

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

COGEMA MINING, INC.

(License Renewal In Situ Leach Facility,
Irigaray & Christensen Ranch, WY)

Docket No. 40-8502

License SUA-1341

April 10, 2009

REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

Petitioner Oglala Delegation of the Great Sioux Nation Treaty Council,
Chief Oliver Red Cloud, Chairman

By and through counsels:

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Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Sir or Madam:

I. INTRODUCTION AND INTEREST IN THIS PROCEEDING

The Oglala Delegation of the Great Sioux Nation Treaty Council, through its chairman, Chief Oliver Red Cloud files this Request for Hearing and Petition for Leave to Intervene pursuant to 10 CFR Section 2.309. Petitioner has an affected material interest in this matter and wishes to participate as a party to the licensing proceeding based on the Application filed May 30, 2008 ("Application") filed by Applicant COGEMA Mining, Inc., an indirect subsidiary of Industrie - Commissariat à l'Énergie

Atomique (“CEA”), the atomic energy department of the Government of France (“Applicant”).

It is hard to conceive of a Petitioner with a greater claim of standing than the Oglala Delegation of the Great Sioux Nation Treaty Council, represented in this request by Chief Oliver Red Cloud, to participate in the license renewal proceeding. His attached Affidavit describes, in painful detail, what he, his ancestors and the Oglala Lakota in general, have suffered at the hands of the United States and its predecessors.

The Oglala Delegation of the Great Sioux Nation Treaty Council is the unbroken traditional entity established by the Oglala Lakota to negotiate treaties between the Oglala Lakota and the United States, and to ensure the enforcement of the same. The two most important treaties, relevant to the Application are the Fort Laramie Treaties of 1851 and 1868. In each Treaty, large tracks of land, specifically including all the land and water resources currently occupied by the Irigaray Ranch and Christensen Ranch, were retained by the Lakota People.

The United States and the seven bands of the Teton Division of the Sioux Nation, and others, entered into a treaty on September 17, 1851, 11 Stat. 749 (“1851 Fort Laramie Treaty” or “1851 Treaty”), which treaty was duly ratified by the United States. Article 5 of the 1851 Fort Laramie Treaty defined the territory of the bands of the Teton Division as follows (“1851 Treaty territory”):

commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Butte, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the headwaters of the Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the

place of beginning.

In Sioux Tribe v. United States, 15 Ind. Cl. Comm. 577 (1965), the Indian Claims Commission ruled that the 1851 Treaty was a multi-lateral treaty by which the United States recognized the aboriginal territory of not only the seven Teton bands, but also the aboriginal territories of the other signatory tribes, including the Hidatsa, also known as the Gros-Ventre, the Mandan and the Arikara tribes. The Commission ruled that article 5 of the 1851 Treaty recognized the seven Teton bands' joint and several aboriginal Indian title to the entire sixty million acre area west of the Missouri River. The Mine site is within the 1851 Treaty territory, i.e., unceded Lakota lands.

Unconsented encroachments on the 1851 Treaty territory by the United States and its citizens resulted in the Powder River War of 1866-1868 (also known as "Red Cloud's War") between the United States and the Teton bands. Peace was concluded between the United States and the Teton bands by treaty on April 29, 1868, 15 Stat. 635 ("1868 Fort Laramie Treaty" or "1868 Treaty"), which treaty was duly ratified by the United States on February 16, 1869 and proclaimed on February 24, 1869. The 1868 Treaty provided for a mutual demobilization without terms of surrender on either side.

Article 2 of the 1868 Treaty established a designated territory within the 1851 Treaty territory boundaries for the seven Teton bands and other Sioux bands. This territory is commonly referred to as the "Great Sioux Reservation," and is described in article 2 of the 1868 Treaty as follows:

Commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point

where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of the beginning; and in addition thereto, all existing reservations on the east bank of the said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named

Article 12 of the 1868 Treaty further provided that no future cessions of territory within the Great Sioux Reservation would be of "any validity or force . . . unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same" Under article 12, the United States and Teton bands agreed to limit their sovereign powers to cede and to accept cessions of land for the protection and peace of both parties. The Mine site is within the 1868 Treaty territory, *i.e.*, unceded Lakota lands.

By the Act of February 28, 1877, ch. 72, 19 Stat. 254 ("1877 Act"), Congress purported to ratify and confirm an agreement between commissioners on behalf of the United States and the Teton and other bands of the Sioux Nation and the Northern Cheyenne and Arapaho tribes. The purported agreement provided for the cession of over 7 million acres of territory in the western part of the Great Sioux Reservation, including the Black Hills. No such agreement existed in fact or in law. The 1877 Act has the dubious distinction of being characterized as such: "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history, which is not, taken as a whole, the disgrace it now pleases some persons to believe." United States v. Sioux Nation of Indians, 448 U.S. 371, 388 (U.S. 1980) (*quoting United States v. Sioux Nation of Indians*, 207 Ct. Cl., 234, 241 (1975)). To coerce the Lakota into amending the 1868 Treaty, "[i]n August 1876, Congress enacted an appropriations bill providing that "hereafter there shall be no appropriation made for the subsistence" of the Sioux, unless

they first relinquished their rights to the hunting grounds outside the reservation, ceded the Black Hills to the United States, and reached some accommodation with the Government that would be calculated to enable them to become self-supporting. Act of Aug. 15, 1876, 19 Stat. 176, 192.” Sioux Nation of Indians, 448 U.S. at 381. This was also known as the “sell or starve campaign.” Despite these efforts, only 10 per cent of the adult males signed. Id. at 383. Nothing about the 1877 Act undermines the fact that the Mine site is within the 1851 Treaty territory and the 1868 Treaty territory, i.e., unceded Lakota lands.

The Oglala Delegation of the Great Sioux Nation Treaty Council is the only entity selected and maintained through the traditional governing mechanisms of the Oglala Lakota. Whereas the Oglala Sioux Tribe (“OST”), for example, is a creation of the U.S. Indian Reorganization Act of 1934, and as such, is, by definition, beholden to the laws of the United States, the Oglala Delegation of the Great Sioux Nation Treaty Council is beholden only to the traditions of the Oglala Lakota and to the treaties. It is the only body appointed directly by the Oglala Lakota to decide treaty matters, including most importantly, land claims.

Chief Oliver Red Cloud’s paternal great-grandfather, who led the war that caused the United States to negotiate the Ft. Laramie Treaty of 1868, fought over the land surrounding present day Irigaray Ranch and Christensen Ranch, and negotiated the Ft. Laramie Treaty. Whatever ancient camps or artifacts that may be found in the area of the Mine are likely to have been left by Red Cloud’s people, or other Oglala Lakota.

The Oglala Delegation of the Great Sioux Nation Treaty Council has a vested interest in any artifacts or historical evidence that has been, or may be discovered, in the

permit area and specifically makes an environmental contention that artifacts and evidence of ancient aboriginal occupancy in the Mine area is not being adequately investigated or addressed. Indeed, the Application is silent on the matter of the cultural impact of the proposed operations.

According to the United States Supreme Court, the land and water resources currently in use by the Mine, as well as the entirety of the Black Hills, were forcibly coerced from the Lakota People through the United States Government's "Sell or Starve" policy. The Supreme Court ruled in 1980 that the taking of said land was improper and ordered just compensation to be paid to the Lakota People. The Lakota rejected the notion of just compensation and continue to demand specific performance of the treaties they signed with the United States. Title to the land, the minerals underlying it, and the water that flows above and below the Mine is not clearly established. Petitioners claim aboriginal title to all the land, water and mineral resources occupied and extracted by the Mine.

Because of the continued use of coercive force by the United States, most members of the petitioning Oglala Delegation of the Great Sioux Nation Treaty Council, including chairman Chief Oliver Red Cloud, reside on the Pine Ridge Reservation. The Pine Ridge Reservation is the closest Indian Reservation to the Mine facility.

Trust Responsibility

The United States Supreme Court has recognized that the trust duty owed by the United States Government to Indian tribes and tribal members, who it characterizes as "dependent and sometimes exploited people", is the highest legal duty. In carrying out its

treaty obligations with the Indian tribes, the United States Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of the United States Supreme Court, it has charged itself with moral obligations of the highest responsibility and trust. Seminole Nation v. United States, 316 U.S. 286, 296-297 (1942). Any action taken by the Nuclear Regulatory Commission, a federal agency, must be done with consideration of this duty owed to the Oglala Delegation. It must be recognized that this duty is higher than that owed to the American people as a whole. As trustee for the Oglala Delegation, the NRC has an affirmative duty to ensure that any action it takes, including granting a renewal license, will not negatively impact the Oglala Lakota.

In addition to the trust responsibility, there are many aspects of federal Indian law applicable here, including the Canons of Interpretation. See, Memorandum of Law regarding Indigenous Rights, Treaties and Indian Law, (ML080640548), incorporated herein by this reference as if set forth at length.

The Oglala Delegation's Interest in the Renewal

The Oglala Delegation has recognized aboriginal territory in the area of the renewal permit. Many of the cultural resources in the area are associated with the Oglala Lakota. Furthermore, The Mine spills into the Willow Creek which flows into the Powder River, West, towards Pine Ridge Indian Reservation ("Reservation") – the entire area in between is within the treaty territory. The in situ leach mining not only depletes the aquifers used by the Oglala Lakota so that less water is available, but also negatively affects the quality of water.

If the license renewal is granted, the Oglala Lakota will continue to be negatively

and irreparably affected by the ISL mining operations. Since the mining began, the water table has gone down resulting in a loss in total available water, the water that is left is of lesser quality, and numerous negative health impacts to people and wildlife at or near the Mine site. It also impacts live stock and other animals using well water or the Willow Creek or the Powder River, and its tributaries as their source of water, which other animals are prey for raptors in the region, including sacred Eagles.

Steward of the Land, Water and Wildlife

The Oglala Delegation of the Great Sioux Nation Treaty Council is tasked with protecting the land, water, resources, health and well-being of the Oglala Lakota. Petitioner makes an environmental contention that the health of the Oglala Lakota, including not only members of the Oglala Delegation of the Great Sioux Nation Treaty Council, but those persons and families they are ordained to protect, is adversely affected by the operation of the Mine.

Wildlife, including antelope, deer, elk and fish provide food for a number of Oglala Lakota, including members of the petitioning Oglala Delegation of the Great Sioux Nation Treaty Council, who currently reside within the treaty territory. Petitioner makes environmental contention that these animals are adversely affected by the operation of the Mine through the bioaccumulation of radioactive materials from the surrounding environment.¹

¹ See "Ionizing Radiation from Nuclear Power and Weapons and its Impacts on Animals" by Diane D'Arrigo (Nuclear Information and Resource Service, June 2004), which states that with increased mining and uses of radioactive material in society, more radionuclides have been and continue to be released to the environment. Once released, they can circulate through the biosphere, ending up in drinking water, vegetables, grass, meat, etc. The higher an animal eats on

Eagles are sacred to the Oglala Lakota, including members of the petitioning Oglala Delegation of the Great Sioux Nation Treaty Council, who currently reside on the Pine Ridge Reservation. Petitioner makes environmental contention that these birds are adversely affected by the operation of the Mine through the bioaccumulation of radioactive materials from the surrounding environment. See 2007 Irigaray and Christensen Ranch Wildlife Monitoring, attached as Appendix C to the Application, and Table 1 thereof concerning three (3) bald eagles, and Table 3 thereof concerning 61 intact raptor nests, including 11 ferruginous hawk nests, 10 red-tailed hawk nests, 9 great-horned owl nests, 7 golden eagle nests, and 2 prairie falcon nests.

