering community. And the water that flows
18 through the White River as I understand it right now
19 is -- or through a creek out south of town here, I
20 guess, is the sole source of the drinking water for
21 Crawford at this time.

22 What happens when the Crawford community
23 grows to a point where that's no longer sufficient
24 water? Then where do we turn? Do we turn to the
25 White River? Is that the finest water that we have

1 available? And how large a community and how much
2 industry can the White River support?

3 To me it's not very farfetched to consider
4 the possibility of using this formation, cleaning it
5 up with the technologies that become available. It's
6 not farfetched to consider using this as a source of
7 water for not only drinking but also industry as years
8 go by.

9 Considering this and considering my feelings
10 toward the absurdness of the exemption, if the
11 exemption process continues, I ask the EPA to use that
12 exemption process to provide some type of review for
13 this whole project.

14 In other words, I feel like an exemption that
15 would allow Ferret Nebraska to mine for two or three
16 years and then come up for review again to see how
17 they are doing, the mining, how their reclamation is
18 going, that that exemption should extend for two or
19 three years and let's review it. I don't feel like an
20 extension -- excuse me -- an exemption that allows
21 them to mine for ten years unreviewed is at all
22 adequate.

23 I also would like the EPA to require that
24 total reclamation of both the well fields presently
25 being developed by Ferret Nebraska. In the original

1 hearings, I heard promises after promises that there
2 would be no future progress towards a commercial
3 development of this project until the pilot project
4 was totally restored and totally cleaned up. What
5 happened to those promises?

6 I would like, again, to encourage the EPA to
7 require total cleanup, total restoration of this pilot
8 project before any further exemption is even
9 considered.

10 I guess I will leave it at that. Thank you
11 very much.

12 HEARING OFFICER MILLER: Thank you.

13 Is there anyone else who would like to make a
14 statement?

15 (No response.)

16 MR. OWENS: I am Harold Owens, the Chief
17 of the Underground Injection Control program for EPA
18 Region 7 in Kansas City. And I would just like to
19 make a few comments on our role with respect to the
20 State and with respect to NRC.

21 Basically, EPA is responsible for protecting
22 underground sources of drinking water from injection
23 well practices. And as you well know, the mining
24 process that's being used or has been proposed and has
25 been used is an in situ mining which is an injection

1 well process.

2 The exemption process through the regulation
3 has been described very well by Mr. Reid and the
4 criteria that is present in the regulations are
5 criteria that we are bound to use to make that
6 determination.

7 Now, whether or not that is legal has to go
8 back to the drafters of that act, the Safe Drinking
9 Water Act, and Congress. So at this point EPA has
10 considered that, written regulations to allow for
11 exemptions, and that's part of our -- as an agency,
12 what we are supposed to carry out and what we are
13 supposed to evaluate.

14 The other thing with respect to the exemption,
15 the State has to come to EPA for a program
16 modification, and our procedures are those that deal
17 with a program modification. Of course, the State is
18 requesting the exemption to be a part of the program
19 modification. So procedurally, we are bound by that
20 procedure, that we are to use procedures in our
21 regulations that deal with requested program
22 modifications.

23 With respect to the oversight and EPA role as
24 to checks and balances, if you will, for how the
25 program is being conducted, the program has been

1 approved and delegated to the State and we deal with
 2 the State in an oversight role. And the activities on
 3 that site are controlled by the permit and the State
 4 has the authority to issue the permit.

5 Now, we often go through the material. We
 6 review what the State is doing as part of our
 7 oversight with respect to the permit activity itself.
 8 NRC also has a license which they issue. And NRC, the
 9 Nuclear Regulatory Agency, has the authority on this
 10 site because it is a uranium mining site,
 11 radioactivity is involved.

12 NRC, it's my understanding, will do -- has
 13 done an environmental assessment early on and is in
 14 the process of now doing an environmental assessment
 15 for the licenses.

16 EPA has what is called the authority to do an
 17 environmental equivalency in lieu of an environmental
 18 impact statement. And there has been court case after
 19 court case that says that the nature of the agency,
 20 because of its review, its oversight, its expertise,
 21 that it can do an environmental -- an equivalency
 22 rather than a full what's considered an environmental
 23 impact statement. Those requirements and issues have
 24 been settled to some degree through court cases and
 25 through practices that EPA has conducted through the

1 years. And that will be looked at before the decision
2 is made.