The 2007 Wildlife report states that “Fluctuations in raptor nesting attempts and success rates are often linked to variations in prey availability. Large raptor species such as golden eagles, ferruginous hawks, red-tailed hawks, and great homed owls prey predominantly on lagomorphs (hares and rabbits).” Id. “Golden eagles have also regularly nested in the Irigaray and Christensen Ranch survey.” Id. The 2007 Wildlife report further states that:

the bald eagle remains under the purview of the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, both of which are administered and enforced by the USFWS. Consequently, they remain a species of concern in Wyoming. Bald eagles are common winter residents in portions of northeast Wyoming, and sightings at Cogema have occurred with some regularity over the years. Roosting

the food chain, the higher the concentration of radionuclides. This is bioaccumulation. The process of bioaccumulating radionuclides can be especially harmful to animals at the top of the food chain because the concentrations of radionuclides are much higher. Radionuclides can concentrate in various kinds of tissue. The article states that “animals in the vicinity of nuclear facilities and downwind from accidental radiation releases have been found to be radioactive.” Id. at p. 3.

habitat is limited primarily to the cottonwood corridor along Willow Creek as it courses through the Irigaray and Christensen Ranch permit areas, and the larger pine trees along North Butte at the eastern edge of the combined survey area.

The BLM has identified four bald eagle roost sites within the project area, as well as several other observation points (Map 1). Those records span more than 20 years, and all but two of the roost and observation locations were located along Willow Creek or one of its primary tributaries. One roost site appears to have been located at the head of a tributary draw flowing southwest into Little Willow Creek, and another roost site was in the pine trees at the base of the western slope of North Butte. Two of the four BLM winter roost sites are within the Christensen Ranch permit area; none are in the Irigaray permit area. However, the locations within the Christensen Ranch area are immediately adjacent to existing processing facilities or are in an area not currently scheduled for uranium development. Id.; Irigaray and Christensen Ranch-2007 T&E Report Page 5.

The United States agreed to protect the lands and resources of the Lakota People from degradation and destruction by persons subject to the laws of the United States. The Oglala Lakota Delegation of the Great Sioux Nation Treaty Council, through Chief Oliver Red Cloud, disputes the sufficiency of the resource protections afforded by the United States and its sub-agencies, specifically the Nuclear Regulatory Commission. Petitioner makes miscellaneous contention that the safety procedures imposed upon Applicant by the Nuclear Regulatory Commission, and Applicant's efforts at compliance with said procedures, are insufficient to adequately protect the land and water resources in the region, as evidenced by the current state of degradation.

Petitioners make technical contention that the Mine facility intends to consume billions of gallons of fresh water over its 10-year license period, using it to conduct in situ leach mining of uranium and then returning it to the aquifer with increased

concentrations of Arsenic which Arsenic has been shown to contribute to or cause pancreatic problems such as Diabetes and Pancreatic Cancer. See Arsenic Contention below.

Until there is conclusive proof that the in situ leach mining of uranium at the Mine does not affect the quality of the surface water and the ground water of the immediate surrounding area, the Application should be denied and uranium mining operations at the Mine should not be renewed.

The Oglala Delegation asserts that it clearly has an interest which may be affected, as described in Section 189 of the Atomic Energy Act of 1954, as amended (the "1954 Act"); 42 USC §2239. The Oglala Delegation, as a local governmental body and as an affected Indian tribe (that has been recognized by the federal government by the 1851 Treaty and the 1868 Treaty, among other things) also asserts standing under 10 CFR §2.309(d)(2)(i) which provides that:

A State, local governmental body (county, municipality or other subdivision), and any affected Federally-recognized Indian Tribe that desires to participate as a party in the proceeding shall submit a request for hearing/petition to intervene. The request/petition must meet the requirements of this section (including the contention requirements in paragraph (f) of this section), except that a State, local governmental body or affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements under this paragraph. The State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request/petition, each designate a single representative for the hearing. 10 CFR 10 CFR §2.309(d)(2)(i).

Because the Oglala Delegation is filing this Petition and wishes to be a party in the proceeding for a facility located within its boundaries, i.e., the treaty territory, the Oglala Delegation need not address the standing requirements under 10 CFR §2.309(d)(1).

The petitioning Oglala Delegation of the Great Sioux Nation Treaty Council request a hearing on this matter and request intervention as described above.

Pursuant to 10 CFR §2.309(d)(2)(i), the Oglala Delegation has designated Chief Oliver Red Cloud as its single representative for the hearing; and the undersigned attorneys. See attached Affidavit of Chief Oliver Red Cloud dated April __, 2009 [sic]; which incorporates by reference his Affidavit contained in and attached to the Petition of the Oglala Delegation in the renewal licensing of the Crow Butte Resources mine at Crawford, NE (ASLBP 08-867-02-OLA-BD01) at ML082170263, all of which are incorporated by reference herein.

Pursuant to 10 CFR §2.309(d)(2)(ii), no further demonstration of standing shall be required of the Oglala Delegation. In the event that the Commission shall rule that 10 CFR §2.309(d)(2) is inapplicable to the Oglala Delegation, the Oglala Delegation respectfully requests a reasonable time from notice of that decision to submit additional information in satisfaction of 10 CFR §2.309(d)(1).

This request/petition is timely filed on April 10, 2009, based on the Federal Register Notice published at 74 Fed. Reg. 6436 (February 9, 2009).

II. BACKGROUND

The project at issue was originated by a subsidiary of Westinghouse Electric Corporation (a US company) in 1978. Application at 1.2.1. In 1982, operations ceased at the Irigaray plant pending improvements in the Uranium market. Id. In June 1987, the project was purchased by Malapai Resources Company, a subsidiary of Arizona Public Service (a US company). Id. In 1988, the project license was amended to include the

Christensen Ranch satellite ion exchange plant and associated mine units. Id.

In September 1990, Malapai Resources Company was sold to Electricite de France (EdF), the French nuclear utility. Id. The NRC's ADAMS system does not reveal to Petitioner any approval under 10 CFR §40.46 of such transfer. There appears to never have been performed any inimicality analysis concerning the ownership of the Irigaray Ranch and Christensen Ranch mines and operations by a foreign government. This transaction was subject to the Byrd Amendment (discussed below) and should have been reviewed by CFIUS (discussed below) under the Exon-Florio Amendment (discussed below). The Application fails to disclose whether all such governmental approvals were obtained in connection with the 1990 transaction. Therefore, it appears that the 1990 transaction is subject to divestiture under Exon-Florio.

In 1990, the French owner assigned operations to a French company, Total Minerals Corporation (TOMIN). Application at 1.2.1. In 1993, as a result of certain corporate transactions that occurred in France and over which the United States government had no regulatory oversight, a French company, COGEMA, acquired all of this project. Id. In June 2000, the mine units were operated under licenses that allowed only restoration and site decommissioning. Id. The identities of the actual decision-makers of Applicant's ultimate parent are unknown and beyond the reach of NRC jurisdiction or enforcement. See 10 CFR §40.2 (limiting NRC regulations to persons within the United States).

In January 2001, Applicant reported a radioactive spill at the Irigaray Project of about 13,392 gallons of restoration groundwater. See Letter from John Vaselein,

Radiation Safety Officer of Applicant, dated January 25, 2001, to P. Ting, NRC Fuel Cycle Licensing Branch, re: Spill Report for Event #37686. The spill resulted from human error when a pump in a restoration well was turned on by accident and allowed to pump groundwater onto the surface. Id. No recovery of the spill was conducted. Id. The Application fails to disclose the 2001 spill in violation of 10 CFR §51.45(e).

In September 2003, Applicant was responsible for a discharge of 110,160 gallons of radioactive groundwater from one of its deep monitoring wells in mine unit 3 at the Christensen Ranch project due to human error. See Letter dated October 2, 2003 from T. Nicholson, Environmental Specialist/RSO of Applicant to G. Mooney, Wyoming Department of Environmental Quality (WDEQ) re: Groundwater spill Christensen Ranch Monitor Well 3MW53D. This spill resulted from negligence of one of Applicant's well field operators who failed to turn it off upon completion of a sampling procedure. Id. As a result, the spill ran uninterrupted for 16 days until coincidentally discovered by another worker. Id. The spill water traveled at least 400 feet northeast from the wellhead following a deep depression and soaked into the ground along that route. Id. Water reached a dry draw near the Willow Creek but did not reach Willow Creek itself. Id. The Application fails to disclose the 2003 spill in violation of 10 CFR §51.45(e).

In April 2004, it was discovered that there were multiple leaks in Christensen Ranch Ponds 3 & 4 due to winter conditions in which ice formed at the surface and punctured the pond liners during the spring thaw. See Letter dated August 19, 2004 from T. Nicholson, Environmental Specialist/RSO to G. Janosko, NRC Fuel Cycle Facilities Branch and M. Taylor, WDEQ. The amount of radioactive wastewater that leaked during the 2004 from Ponds 3 & 4 is unknown. While the Application discusses Ponds 3 and 4,

it does not provide adequate disclosure of adverse information concerning such leaks in 2004 and how the operations have changed to mitigate the risks of such kinds of leaks in the future, in violation of 10 CFR §51.45(e).

The Application states that “the recent resurgence of the uranium mining industry led to COGEMA’s decision to request a license amendment from the NRC to change the license from a decommissioning status to an operational status. Application at 1.2.1. The amendment request was submitted April 2007. *Id.* Petitioners submit that the Applicant’s decision was prompted by the 2007 violations of its license for over-producing Yellowcake.

In July 2007, Applicant was cited for violations of its licenses involving production of more than 50,000 pounds of Yellowcake Uranium per year under its restoration/decommissioning licenses. *See* Letter from NRC D. Blair Spitzberg, Ph.D, Fuel Cycle and Decommissioning Branch, dated July 27, 2007, to Bernard Bonifas, General Manager, COGEMA Mining, Inc. Applicant admitted that in violation of its license, which was to be used solely for restoration and decommissioning, it produced a total of 178,274 pounds of Yellowcake Uranium in 2005 (two hundred seventy four (274) 55-gallon drums); having a market value of between \$3.69 million and \$6.51 million, based on 2005 prices.² *See* Letter dated August 20, 2007 from T. Hardgrove, Manager, Environmental and Regulatory Affairs of Applicant to NRC re: Reply to a Notice of Violation. Petitioner submits that Applicant timed the 2005 license violations to extract

² *See* WISE Uranium Project “Uranium Mining Issues: 2005 Review,” updated March 1, 2006, “[d]uring the course of the year 2005, the uranium spot market price climbed from 20.70 to 36.50 US\$/lb U3O8, a 76% increase. The price is now more than 5 times its record low of 7 US\$/lb U3O8.” <http://www.wise-uranium.org/uissr05.html>.

the maximum economic benefit (on the order of \$5,000,000+) for the same regulatory risk, which it turned out was a non-economic ‘slap on the wrists.’ See Spitzberg Letter, *supra*. The public record does not disclose what happened to the 274 55-gallon drums. Was the Yellowcake processed within the United States? Was it exported? The Application omits disclosure of this information in violation of 10 CFR §40.9.

Without regard to the health and safety of the public and in violation of the AEA and NRC regulations, and its license, Applicant operated a Yellowcake drying “campaign” to dry (and presumably sell) the ‘captured’ pounds of Yellowcake in the precipitation circuit. See Spitzberg Letter, *supra*. Applicant’s excuse was that it “felt comfortable with the concept of a single dryer run at the conclusion of restoration. The single dryer run at the conclusion of restoration was more efficient, did not cause an increase in overall stack emissions for the four years and avoided the potential occurrence of additional employee radiation exposures attendant to the inevitable dryer maintenance activities that would be required prior to multiple dryer startups. See Hardgrove Letter, *supra*. The Notice of Violation contained in the Spitzberg Letter states “Additionally, this violation is of concern because it occurred while the environmental monitoring program was suspended.” Spitzberg Letter, *supra*. The Applicant’s assumptions about the potential health impacts does not account for the Radon-222 exposures to the public and wildlife involved in its “campaign” to dry the stored Yellowcake and constitutes a violation of Section 40.9(b) and Section 40.10.

Applicant also admitted that it failed to notify the NRC of the expiration of the approved waste disposal agreement with its sister company, Pathfinder Mines Corporation, Shirley Basin Mine, Wyoming. See Hardgrove Letter, *supra*. Applicant’s

excuse is that it was a management oversight. Id.

Applicant's April 3, 2007 request for amendment to its license to revert to operating status had requested that no additional environmental review be performed in connection with the amendment. See Letter dated March 4, 2008 from K. McConnell, NRC Decommissioning and Uranium Recovery Licensing Directorate, to T. Hardgrove. The NRC determined that Applicant's request to return to uranium production did not qualify for an exclusion and that an environmental review is required and provided Applicant with a Request for Additional Information (RAI). Id. Specifically, NRC's RAI included a request that "COGEMA should provide a description of any such activities in order to facilitate an NRC evaluation of the cumulative effects of the proposed action on the environment." Id.

On May 30, 2008 COGEMA Mining, Inc. ("Applicant") submitted a License Renewal Application ("Application") to the U.S. Nuclear Regulatory Commission ("NRC") to renew Source Materials License SUA-1341 for the Christensen and Irigaray Ranch Facilities in Johnson and Campbell Counties, Wyoming. On December 29, 2008, the NRC found that the application was administratively complete to begin a technical review. On February 9, 2009, the NRC published notice in the Federal Register of an opportunity to request a hearing and intervene. See 74 Fed. Reg. 6436 (February 9, 2009).

III. APPLICABLE LAW AND REGULATIONS

The issuance and renewal of source materials licenses such as that sought by Applicant in the Application are subject to the Atomic Energy Act of 1946 (the "1946

Act”), the 1954 Act, and NRC Regulations, particularly found in Part 40, including Appendix A thereto, as well as 10 CFR §40.9(a), 10 CFR §40.10, 10 CFR §40.32, 10 CFR §40.45, 10 CFR §51.45, and 10 CFR §51.60, and the other laws and regulations referenced herein.

The AEA expressly provides that “the Congress of the United States hereby makes the following findings concerning the development, use and control of atomic energy:

[t]he development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security, [t]he processing and utilization of source material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public, and [s]ource and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public. AEA Section 2012(a), (c)(d)(e); 42 USC §2012.

Significantly, the national interest and common defense aspects include protecting the health and safety of the public, including the environment and water resources.

“The Atomic Energy Act was passed years before broader environmental concerns prompted enactment of the National Environmental Protection Policy Act (“NEPA”). Yet many of those same concerns permeated provisions of the first-mentioned legislation and the regulations promulgated in accordance with its mandate. To say that these must be regarded independently of the constantly increasing consciousness of environmental risks reflected in proceedings with reference to NEPA, would make for neither practicality nor sense. Nor can AEA requirements be viewed separate and apart from NEPA considerations. Especially in view of NEPA, it also is unreasonable to suppose that risks are automatically acceptable, and may be imposed upon the public by virtue of AEA, merely because operation of a facility will conform to the Commission’s basic health and safety standards. The weighing of risks against benefits in view of the circumstances of particular projects is

required by NEPA in view of AEA. The two statutes and the regulations promulgated under each must be viewed in *para material*". Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1299 (DC Cir. 1975).

AEA Sections 62 and 69 are directly applicable as they expressly govern source material. Additional guidance from AEA Section 103(d) is allowable due to the operation of Section 2012(f) quoted above that **"source...material... facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.** 42 USC §2012 (e) (emphasis added). Under Vogel, *infra*, any NRC Regulations must be interpreted consistently with these Congressionally expressed purposes in order to be effective under Chevron.

AEA Section 61 provides that the Commission may make certain determinations concerning source material provided that before making such determination, the Commission must "find that the determination that such material is source material is in the interest of the common defense and security. 42 USC §2091. AEA Section 62 provides that "no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature. 42 USC §2092. AEA Section 69 provides that **"[t]he Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense**

and security or the health and safety of the public. 42 USC §2099 (emphasis added).

As a result, AEA Section 69 contains the dispositive rule.

For additional guidance, we may look to AEA Section 103(d), which states “[n]o license [for a utilization facility] may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. 42 USC §2133(d).

In order to obtain a source materials license from the NRC, an applicant must file a license application under AEA Section 182. 42 USC §2232. Each application shall be in writing and “shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, **the citizenship of the applicant**, or any other qualifications of the applicant as the Commission may deem appropriate for the license. *Id.* (Emphasis added.)

Further, licenses issued under the AEA are not transferable, directly or indirectly, through transfer of control or otherwise unless full disclosure is made to the NRC and the NRC “after securing full information” finds that the transfer is in accordance with the provisions of the AEA. 42 USC §2234; 10 CFR §40.46. In order to find that the transfer is in accordance with the AEA, the NRC would have to make a determination under AEA Section 69 that the transfer is not inimical to the common defense and security or the

health and safety of the public. 42 USC §2099.

Since AEA Section 182 requires the citizenship of the license applicant to be disclosed and evaluated in connection with making a determination under AEA Section 69 as to whether granting the request would be inimical to the common defense and security or the health and safety of the public, it is clear that the determination of foreign ownership, control and domination is a statutory requirement that transcends all of the applicable NRC regulations concerning the issuance, amendment, renewal and transfers of various kinds of atomic licenses.

Significantly, under Regulations Section 40.2, the regulations in Part 40 apply to all persons in the United States. 10 CFR §40.2. How would the control persons of the parent company of Applicant, in this case the Government of France, be made subject to NRC Regulations if Section 40.2 makes them applicable only to persons in the United States? Further, how can NRC regulations be enforced against a foreign government? What happens if, as happened in 1981, the internal politics of France change its national policy concerning uranium and nuclear power?³

As discussed above, AEA Section 182 requires a written license application which states the citizenship of the applicant, all information required by NRC regulations and regulators. NRC Regulation Section 40.9 provides that all information provided to the Commission by Applicant shall be complete and accurate in “all material respects”

³ See <http://en.wikipedia.org/wiki/Areva> “[t]he May 1981 Socialist electoral victory in France intensified calls for greater government control of Framatome [a predecessor of Applicant’s parent company, Areva]. A January 1982 company reorganization simultaneously strengthened French public and private control of the company by allowing Creusot-Loire to increase its share of the company while increasing CEA say in the running of the firm.”

which is read to mean that the Applicant has disclosed all information that a reasonably prudent regulator would consider important in making a licensing decision.⁴ 10 CFR §40.9(a).

Further, Section 40.9(b) requires Applicant to notify the Commission if Applicant has identified information having a significant implication for public health and safety or common defense and security. Petitioner submits that Section 40.9 requires that Applicant disclose the identities of the actual decisionmakers in the Government of France, Industrie - Commissariat à l'Énergie Atomique ("CEA"), Applicant's ultimate parent as well as the decisionmaking process and the political implications thereof and the jurisdiction of the United States and the NRC over such persons. The Application fails to make any such disclosures.

Once the Commission has received full disclosure in an application, it may approve the sought after source materials license in accordance with Section 40.32 if: (a) The application is for a purpose authorized by the Act; (b) The applicant is qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property; (c) The

⁴ Rules for establishing materiality under federal law are well-established by the Supreme Court under the securities laws, see *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), articulating the standard that "[a]n omitted fact is material if there is a substantial likelihood that a reasonable [decisionmaker] would consider it important in deciding how to vote." *Id.*, at 449. Acknowledging that certain information concerning corporate developments could well be of "dubious significance," *id.*, at 448, 96, the Court was careful not to set too low a standard of materiality; it was concerned that a minimal standard might bring an overabundance of information within its reach; *Id.*, at 448-449. It further explained that to fulfill the materiality requirement "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable [person] as having significantly altered the 'total mix' of information made available." *Id.*, at 449. The Supreme Court adopted the TSC Industries standard of materiality for the § 10(b) and Rule 10b-5 context. *Basic Inc. v. Levinson*, 485 US 224, 231-232 (1988).

applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and (d) **The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.** 10 CFR 40.32 (emphasis added.)

IV. FOREIGN GOVERNMENTAL OWNERSHIP BARS ISSUANCE OF THE LICENSE.

*A. The NRC Lacks Authority to Issue License to US corporation which is owned, controlled and dominated by foreign interests – in this case the Government of France.*⁵

Sections I, II and III above are hereby incorporated herein by this reference. At http://www.inc.aveva-nc.com/societes_desc/aveva-nc_resources_usa.htm, it states:

COGEMA Resources, Inc. (USA) is a former uranium producer in the U.S. and performs reclamation through its subsidiaries Pathfinder Mines Corporation and COGEMA Mining, Inc.

COGEMA Resources, Inc. (USA)
935 Pendell Boulevard
P. O. Box 730
Mills, WY Telephone: (307) 234-5019
Fax: (307) 473-7306

The Application states the following, notably omitting any reference to COGEMA Resources, Inc. (US), its parent, Areva NC, Inc. (US)⁶, its parent, Areva NC

⁵ See Wise Uranium Project "AREVA NC Company Links" updated January 5, 2009 re: "AREVA NC formerly Cogéma - Compagnie Générale des Matières Nucléaires", at <http://www.wise-uranium.org/uccog.html>.

⁶ http://www.inc.aveva-nc.com/Businesses/businesses_uranium_products_and_services/businesses_uranium_pro

(FR)⁷, its parent Areva⁸, or its controlling shareholder, Industrie - Commissariat à l'Énergie Atomique ("CEA")⁹, the atomic energy department of the Government of France; in each case a material omission and violation of Section 40.9:

5.0 OPERATIONS

COGEMA Mining, Inc. (COGEMA) is a subsidiary of COGEMA Resources, Inc., a wholly owned subsidiary of AREVA NC, Inc. AREVA NC, Inc. is a United States subsidiary of COGEMA, S.A.E. located in France. COGEMA maintains a United States headquarters in Mills, Wyoming where site licensing actions originate....

5.1 CORPORATE ORGANIZATION AND ADMINISTRATIVE PROCEDURES

The COGEMA organizational chart, as it pertains to the responsibility for radiation safety and environmental protection at the Christensen Ranch satellite and Irigaray recovery facility is given as Figure 5.1. The personnel identified are responsible for the development, review, approval, implementation, and adherence to operating procedures, radiation safety programs, environmental and groundwater monitoring programs, as well as routine and non-routine maintenance activities. Specific responsibilities of the organization are provided below.

5:1.1 GENERAL MANAGER, OPERATIONS

The General Manager, Operations, has the overall responsibility for each level of management and the radiation, safety and environmental programs for all of COGEMA's in-situ leach uranium operations, including the Texas operations and the Irigaray and Christensen Ranch projects. The General Manager has responsibility for the mine development, engineering and operational procedures. These responsibilities include the development, review and implementation of all production related operating procedures and the implementation of safety programs, associated quality assurance programs and routine and non-routine maintenance activities. The General Manager has the authority to terminate immediately any or all portion(s) of the project that have been

ducts_and_services_uranium_mining.html#; see, also, Areva NC Inc. Organizational Chart, attached.