3 We have not made a decision. We have done
4 some staff work based on the information that's
5 available in our office. All that information that's
6 available to EPA has been available to the public.
7 It's been available to the public for some time.
8 There is no information in our office that is
9 available to us that has not been available to the
10 public since the beginning of this project. And I
11 want you to be assured of that.

12 Also, again, I am repeating that the decision
13 has not been made. When a decision is made, it will
14 be made by the regional administrator and it will be
15 published in the Federal Register.

16 We have been doing staff work. We have been
17 looking at the information that has been developed on
18 the geology of that formation. That information is in
19 various locations. Some of it has been done by the
20 conservation survey in Nebraska and others. And
21 that's all public information.

22 So, just to assure you that EPA is looking at
23 this in a neutral -- from a neutral perspective and
24 actually we are acting upon the State's request and in
25 conjunction with a permit application. That's the

1 extent of our authority with the exemption.

2 HEARING OFFICER MILLER: If there are no
3 further comments, we will wrap up the hearing then.
4 Again, I encourage you that, if you haven't already
5 signed the sheet, please do so.

6 Since we haven't made a decision tonight as
7 to how long to extend the comment period beyond
8 September 5th, we will be doing so probably within the
9 next week, and I imagine we will have to publish that
10 in the Federal Register and local papers. And if you
11 sign the list, you will be on our list of interested
12 persons and will receive notice of that also.

13 MR. OWENS: I might clarify then. We
14 are speaking of written comments that you would send
15 to EPA.

16 HEARING OFFICER MILLER: And Angela
17 Ludwig is the person that any comments would be sent
18 to. The address is Environmental Protection Agency,
19 726 Minnesota Avenue, Kansas City, Kansas, 66101. If
20 you need that, we will provide it later.

21 If there are no further comments, we will
22 conclude this meeting. Thank you very much.

23 MR. REID: Excuse me. I have just one
24 question.

25 HEARING OFFICER MILLER: Back on the

1 record.

2 MR. REID: Could you explain to me what
3 this Briefing, Chadron Aquifer document is that I got
4 from you? That article refers to a decision already
5 being made.

6 MR. OWENS: That material, as I say,
7 it's in our office. It's staff work. We routinely
8 keep the regional administrator informed of the
9 information we have and what we are doing. And that
10 was the briefing document, if I recall correctly. I
11 think the title of that is --

12 MR. REID: It's entitled Briefing,
13 Chadron Aquifer Exemption and has a background of
14 regulations. It's dated March 30th, 1988.

15 MR. OWENS: That's a staff document
16 where we were looking at all the possible issues and
17 making some comments. Staff made some comments on
18 particular issues there and we were briefing the
19 director and the regional administrator.

20 MR. REID: I guess the question I have,
21 it indicates the decision was already made with regard
22 to --

23 MR. OWENS: I think it said, does it
24 meet the criteria.

25 HEARING OFFICER MILLER: I believe if

1 you read that, it says something like these are the
2 areas under which an exemption, if appropriate, would
3 be reviewed.

4 MR. REID: Right. And it says that it
5 meets the criteria. And I guess my question is, how
6 can you determine that it meets the criteria before
7 you have a hearing?

8 MR. OWENS: Excuse me for interrupting
9 you. But I think if you look at the checks, it says,
10 does it meet the criteria and it's been checked.

11 MR. REID: And there is a discussion
12 under it that talks about it being demonstrated that
13 it meets the criteria. I am wondering how you
14 determine that it's been demonstrated before of you
15 even conducted a public hearing and heard the issues
16 defined for you.

17 MR. OWENS: That's a technical question
18 on the geology, hydrology and that information.
19 That's only a technical review.

20 HEARING OFFICER MILLER: And a decision
21 isn't made until the regional administrator makes it.

22 If there is nothing further, we will conclude
23 the meeting. Thank you very much for coming tonight.

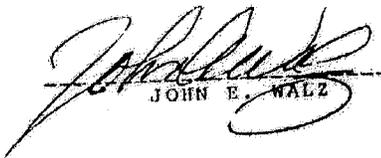
24 (Hearing proceedings concluded 8:33
25 p.m., August 23, 1988.)

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I, JOHN E. WALZ, a Registered Professional Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein and that the foregoing 57 pages constitute a full, true and correct transcript.

Dated this 26th day of August, 1988.


JOHN E. WALZ

Subscribed and sworn to before me this 26th day of August 1988

JOHN E. (JACK) WALZ