⁷ <http://www.aveva-nc.com/scripts/aveva-nc/publign/content/templates/Show.asp?P=7342&L=EN>

⁸ <http://www.aveva.com/>

⁹ <http://www.cea.fr/>

determined to be a threat to health or property as indicated in reports from the Radiation Safety Officer or his designee.

The General Manager works closely with the Manager, Environmental and Regulatory Affairs, the Radiation Safety Officer, and the Operations Manager to assure that all activities at each site are conducted in a safe, prudent and responsible manner in compliance with all applicable regulations. **The General Manager reports to the President, COGEMA Mining, Inc. in Bessines Sur Gartempe, France.** (Emphasis added.)

5.1.2 OPERATIONS MANAGER

The Operations Manager is responsible for all operational aspects of the Irigaray and Christensen Ranch Sites. These aspects include the development, review and implementation of all operating procedures and implementation of safety programs, associated quality assurance programs and routine and non-routine maintenance activities. The Operations Manager is also responsible for adherence to all regulatory license conditions, stipulations and regulations. The Operations Manager has the authority to terminate immediately any or all portion(s) of the project that have been determined to be a threat to health or environment as indicated from the Radiation Safety Officer or Radiation Safety Technician. The Radiation Safety Officer, in addition to the Plant Foreman and the Maintenance Foreman, report directly to the Operations Manager. The Operations Manager reports to the General Manager.

Areva NC, Inc.'s website lists the following address and contact information:

AREVA NC Inc. (headquarters)¹⁰

Bethesda, MD Office
One Bethesda Center
4800 Hampden Lane, Suite 1100
Bethesda, MD 20814
Telephone: (301) 841-1600
Fax: (301) 841-1611 (AREVA, Inc.)
Fax: (301) 841-1610 (AREVA NC Inc.)
Email: communication@areva.com

¹⁰ http://www.inc.areva-nc.com/contact_us/contact_us.html.

B. Failures to disclose (in violation of Section 40.9(a) and (b)) the following, among other things:

1. Identity of ultimate parent of COGEMA SAE, when an Internet search reveals ultimate ownership by Areva, which is owned, controlled and/or dominated by CEA, which is, in effect, the atomic energy department of the Government of France.¹¹

2. Identity of the persons making the decisions as to who the General Manager is and making the decisions affecting the health and safety of the public as well as those having the authority to hire and fire such individuals, and the nature and extent of United States and NRC jurisdiction over such persons and their assets. Section 5.1.1 mentions the President of COGEMA Mining Inc. in Bessines Sur Gartempe, France but makes no reference as to who that person is, their address, or whether they have agreed to submit to the jurisdiction of the United States and the NRC.

3. Risks to corporate governance and Mine management posed by political changes and/or the potential for political changes within the Government of France.

4. Information concerning what happened to the 174,274 pounds of Yellowcake produced by Applicant at the Christensen Ranch in 2005 and put into two hundred seventy four (274) 55-gallon drums; the identity of the purchaser; whether such drums remain in the United States or whether they were exported and to whom.

Dispute: APPLICATION omits to the foregoing items 1 through 4 despite the fact that they are material items of information required to be disclosed under Section

¹¹ See <http://www.wise-uranium.org/uccog.html> and <http://www.cea.fr/>.

40.9.

For the reasons stated below, the Atomic Energy Act of 1954, as amended (the “AEA”), and Section 40.32(d) clearly bar the issuance of the sought license renewal due to the admitted foreign ownership and control of the licensed uranium mining activities by the Government of France. Therefore, this issue is clearly within the scope of this proceeding and the zone of interests protected by the AEA and NEPA.

The patterns and practices of the bad actors evolve much faster than applicable laws. The evolution of national security restrictions on foreign investment in the United States can be traced from the Trading With the Enemy Act (“TWEA”) of 1917, the International Economic Emergency Act (“IEEA”), the 1988 Exon-Florio Amendment and 1992 Byrd Amendment related to Section 721 of the Defense Production Act, and reviews by the Committee on Foreign Investment in the United States (“CFIUS”), and more recently the Department of Defense’s issuance of NISPROM and an explanation of “Foreign Ownership Control or Influence” (“FOCI”) factors applied to defense and DOE contractors.¹²

In each case, the applicable laws were crafted or amended to protect national security after the occurrence of events that raised awareness of potential threats to national security (e.g., World War I, World War II, the 1988 attempted takeover of Fairchild Aviation by Fujitsu, the 1989 takeover of MAMCO by CATIC (divested by

¹² See Chapter 2, Section 3: Foreign Ownership, Control or Influence, §2-300 et seq.; (the FOCI policy for US companies is intended to facilitate foreign investment by ensuring that foreign firms cannot undermine US security and export controls to gain unauthorized access to critical technology or classified information.) See also 1993-June-06 DOE Order 5634.3 re Foreign Control at ML081570141 and footnote 27, *infra*.

Presidential order), the events of September 11, 2001, the 2005 attempted takeover of Unocal by CNOOC and accomplished takeover of IBM's PC business by Lenovo, the 2006 attempted takeover of six US ports by Dubai World Ports, the constant and increasing illicit procurement efforts by Iran, Al Qaeda and the like to acquire dual-use items and constant nuclear smuggling such as that evidenced by the A.Q Kahn network.

IAEA nuclear security expert Anne Nilsson explains that legal enforcement is the last step in the process of evolving nuclear security under "Lessons Learned."¹³ The first steps are: Prevention and Detection; then comes Response, Storage, Transportation, Remediation, Forensic Investigation and, finally, Legal Process.¹⁴ It is widely agreed by nuclear security experts that the best course of action is to detect and prevent activities that might result in the use of a nuclear weapon or radiological device ("RDD" or "Dirty Bomb").¹⁵

Therefore, it is in furtherance of nuclear security to require disclosures of all information related to radioactive materials that is material to an analysis of the detection and prevention of nuclear security risks and further to conduct a thorough examination of the nuclear security threats posed by issuing source materials licenses to foreign-owned and controlled entities.

The so-called "Path to the Bomb" starts with Uranium ore in most cases. Natural

¹³ Anita Nilsson, IAEA Office of Nuclear Security, Combating Illicit Nuclear Trafficking: Global Perspective (February 14-18, 2008) at 19, at <http://cstsp.aaas.org/files/nilsson.pdf>.

¹⁴ Id.

¹⁵ A radiological device ("RDD") is described as a "weapon of mass disruption" which causes more psychological and economic damage than physical damage; see NRC Fact Sheet on Dirty Bombs at <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/dirty-bombs.html>.

uranium contains 0.7205% of the U-235, the fissile isotope of uranium.¹⁶ Most civilian power reactors use enriched uranium fuel containing 3 to 4% U-235.¹⁷ To make weapons-grade uranium, it must be enriched to greater than 90% U-235.¹⁸

The 1945 “Manhattan Project” considered the four physical processes for uranium enrichment: gaseous diffusion (effusion), electromagnetic separation, liquid thermal diffusion, and centrifugation, and used the first three to produce enriched uranium for the Hiroshima bomb.¹⁹ All four enrichment methods are available to terrorists and rogue nations due, in large part, to the nuclear smuggling by the A.Q. Kahn network.

One 55-gallon drum of U308 Yellowcake can be enriched relatively easily using any of four technologies (gas, electromagnetic, thermal, centrifuges), each of which requires vacuum pumps and a variety of other dual-use items.²⁰ Once it is enriched, it has become special nuclear material capable of being used as a Weapon of Mass Destruction. Even before it is enriched, it is capable of being used as an RDD – a Weapon of Mass Disruption.

In this case, Applicant seeks to mine and transfer from Wyoming to points unknown up to 2,500,000 pounds per year of concentrated Yellowcake and each pound of it may be weaponized if obtained by bad actors. To date, Applicant has illegally produced and sold at least 274 55-gallon drums of Yellowcake and has not disclosed the

¹⁶ Nuclear Chemistry: Uranium Enrichment, Dr. Frank Settle, Kennesaw State University (2005); <http://www.chemcases.com/nuclear/nc-07.htm>.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ There are 274 such 55-gallon drums unaccounted for as a result of Applicant’s illegal 2005 Yellowcake drying “campaign.”

ultimate destination of such Yellowcake. The foregoing is inimical to the common defense and security of the United States as well as to the public health and safety of the people, including the Oglala Delegation; all in violation of Section 40.32(d).

If discovered by the IAEA, a radiological weapon or stolen radiological material would be investigated to determine the source(s). It is understood that Yellowcake is fungible and it may not be possible to track shipments to the mine; but we do not know the capacity of the IAEA forensic labs and it is not our task to make that determination. Suffice it to say that IAEA investigators would use all necessary resources to discover all relevant information concerning the weapon, including the source of the Uranium.

Many companies believe, such as Applicant will likely argue, that they are involved in peaceful, profit-making commercial business when, in fact, they are being manipulated by bad actors to engage in illicit trade.²¹ It comes as a complete shock when IAEA investigators come to their offices with evidence that some part they sold has been used on an Improvised Explosive Device (“IED”) in Afghanistan or Iraq or that was welded to enrichment centrifuges, or were found on equipment related to a rogue nation’s illegal nuclear program. Such was the case at Leybold when serial numbers from their vacuum pumps were actually found on uranium enrichment equipment in Iraq during Gulf War I.²² Leybold executives were at first shocked but then conceded that it was

²¹ See US v. Ali Akbar Yahya et al., footnote 32, *infra*.

²² Remarks of R. Wirtz, of Oerlikon Leybold Vacuum, at Finding Innovative Ways to Detect and Thwart Illicit Nuclear Trade, footnote 63, *infra* at 11.

their equipment and they started a new corporate program designed support the non-proliferation efforts of the IAEA.²³

Our task is to make sure the IAEA investigators don't ever need to show up at the COGEMA offices in Mills, Wyoming, to find out how Wyoming Yellowcake was weaponized by bad actors that got hold of it after it left the hands of the Wyoming people who work at the mine.

Nuclear Security is defined by the IAEA as “the prevention and detection of, and response to, theft, sabotage, unauthorized access, illegal transfer or other malicious acts involving nuclear material, other radioactive substances or their associated facilities.”²⁴ The WMD Commission Report notes that there are several areas where the United States can improve its nonproliferation efforts specifically including strict compliance with the terms of the AEA.²⁵ The WMD Commission Report also notes the shortcomings in Congressional oversight of nonproliferation where IAEA inspections are required under the AEA.²⁶ Petitioner submits that the NRC's failure to strictly comply with the AEA by issuing source materials licenses to foreign-government-owned entities in the past has no persuasive weight – especially in light of the WMD Commission's admonition to require strict compliance with the AEA now and in the future in order to promote nuclear security.

²³ Id.; see also Building a Corporate Nonproliferation Ethic, at footnote 36, *infra*.

²⁴ A. Nilsson, footnote 13 *infra*, at 9.

²⁵ See WMD Commission Report at 92 discussing failure of nonproliferation assessments that are required under the AEA; failure to hold hearings regarding Turkey or Saudi Arabia; failure to properly review the nuclear cooperation agreements between Russia or India.

²⁶ Id.

A full and complete analysis of the nuclear security risks requires strict compliance with the “disclosure of citizenship” requirements of AEA Section 182 as well as a complete analysis of the implications of foreign ownership, control and influence (“FOCI”)²⁷ on the common defense and security and on the health and safety of the public.

“[P]revious Commission decisions regarding foreign ownership or control did not appear to turn on which particular nation the applicant was associated with.” 64 Fed. Reg. at 52,357. In addition, such prior Commission decisions must be evaluated in the context of the threats we face in 2009 and rapidly evolving and adapting networks of illicit procurement and nuclear smuggling.

In this case, we have the luxury of addressing these issues before a tragic incident occurs that is traceable to this Application. “[M]inimally, the regulations under 10 CFR Part 40 for “Domestic Licensing of Source Material” clearly require, at Section 40.32(d), that the “issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.” Long Island Lighting Co. (Shoreham Nuclear

²⁷ See 1993-June-06 DOE Order 5634.3 re Foreign Control (ML081570141) - Department of Energy implementation of a Foreign Ownership, Control, or Influence (FOCI) program designed to obtain information that indicates whether DOE offerors/bidders or contractors/subcontractors are owned, controlled, or influenced by foreign individuals, governments, or organizations, and whether that foreign involvement poses an undue risk to the common defense and security. DOE Order 5634.3 at ¶1. The DOE Order is also similar to the National Industrial Security Program Operating Manual (NISPOM) issued by the Department of Defense. The DOE requires that if the “ultimate parent” and any intervening levels of ownership, of the entity is controlled by another organization, to submit complete, current, and accurate information, certification and explanatory documentation which define the extent and nature of any relevant FOCI over the offeror/bidder and tier parents for use by DOE in determining the risk presented by that FOCI. DOE Order 5634.3 at ¶5. Another example of a common “ultimate parent” analysis can be found in the antitrust rules for pre-merger notifications under 15 USC §18a, which was part of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1400 (1984). This is especially important where, as here, the source materials license may be conjoined with the legal authority to export truckloads of 55-gallon drums of U308 Yellowcake from Wyoming to points unknown.²⁸ For the reasons stated below, the AEA, and Section 40.32(d) clearly bar the issuance of the sought source materials license renewal.

The AEA expressly provides that:

“the Congress of the United States hereby makes the following findings concerning the development, use and control of atomic energy:....[t]he development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security, [t]he processing and utilization of source material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public, and [s]ource and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public. AEA Section 2012(a), (c)(d)(e); 42 USC §2012.

Further evidence of Congressional intent is found in the Atomic Energy Act of 1946 (the “1946 Act”):

The significance of the atomic bomb for military purposes is evident. The effect of the use of atomic energy for civilian purposes upon the social, economic and political structures of today cannot now be determined. It is a field in which unknown factors are involved. Therefore, any legislation will necessarily be subject to revision from time to time. It is reasonable to anticipate, however, that tapping this new source of energy will cause profound changes in our present way of life. Accordingly, it is hereby declared to be the policy of the people of the United States that, subject at all times to the paramount objective of assuring the common defense and security, the development and utilization of atomic energy shall, so far as

²⁸ See 10 CFR Part 110 concerning export processes based on a source materials license.

practicable, be directed toward improving the public welfare, increasing the standard of living, strengthening free competition in private enterprise and promoting world peace. 1946 Act, §1(a).

In furtherance of preventing diversion of nuclear materials, the 1946 Act provided for US government ownership of all fissionable materials.²⁹ Section 5(a)(3) of the 1946 Act made it unlawful for any person to possess, transfer, import or export any fissionable material or *directly or indirectly engage in the production of any fissionable material outside of the United States.*³⁰ (Emphasis added.) Since the 1946 Act only applies to persons within the United States, this implies Congressional intent that foreign persons would not control the production of fissionable material.³¹

Section 5(b)(1) of the 1946 Act provides the original definition of “source material” to include Uranium such as that mined by Applicant. Section 5(b)(2) of the 1946 Act imposed a licensing requirement identical to the one at issue in this case. Section 5(b)(3) of the 1946 Act provides that:

[t]he Commission shall establish such standards for the issuance, refusal, or revocation of licenses as it may deem necessary to assure adequate source materials for production, research, or development activities pursuant to this Act or to prevent the use of such materials in a manner inconsistent with the national welfare.

Further, Section 7(c) of the 1946 Act provided that:

[n]o license may be given to any person for activities which are not under

²⁹ 1946 Act, §5(a).

³⁰ 1946 Act, §5(a)(3)(C) (emphasis added).

³¹ See, also, 10 CFR §40.2 (“the regulations in this part [40 - Domestic Licensing of Source Material] apply to all persons in the United States”).

or within the jurisdiction of the United States, **to any foreign government**, or to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security.

It is significant that Section 7(c) speaks to three situations in which a license may not be issued: (1) a license for activities which are not under or within the jurisdiction of the United States; **(2) a license to any foreign government**; or (3) a license to any person within the United States if in the opinion of the Commission such issuance would be inimical to common defense and security (“CD&S”). Unlike many provisions of the 1946 Act that were superseded by the 1954 Act,³² Section 7(c) quoted above was not amended by the 1954 Act and remains in full force and effect. Section 69 of the AEA supplements Section 7(c) of the 1946 Act with an emphasis on the last type of person described in Section 7(c).

Based on the foregoing, Section 7(c) of the 1946 Act bars the issuance of a source materials license to any foreign government. Section 7(c) of the 1946 Act demonstrates Congressional intent to restrict foreign control over source materials licenses. It bars licenses to be issued for foreign activities and bars licenses to be issued to foreign governments. Petitioners submit that such intent also supports a finding that no source materials license may be issued to foreign entities or entities owned or controlled by them. This is supported by a fair reading of 10 CFR §40.38 which provides that a license may not be issued to the “Corporation” if it is owned, controlled or dominated by an alien, a foreign corporation or foreign government, or the issuance of the license would

³² See, e.g., Section 5(b)(7) of the 1946 Act, which was superseded by Section 68(c) of the 1954 Act.

be inimical to the common defense and security of the US or maintenance of a reliable and economical domestic source of enrichment services.³³ Section 40.38 shows important factors to be considered in the analysis such as whether the licensee entity is owned, controlled or dominated by an alien, a foreign corporation or a foreign government. Section 40.38 also makes reference to the importance of a reliable and economical domestic source of enrichment services, which itself is a public policy goal that would be frustrated by allowing America's uranium assets to be owned, licensed and mined by foreign companies.

Congressional intent also may be discerned from Section 170B of the AEA which provides that the Secretary of the Energy was required during the years 1983 to 1992 to report annually to Congress and the President a determination of the viability of the domestic uranium mining and milling industry.³⁴ How would the domestic uranium mining and milling industry be defined if foreign governments were allowed to acquire controlling interests in US uranium mines and mills? Section 170B of the AEA presumes that US uranium mines are owned by US persons which indicates Congressional intent that source materials licenses not be issued to foreign-controlled applicants.

Further Congressional intent is discerned from Section 10(b)(3) of the 1946 Act which provides that:

[w]hoever,...with intent to secure an advantage to any foreign nation, acquires or attempts or conspires to acquire any...information involving restricted data shall, upon conviction thereof, be punished by death or imprisonment for life; or by a fine of not more than \$20,000 or imprisonment for not more than twenty years, or both.

³³ 10 CFR §40.38.

³⁴ 42 USC §2210b.

This shows that Congress intended to prohibit foreign companies and governments from acquiring control of US companies that possessed ‘restricted data’³⁵ *under penalty of death*.

AEA Section 62 provides that “no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature.”³⁶ AEA Section 69 provides that “[t]he Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.”³⁷

AEA Section 103(d)³⁸ states:

Ino license [for a utilization facility] may be issued to an alien or **any corporation** or other entity **if the Commission knows** or has reason to believe it **is owned, controlled, or dominated by** an alien, a foreign corporation, **or a foreign government**. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.”³⁹

AEA Section 182 provides that in order to obtain a source materials license from

³⁵ “Restricted data” was defined as “all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power.” 1946 Act, §10(b)(1).

³⁶ 42 USC §2092.

³⁷ 42 USC §2099.

³⁸ Since the Congressional purposes stated in AEA Section 2 are the same for source material as for utilization facilities, the guidance provided by AEA Section 103(d) is persuasive.

³⁹ 42 USC §2133(d).

the NRC, an applicant must file a license application.⁴⁰ Each application shall be in writing and “shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, **the citizenship of the applicant**, or any other qualifications of the applicant as the Commission may deem appropriate for the license.⁴¹ Further, licenses issued under the AEA are not transferable, directly or indirectly, through transfer of control or otherwise unless full disclosure is made to the NRC and the NRC “after securing full information” finds that the transfer is in accordance with the provisions of the AEA.⁴² Accordingly, unless full information was provided to the NRC in connection with the 1990 transaction, such transaction remains open for review in connection with this licensing proceeding and under Exon-Florio.

A full and complete analysis of the nuclear security risks in each case requires strict compliance with the “disclosure of citizenship” requirements of AEA Section 182 as well as a complete analysis of the implications of foreign ownership, control and influence (“FOCI”) on the US national interest, common defense and security and on the health and safety of the public. The AEA, pursuant to Section 7(c) of the 1946 Act, bars the issuance of a source materials license to any foreign-owned and controlled entity because its decision-makers are outside the jurisdiction of the United States. Further, even if there were no absolute bar, in light of current nuclear threats and in light of nuclear smuggling and illicit procurement networks, any issuance to a foreign-owned and

⁴⁰ 42 USC §2232.

⁴¹ Id. (Emphasis added).

⁴² 42 USC §2234.

controlled applicant is currently inimical to the common defense and security. Finally, even not otherwise barred, the issuance to Applicant of a source materials license is inimical and must be denied for the reasons discussed below.

NRC regulations in Part 40 apply to all persons in the United States.⁴³ There is no regulation that extends jurisdiction to persons outside of the United States. While the 1954 Act does not address this issue directly, the 1946 Act Section 7(c) applies to bar any license from being “given to any person for activities which are not under or within the jurisdiction of the United States,” or “any foreign government.”⁴⁴ Petitioners submit that when the activities of an applicant are controlled by decision-makers who are “not under or within the jurisdiction of the United States” such activities are likewise not “under or within the jurisdiction of the United States” for purposes of Section 7(c) of the 1946 Act. As a result, the AEA bars the issuance of any license to Applicant because it bars issuance of a license to any person who is controlled by persons that are not “under or within the jurisdiction of the United States.”

Applicability of the Byrd Amendment, Exon-Florio and Section 721 of the Defense Production Act

In 1992, in the wake of the failed attempt by French government-owned Thomson-CSF to buy LTV Corporation’s Missile Division, Congress passed the “Byrd Amendment”⁴⁵ to Exon-Florio, requiring a review of acquisitions of US firms by foreign government-owned or government-controlled firms. There is no evidence that the 1990 transaction was subject to scrutiny under Exon-Florio.

⁴³ 10 CFR § 40.2.

⁴⁴ 1946 Act, §7(c) (emphasis added.)

⁴⁵ See Sections 837 and 838 of the Fiscal Year 1993 National Defense Authorization Act (Public Law 102-484), amending 50 USC app. §2170 and adding 10 USC §2537, respectively.

There is no dispute that Applicant is owned, controlled and dominated by a foreign government – namely, the Government of France. Even though the Application fails to disclose that the ultimate parent of its parent company is the Government of France, such information may be obtained by a modicum of Internet searching. There is no question that foreign ownership, control and domination of an applicant for a source materials license is material information that should be disclosed on an application under AEA Section 182(a) which specifically requires disclosure of the citizenship of the Applicant.

The September 11, 2001 attacks demonstrated the extent of US vulnerability to the terrorist threat.⁴⁶ In the introduction to The National Strategy for The Protection of Critical Infrastructures and Key Assets (2003), President G.W. Bush wrote:

The terrorist enemy that we face is highly determined, patient, and adaptive. In confronting this threat, protecting our critical infrastructures and key assets represents an enormous challenge. We must remain united in our resolve, tenacious in our approach, and harmonious in our actions to overcome this challenge and secure the foundations of our Nation and way of life.⁴⁷

In 2005, a Congressional uproar over national security concerns terminated proposed purchase of Unocal by the China National Offshore Oil Corporation

⁴⁶ President G.W. Bush, introductory note to The National Strategy for The Protection of Critical Infrastructures and Key Assets (February 2003), at http://www.dhs.gov/xprevprot/publications/publication_0017.shtm.

⁴⁷ Id. There is no reason to believe that the Obama Administration will take a different view - "We will not apologize for our way of life, nor will we waver in its defense, and for those who seek to advance their aims by inducing terror and slaughtering innocents, we say to you now that our spirit is stronger and cannot be broken; you cannot outlast us, and we will defeat you." President Obama Inauguration Speech, January 20, 2009.

("CNOOC") even though CNOOC offered substantially more to Unocal shareholders.⁴⁸ Also in 2005, national security concerns were raised with the sale of IBM's PC business to the Chinese firm Lenovo making it the third largest PC maker in the World behind Dell and Hewlett-Packard.⁴⁹ CFIUS approved the transactions after requiring some national-security related changes to the deal.⁵⁰ In 2006, the Dubai Ports World-P&O acquisition raised concerns about foreign control over six US ports and sparked a re-examination of the national security implications of corporate transactions resulting in foreign control over strategic US assets.⁵¹

In September 2008, 16 foreign individuals and companies involved in procuring items with military applications for Iranian entities through Dubai and Malaysia-based trade networks were indicted under IEEPA, Iran Trade Embargo, and Iranian Transactions Regulations.⁵² In that case, a dozen 'innocent' US companies located in Arizona, California, Connecticut, Florida, Illinois, Massachusetts, Minnesota, New York, and Texas, were implicated in unknowingly supplying dual-use items to Iranian

⁴⁸ See E. Graham and D. Marchick, US National Security and Foreign Direct Investment, at 4, 14 (May 2006) (hereinafter "National Security and FDI"), at 128.

⁴⁹ See "IBM Completes Sale Of PC Business To Lenovo: IBM and Lenovo made minor modifications to the terms of the sale to win U.S. government approval," InformationWeek (May 2, 2005) ("Some U.S. lawmakers expressed concerns that it would result in the transfer of sensitive technology to a communist-led country that some consider a political and economic rival to the United States....IBM and Lenovo had to make some "minor modifications" to the agreement to win federal approval.") <http://www.informationweek.com/news/hardware/showArticle.jhtml?articleID=162100445>.

⁵⁰ Id.

⁵¹ See, e.g., Council on Foreign Relations Backgrounder: Foreign Ownership of U.S. Infrastructure, E. Kaplan & L. Teslik (February 13, 2007) at http://www.cfr.org/publication/10092/foreign_ownership_of_us_infrastructure.html.

⁵² Iranian Entities' Illicit Military Procurement Networks, D. Albright, P. Brannan and A. Scheel, Institute for Science and International Security (January 12, 2009); www.isis-online.org, at 1 with reference to US v. Ali Akbar Yahya et al., Case No. 08-20222-CR-LENARD(s) (filed September 11, 2008, US Dist. Ct., Southern Dist. Florida).

recipients in 2004. The dual-use US products (GPS, inclinometers, etc.) were usable (and probably used) to make high-tech Improvised Explosive Devices (“IEDs”) that kill American soldiers in Afghanistan and Iraq.⁵³ The United Arab Emirates (UAE)’s port capital of Dubai:

functions as one of the world’s most unrestrictive free trade and shipping zones. It also houses hundreds of front companies and foreign trading agencies that actively procure dual-use items for entities in countries under sanction.... It is difficult for manufacturers and suppliers to know when they are being exploited by these sophisticated procurement networks. The alleged successes of the Dubai and Malaysia- based networks in obtaining the items show that U.S. companies often are unable to detect illicit procurement schemes on their own. Though the entities involved in this illicit procurement scheme allegedly purchased items which could be used in conventional weapons, a network using similar strategies to procure a range of dual-use items for use in an unsafeguarded nuclear program would likely have found a similar level of success. Iran’s efforts to procure for its nuclear program, particularly its gas centrifuge program, are similar in their complexity and difficulty in discovering.

On October 28, 2008, Dr. Mohamed ElBaradei, Director General of the International Atomic Energy Agency (IAEA), addressed the United Nations General Assembly and warned the world about nuclear terror:

The possibility of terrorists obtaining nuclear or other radioactive material remains a grave threat. The number of incidents reported to the Agency involving the theft or loss of nuclear or radioactive material is disturbingly high....Equally troubling is the fact that much of this material is not subsequently recovered. Sometimes material is found which had not been reported missing.⁵⁴

⁵³ *Id.* at 9-11.

⁵⁴ WORLD AT RISK - The Report of the Commission on the Prevention of WMD Proliferation and Terrorism, Graham & Talent (December 2008), <http://www.preventwmd.gov> (hereinafter “WMD Commission Report”), at 43.

In December 2008, the Commission on the Prevention of WMD Proliferation and Terrorism (the “WMD Commission”) reported:

We live in a time of increasing nuclear peril. The number of states armed with nuclear weapons or seeking to acquire them is increasing. Terrorist organizations are intent on acquiring nuclear weapons or the material, technology, and expertise needed to build them. **Trafficking in nuclear technology is a serious, persistent, and multidimensional problem. The worldwide expansion of nuclear power increases the danger of proliferation.**

The challenges for the United States and the world remain clear. Today, anyone with access to the Internet can easily obtain designs for building a nuclear bomb, but **the hardest part for those bent on nuclear terror has always been acquiring the weapons-grade uranium or plutonium required to make the bomb. Our crucial task is to secure that material before the terrorists can steal it or buy it on the black market.** And we must stop and reverse the proliferation of nuclear weapons while we can.

...

...Our efforts must adapt to meet the rapidly evolving nuclear security challenges we confront today.⁵⁵

The proliferation of nuclear weapons starts with Uranium mining.⁵⁶ Applicant is licensed by Source Materials License SUA-1341, the renewal of which is at issue in this case, to mine up to 2,500,000 pounds per year of U308 Yellowcake Uranium from the Christensen Ranch mine units. What is Applicant planning to do with the Yellowcake? Where will it be shipped? From Wyoming to where? Export is handled through an NRC licensed shipper which reports Applicant (as a licensed entity) as the customer/supplier

⁵⁵ Id. at 43-44 (emphasis added).

⁵⁶ Building a Corporate Nonproliferation Ethic, D. Albright and P. Gray (June 1993), at <http://isis-online.org/publications/expcontrol/isisrpt693.html>, Paths to the Bomb diagram at <http://isis-online.org/publications/expcontrol/oldpaths.jpg>.

under Part 110.⁵⁷

Given the importance of the AEA as means of ensuring nuclear security in the post-9/11 world, it is critically important that the issue of the Applicant's foreign ownership be assessed in light of the Congressional mandate that nuclear material be regulated "in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."⁵⁸ As discussed herein, Applicant's ownership and complete domination by the Government of France violates the applicable regulatory scheme and flaunts laws specifically enacted by the U.S. Congress to ensure the health, security and safety of U.S. citizens. No less important is the Applicant's poor operations record fraught with human errors, spills, leaks and noncompliance with NRC regulations.

The NRC itself lacks authority under the AEA to grant a license or amendment where, as here, there is no benefit to the US national interest, common defense or security and there are clear detriments to the health and safety of the public. Mere technical compliance with NRC disclosure regulations does not in and of itself satisfy the purposes stated in the Atomic Energy Act, as amended ("AEA").

The United States Supreme Court has stated that a regulation "is not a reasonable statutory interpretation unless it harmonizes with the statute's 'origin and purpose.'" US v Vogel Fertilizer Co., 455 US 16, 26 (1982). Accordingly, it is incumbent upon the NRC

⁵⁷ Because Applicant is not currently licensed to produce Yellowcake, it presumably has not yet established an export shipper arrangement; in any case the Application is silent as to where its Yellowcake would be shipped after processing at the Christensen Ranch. 10 CFR Part 110 applies to authorize export on behalf of source materials licensees such as Applicant.

⁵⁸ See U.S.C. § 2133(d).

to evaluate the US national interest or common defense and security, or lack thereof, as well as the protection of public health and safety, or failure thereof. Furthermore, the NRC is required to deny a license amendment that would not serve the US national interest or common defense and security or would fail to protect public health and safety. Since the purposes of the AEA would not be served by issuing a license to the Government of France to mine Yellowcake out of the Wyoming aquifers, granting any license renewal to Applicant would be inimical to the common defense and security and public health and safety. Accordingly, this Contention must be admitted and determined upon a proper record.

Due to Applicant's intentional failures to disclose material information concerning its foreign ownership, control and domination, Applicant has "unclean hands" in this proceeding and may not receive the benefits of any presumptions or assumptions. Rather, Applicant must be held to the highest standards for the protection of the US national interest, common defense and security and health and safety of the public.

One example of the impact of foreign ownership, control and domination on the operation of an ISL uranium mine is that foreign owners and control persons who are not US persons have no loyalty to prevent the reckless, negligent or intentional contamination of the environment by the ISL mining. For example, a foreign controlled uranium mining company would be more inclined to overlook the technical requirements of its license (as was the case in the 2005 Yellowcake drying "campaign") in favor of

profit taking in what is often known as “cut and run” mining operations.⁵⁹ As a result, lack of foreign ownership, control and domination is required in order to properly preserve the health and safety of the public as required by the AEA and NRC Regulations. In the absence of any effective negation plan, Applicant’s license amendment for the benefit of foreign COGEMA must be denied.⁶⁰

The Court of Appeals recognized the problems associated with allowing non-US persons to control nuclear materials, stating:

the internal evidence of the Act is that Congress was thinking of keeping such materials in private hands secure against loss or diversion; and of denying such materials and classified information to persons whose loyalties were not to the United States. In the case of the latter standard of ‘the public health and safety,’ the Congressional preoccupation was with industrial accidents and the dangers they presented to employees and the neighboring public....In short, Congress certainly can be taken to have expected that an applicant for a license should bear the burden of proving the security of his proposed facility as against his own treachery, negligence, or incapacity. Siegel v. Atomic Energy Commission, 400 F.2d 778, 784 (DC Cir. 1968).

Another example of how it may be inimical to the common defense and security of the United States to grant a foreign company a license to mine and export yellowcake uranium, is that it takes the yellowcake uranium outside of US legal restrictions.

⁵⁹ Further, the surety bond issued by letter of credit on a French bank may not be enforceable in a dispute with Applicant which is owned by the Government of France which itself could pass a law or take legal action under French law to block collection of the surety bond.

⁶⁰ Had Applicant made full disclosures of the foreign ownership and control issues, the NRC might have been able to evaluate such issue and make license conditions if possible that might allow for licensing in accordance with the AEA under NRC Regulation Section 40.41, which contemplates special requirements or conditions that it deems necessary to promote the common defense and security, protect health or minimize danger to life or property, protect restricted data, and require reporting and recordkeeping to effect the purposes of the AEA. A Negation Plan could be properly delineated and adopted under such Regulation 40.41. 10 CFR 40.41.

A cursory comparison of Applicant's disclosures concerning its ownership in with the applicable standard for disclosures of material facts under Section 40.9, requires a conclusion that there are gross omissions to disclose material facts that are necessary to make the Application itself, in light of the circumstances, not misleading. For example, the APPLICATION states that the project was purchased by EdF and that it assigned operations to TOMIN which merged with COGEMA. There are no additional disclosures concerning ownership, control or foreign domination by the Government of France.

The only people who are not in favor of nuclear security are those who have bad intentions to cause harm to innocent people and who seek to undermine peaceful civil society. Such bad actors and their illicit procurement networks do not follow the law; rather, they manipulate front companies to induce innocent companies to violate export controls and nonproliferation laws.⁶¹ Illicit networks, such as the A.Q. Khan network, are responsible for the proliferation of nuclear threats.⁶² Nuclear smuggling was described by one expert as follows:

Nuclear smuggling involves phony front companies, false declared end-users, trading companies located anywhere in the world, and a continuous search for loopholes in laws....Such tricks of the trade help nuclear smugglers to avoid detection....Smugglers continue to corrupt seemingly incorruptible businessmen....Illegal businesses can be hidden inside legitimate ones, and the enormous growth of global trade provides the perfect cover to hide the black market's transactions. Khan demonstrated that it's possible for a shady network of scientists, industrialists and businessmen to sell turnkey nuclear weapons production facilities. A

⁶¹ Iranian Entities' Illicit Military Procurement Networks, at footnote __ *infra*.

⁶² "Iran's Nuclear Program: Status and Uncertainties", prepared testimony by D. Albright, President, Institute for Science and International Security (ISIS), before the House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation, and Trade, Subcommittee on the Middle East and Asia (March 15, 2007), at 1 ("the Khan network provided Iran the ability to build and operate gas centrifuges. Without their assistance, Iran would have likely been unable to develop a gas centrifuge program."); available at www.isis-online.org.

developing country could save years in its quest for nuclear weapons. In the future, **hostile groups and failed states could buy the facilities to make nuclear explosive material and fashion a crude atomic bomb. According to [former CIA Director George] Tenet, in the current market place if you have \$100 million, you can be your own nuclear power.** ⁶³

On September 10, 2008, New York City Police Commissioner Raymond Kelly testified to the WMD Commission that:

[w]hether it's fixing gaping holes in regulation, securing loose nuclear materials abroad, or fully funding programs here at home that represent our last line of defense, we have absolutely no time to lose.... Everything we know about al Qaeda tells us that they will try to hit us again, possibly the next time with a weapon of mass destruction. We must do everything in our power to stop them before it's too late.⁶⁴

Concealment of the foreign ownership, such as shown by the omission by the Application to disclose the control by the Government of France, evidences a corporate culture of resistance to making full disclosures or to conducting a complete analysis of materiality in order to enable disclosures of all material facts.⁶⁵ Such conduct is not consistent with corporate responsibility to support international non-proliferation efforts.⁶⁶ Such conduct is contrary to the national interest and is inimical to the common defense and security and to the health and safety of the public.

⁶³ D. Albright remarks at Finding Innovative Ways to Detect and Thwart Illicit Nuclear Trade, Carnegie Endowment for International Peace: Carnegie International Nonproliferation Conference (June 26, 2007) at 5 (emphasis added), event transcript at <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=1029>.

⁶⁴ WMD Commission Report at 112.

⁶⁵ This corporate culture of nondisclosure is further shown by Applicant's attempt to seek an exclusion from submitting an environmental report; see March 4, 2008 letter, *supra*.

⁶⁶ See Building a Corporate Nonproliferation Ethic, at footnote 36, *infra*.

In addition, from an economic standpoint, it is not in the US national interest to allow uranium mines to be controlled by foreign governments.⁶⁷ Further, the US national interest includes preventing “Economic Espionage”⁶⁸ which is made more likely if source materials licenses are issued to foreign-government-owned and controlled entities.

The US national interest requires a stable source of domestically controlled uranium to supply to US power plants and for medical and scientific needs now and projected needs in the future. It is noteworthy, that some of the objections of the proposed CNOOC purchase of Unocal was that the Chinese owned oil could be diverted away from global markets to exclusively serve China’s oil needs.⁶⁹ The same risk applies now because the French-owned Applicant could divert the proceeds of its Wyoming mines to its nuclear power plants in France.

Further, it is not in the US national interest for US people to be saddled with pollution caused by a mine where the results – the Yellowcake – is exported, sold and used outside the US for foreign profit. How has the United States become a “raw materials colony” for other countries and how can that be in the US national interest?

Therefore, there is an absolute prohibition against the issuance of source materials licenses to persons who are under foreign ownership, control and domination.

⁶⁷ See AEA §105 concerning applicability of anti-trust laws.

⁶⁸ “Economic espionage” was defined in a 1994 U.S. government interagency report as “government-sponsored or coordinated intelligence activity designed to unlawfully and covertly obtain classified data and/or sensitive policy or proprietary information from a U.S. Government agency or company, potentially having the effect of enhancing a foreign country’s economic competitiveness and damaging U.S. economic security. See Defense Industrial Security: Weaknesses in DOD Security Arrangements at Foreign-Owned Defense Contractors (GAO/NSIAD-96-64) (February 1996), at 2.

⁶⁹ See National Security and FDI at 130.

In addition to the factors discussed above, for “health and safety of the public – “PH&S” factors we look to avoiding contamination and releases into pathways for human ingestion; encouraging regulatory compliance through effective enforcement; collectability of under-collateralized cleanup costs (i.e., when as is often the case clean up costs exceed the amount of the applicable surety bond if any); access to restricted information; jurisdiction of regulators and regulations over foreign decision-makers; access to records related to mine but stored at foreign affiliate locations; subpoena authority over foreign decision-makers and foreign located records.

One example of the negative impact of foreign ownership, control and domination on the operation of an ISL uranium mine is that foreign owners and control persons who are not US persons have no loyalty to prevent the reckless, negligent or intentional contamination of the environment by the ISL mining. Such activities could result in environmental damage or loss of drinking water resources in the aquifers that would be equivalent as if a WMD or RDD had been used against America. For example, when Applicant decided to release a huge amount of Radon-222 during the 2005 Yellowcake drying “campaign” in violation of its license, it showed reckless disregard for the health and safety of the public.

The foreign ownership and control of a US mine creates a culture of recklessness at the foreign headquarters for the health and safety of the people living near the mine because the decision-makers do not live near the mine and do not drink the water there. This is why Section 7(c) of the 1946 Act prohibits licenses to be issued when the decision-makers are located outside the United States. As a result, lack of foreign

ownership, control and domination is required in order to properly preserve the health and safety of the public as required by the AEA and NRC Regulations.

If any further analysis is required it would be under 10 CFR §40.32 which provides that once the Commission has received full disclosure in an application, it may approve the sought after source materials license in accordance if: (a) The application is for a purpose authorized by the Act;⁷⁰ (b) The applicant is qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property; (c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and **(d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.**⁷¹

One could compare French COGEMA with Chinese CNOOC – both in the energy sector – identified as a part of “critical infrastructure.” CNOOC involved oil and COGEMA involves Uranium. There are far fewer national security implications involved with oil than with Uranium due to the potential non-peaceful applications of Uranium.⁷²

As a Government-owned company that acquired control of Applicant, under the Byrd Amendment, there should have been a mandatory review by CFIUS under Exon-Florio; Applicant has not provided any evidence that the 1990 transaction complied with Exon-Florio.

⁷⁰ Petitioners submit this means “in the US national interest.”

⁷¹ 10 CFR §40.32 (emphasis added).

⁷² Even compared as energy without regard to its radiological impact, Uranium would be on a par with oil as an energy resource.

CNOOC – “Chinese National Offshore Oil Corporation” was founded in 1982 and is one of the largest state-owned oil giants in China, as well as the largest offshore oil and gas producer. It is authorized to cooperate with foreign partners for oil and gas exploitation in China 's offshore areas. Headquartered in Beijing, it has a total staff of 51,000 with a registered capital of RMB 94.9 billion.⁷³ In connection with the Unocal purchase, CNOOC received easy credit and investment from the Government of China in order to pay for the shares. At the time, Unocal’s share of the US oil market was less than Cameco’s current share of the US Uranium market. CNOOC voluntarily filed with CFIUS.

For the same reasons as CNOOC’s purchase of Unocal was inimical to common defense and security, so was France’s purchase of the Irigaray and Christensen projects (SUA-1341). Petitioner submits that if COGEMA had been owned by another country like China, it would be required to divest on national security grounds in the same way as the China Aero-Tech purchase of MAMCO was ordered divested in 1990.

For example, it is inimical to the public health and safety to allow corporate recordkeeping practices that whereby records are maintained at the foreign parent’s offices and outside the jurisdiction of the United States and NRC Regulations. This raises the question that if all key executive of Applicant attend a strategy meeting at their parent’s headquarters in Bessines Sur Gartempe, France, then to what extent is restricted data being compromised? To what extent are meeting minutes at a meeting in Bessines Sur Gartempe, France available for discovery in this US NRC proceeding.

⁷³ <http://www.cnooc.com.cn/yyww/gsjj/default.shtml>.

If the Government of France resists lawful discovery requests concerning COGEMA's corporate minutes related to any issue related to public health and/or safety, then enforcement of the AEA, NEPA (or other relevant statute such as antitrust, export control, etc.) would be frustrated. Accordingly, to the extent that the enforcement of the AEA and NRC Regulations is made more difficult by one iota, such is an indication that foreign ownership of Applicant is inimical to the public health and safety.

It is inimical to the public health and safety to fail to monitor Arsenic or to filter Arsenic out of the mined aquifer. The foreign ownership and control of Applicant creates a culture of recklessness for the health and safety of the people living near the mine because the decision-makers do not live near the mine and do not drink the water there. Therefore, there is no incentive for Applicant's parent/decisionmakers to ensure compliance with US and NRC regulations.

The ultimate parent's non-US assets are beyond the reach of US jurisdiction – in fact, collection against the sovereign Government of France may not be legally possible at all. Therefore, such assets may not be used to satisfy restoration and decommissioning liabilities to the extent that such liabilities exceed the amount recovered under any surety bond or letter of credit. As discussed above, the surety bond issued by a French bank may not be collectable if there is any dispute with the Government of France over the restoration and decommissioning costs. This creates financial insecurity for the payment of restoration costs creating contingent liabilities for the local, state and federal budgets that would be used to pay for the shortfall. Such is inimical to the health and safety of the public.

V. **CULTURAL RESOURCES CONTENTION - FAILURE TO DISCLOSE CULTURAL RESOURCES IN THE PERMIT AREA**

Sections I, II, III and IV above are hereby incorporated herein by this reference.

The Application omits any discussion of cultural resources or artifacts, or burial grounds or remains in the mining area. Such disclosure is required under Section 40.9, as well as Appendix A to Part 40, NEPA and Section 106 of the National Historic Preservation Act, made applicable through NEPA; and in order for the United States to comply with its obligations under NAGPRA (discussed below).

Such information is required to be disclosed under Section 51.45 and Appendix A to Part 40, in order for an Environmental Assessment and/or Environmental Impact Statement to be prepared by the NRC. Therefore, it is within the scope of this proceeding and part of a determination required to be made in connection with the licensing action.

The Application's failure to disclose the cultural resources is made puzzling by the fact that such cultural resources were identified and disclosed in the "Environmental Assessment for Renewal of Source Material License No. SUA-1341 dated June 1998", which states, in pertinent part (emphasis added):

2.7 Cultural Resources

Archaeological and paleontological clearance was given to the Irigaray project by the Wyoming State Archaeologist in 1977. The Irigaray site is relatively small in size and did not support any archaeological sites. The State Historic Preservation Office (SHPO) for Wyoming has indicated that no sites at Irigaray have been nominated for inclusion in the National Register of Historic Places (NRHP).

During the fall of 1986, although only required to investigate the part of the site that would be disturbed, COGEMA contracted to have a more extensive archaeological and paleontological investigations conducted for

all of the Christensen Ranch site that was on federal or state lands, or approximately 52 % of the permit area. These investigations included a Class III Historical Cultural Resources Inventory, a Class III Prehistoric Cultural Resources Inventory and an Inventory of Paleontological Resources. **Two historic sites, 61 prehistoric sites, and 5 sites with both prehistoric and historic components were evaluated.** None of the 68 sites was determined to be eligible for the NRHP. Cultural resource clearance was recommended for these sites.

Archaeological clearance for the Christensen Ranch project area was provided by the State of Wyoming SHPO and the BLM in 1988, with the exception **of two sites, designated archaeological sites 48CA533 and 48CA534.** Both sites are located in the North Prong geographical portion of the Christensen Ranch permit area. The WDEQ Permit to Mine No. 478 contains a condition that no surface disturbing activities can take place within 100 feet of these sites without a detailed mitigation plan.

Because COGEMA planned to develop Mine Units 6 and 7 which are in that area during 1996, additional cultural resources investigations were conducted in July and August of 1995. Preliminary findings and recommendations were that site 48CA533 should be reduced in size, with **avoidance of an approximate 288 square-meter area with potential for buried cultural materials;** and that clearance should be given for development of site 48CA534, because no cultural materials remain. These recommendations were accepted by BLM, the surface landowner, as the mitigation plan for these two sites.

A total of 2,833 ha (7,082 acres) were surveyed at Christensen Ranch, covering about 52 percent of the permit area. The remaining 48 percent of the permit area is on private land that was not surveyed during the 1986 inventory at the landowner's request. If previously unrecorded cultural materials are encountered during construction or operations, COGEMA has committed and is required by license condition, to report the findings to the appropriate federal and state regulatory authorities and to take action to prevent adverse impacts to the resources. Cultural materials will, be inventoried and evaluated in accordance with 36 CFR Part 800, and no further disturbance shall occur until COGEMA has received authorization from those regulatory authorities (including NRC) to proceed.

In preparing this EA, NRC staff contacted the Wyoming SHPO and the BLM to determine specifically if there are any traditional cultural properties on either of the sites that would require special consideration in evaluating the impacts of the Irigaray and Christensen Ranch license renewal. After review, both agencies responded that there were no known properties.

Therefore, there should be no adverse effect from COGEMA's proposed, continued or planned mining activities at those sites. **BLM staff did indicate that the Pumpkin Buttes were considered by some to be sacred landscape of scenic cultural value, but they will be left undisturbed by the proposed in-situ mining operation.** (Emphasis added.)

The bolded sections above indicate there are burial remains at the permit area that are protected by NAGPRA. In addition, there are cultural resources represented by at least 61 prehistoric sites and 5 sites with both prehistoric and historic elements. These are important cultural resources that must be evaluated by the Oglala Delegation and the failure of the Applicant to make disclosures in the Application concerning such cultural resources constitutes a genuine dispute between Petitioner and Applicant.

Neither the Oglala Delegation nor the Oglala Sioux Tribe has been consulted with regarding the cultural resources that may be in the license renewal area. The Applicant has failed to identify cultural resources in the Application that were identified in the 1998 EA quoted above; neither the Oglala Delegation nor the Oglala Sioux Tribe has had any input on this list, and it therefore cannot be complete.

Issue of fact or law- The Oglala Delegation and the Oglala Sioux Tribe must be consulted with regarding any cultural resources in the area whenever there is major federal action, i.e. the NRC granting a mining permit to the Applicant. NHPA 16 U.S.C. 470 *et.seq.*

Basis of Contention - It is undisputed that the mine area is part of the 1851 Treaty area, which recognized such area as the aboriginal land of the Teton Sioux Nation, including

the Oglala Lakota people. Therefore, any Indian sites or artifacts in the area would be connected to the Oglala Delegation. Applicant is not qualified to determine whether cultural sites or artifacts or sites even exist, or how to preserve them. These potential artifacts and evidence are from *Oglala* and *Lakota* history, and no body or entity is more qualified to judge their existence or importance than the Oglala Lakota Oyate (people) themselves- which is precisely why consultation is required and those determinations are not left to the federal agency or company proposing action.

Issues raised in this contention are within the scope of this proceeding – It is within the scope because the NRC, under NEPA, is mandated to take a “take a 'hard look' at the environmental consequences" of a major federal action before taking that action. Mid States Coalition for Progress v. Surface Transp. Bd., 345 F.3d 520, 533 (8th Cir. 2003) (internal citations omitted). NEPA further requires that federal agencies prepare an environmental impact statement (EIS) when "major Federal actions significantly affecting the quality of the human environment[.]" 42 U.S.C. §4332(2)(C). The NRC must take the potential cultural resources at the license site into consideration when deciding whether to grant a license.

The issue raised in this contention is material to the findings of the NRC of whether Applicant should be granted a renewal of its license for source material - This contention puts forth the obligations the NRC has as a federal agency under federal law. The Oglala Delegation has a right of consultation when there is major federal action that affects its interests. By granting this license renewal, NRC would be taking major federal action. The National Environmental Protection Act, NEPA, guarantees a

right of consultation to Indian tribes when there is major federal action. NEPA mandates that the government “preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice.” 42 USC §4331(b). NEPA then triggers the National Historic Preservation Act (NHPA), 16 U.S.C.S. §470f, Native American Graves Repatriation Act (NAGPRA), 25 U.S.C. §3001 et seq. and the Archaeological Resources Protection Act, 16 U.S.C. §4700 et seq. Federal agencies are required to consult with federally recognized Indian tribes that may attach religious or cultural significance to the project area, even if the project area is not within its reservation under Section 106 of the NHPA. 36 C.F.R. §800.4(f)(2). The federal agency is further required to consult with a tribe’s Tribal Historic Preservation Officer (THPO) if there is one, and a tribal representative if not.

Facts to support this contention include - The Oglala Delegation is a federally recognized tribal governmental organization, entitled to all the rights under federal law that such tribes are entitled to, including consultation under Section 106 of NHPA, as well as the obligations owed to it from its trustee, the federal government. Furthermore, the Powder River basin area is within the 1851 Treaty area, which is recognized as the aboriginal land of the Tribe, and therefore the Tribe ascribes cultural and religious significance to many sites in that area.

Omission from the Application - The Application omits discussion of the cultural resources in the area.

VI. FAILURE TO ENGAGE IN MEANINGFUL CONSULTATION

Sections I, II, III, IV and V above are hereby incorporated herein by this reference. The following apply concerning the rights of the Oglala Delegation to meaningful consultation:

Fort Laramie Treaty of 1851

Fort Laramie Treaty of 1868

UN Declaration on the Rights of the World's Indigenous Peoples ("Declaration"), Article 32 (General Assembly Resolution A/61/L.67 of 7 September 2007.

International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly Resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976 in accordance with Article 49 thereof; ratified by US Senate, 102nd Cong. 2nd Sess., Exec. Rept. 102-23 (March 24, 1992); <http://www2.ohchr.org/english/law/ccpr.htm>.

American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996.

Religious Freedom Restoration Act (RFRA), 42 USC Section 2000bb, *et seq.*; 42 USC Section 2000bb-1.⁷⁴

Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC Sections 3001-3013.

"Government-to-Government Relations with Native American Tribal Governments", 59 Fed. Reg. 22951, 1994 WL 16189198 (April 24, 1994)

Executive Order No. 13175, Consultation and Coordination With Indian Tribal Governments, 65 FR 67249, 2000 WL 1675460 (Pres.Exec.Order Nov 06, 2000)

The Oglala Delegation contends that pursuant to federal Indian law, including the trust responsibility and the Winters Doctrine, the 1851 and 1868 Ft. Laramie Treaties, the

⁷⁴ As this matter is before a federal administrative court, concerning a federal licensing process, it is not relevant that RFRA was found to be unconstitutional as applied to state and local governments because it was an unlawful assertion of federal authority under Section 5 of the 14th Amendment of the Constitution. See City of Boerne v. Flores, 521 U.S. 507 (1997), however Congress has attempted to close the gap with the adoption of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). 42 U.S.C. § 2000cc *et seq.*

UN Declaration of Indigenous Rights, the IPCCR, Executive Orders, the NEPA, the NHPA, the AEA, and the AIRFA, RFRA, NAGPRA, it has admissible contentions regarding the potential impact of the renewal proposed by Applicant. Petitioners further respectfully submit that pursuant to federal Indian law, the 1851 and 1868 Ft. Laramie Treaties, Executive Orders, the UN Declaration of Indigenous Rights, the NEPA, the NHPA, the AEA, the AIRFA, RFRA, NAGPRA, Applicant has failed to take reasonable steps to ensure meaningful consultation with the Lakota elders, or the Oglala Delegation.

International human rights standards indicate that Indigenous peoples' whose lands are affected by development projects have the right to "free, prior and informed consent." In the Declaration on the Rights of the World's Indigenous Peoples ("Declaration"), Article 32, ¶ 1, "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources," and ¶ 2, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources," and ¶ 3, "States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact." (See General Assembly Resolution A/61/L.67 of 7 September 2007.)

To date, no opportunity has been provided under this applicable provision of the Declaration for the Oglala Lakota people, to analyze the Application or its affect on

lands, territories and resources. A favorable decision permitting intervention would provide this opportunity. This is also a violation of the International Covenant on Civil and Political Rights (ICCPR), Treaty Rights of Consultation and applicable Executive Orders.

VII. INTERNATIONAL OBLIGATIONS OF THE UNITED STATES TO THE OGLALA DELEGATION AS INDIGENOUS PEOPLE

Sections I, II, III, IV, V and VI above are hereby incorporated herein by this reference.

A. It is in the National Interest of the United States as a member of the United Nations and the fulfillment of its resultant obligations that potential violators of internationally recognized human rights and fundamental freedoms be properly identified that they be held accountable for violations of human rights and fundamental freedoms in the event of violations.

International human rights are not well understood in the United States as human Rights and fundamental freedoms, guaranteed by the Universal Declaration of Human Rights (UNDHR) and the Covenants and Conventions on human rights, to which the United States is a State Party, receive scant if any attention. Petitioner believes that it is in the National Interest of the United States that internationally recognized human rights be observed and respected. Such are its international and legally binding obligations.

The Purposes and Principles of the United Nations, listed in Charter of the United Nations requires all member States, including the United States, to “achieve international cooperation ...in promoting and encouraging respect for human rights and for fundamental freedoms ...”⁷⁵ The requirement of “joint and separate” action of Member

⁷⁵ Charter of the United Nations, Chapter I, Article 1.

States in the respect for, and observance of, human rights and fundamental freedoms” is also found in Articles 55 and 56 of the Charter.

The exploitation of resources by trans-national corporations is problematic throughout the world. The United Nations has appointed a special investigator, the Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises. His mandate, since 2005, includes annual reports to the General Assembly and the UN Human Rights Council, views and recommendations on ways to strengthen the fulfillment of the duty of the State to protect all human rights from abuses by transnational corporations and other business enterprises, including through international cooperation.

The Special Representative’s reports include the identification and clarification of standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights. He is required to elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation. Notably, his mandate also includes research and clarification on the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence.”⁷⁶

This is only one example of the concern, including the nature of the concern, of the international community of the violation of human rights by transnational corporations and the obligations of the United States as a member of the United Nations. These violations are real and exist throughout the world. Yet, how can a trans-national

⁷⁶ Human Rights Council resolution A/HRC/8/L.8, 2005.

perpetrator of human rights violations be held accountable internationally if he or she is not properly identified? As demonstrated by the corporate identity and origins of Applicant herein, the problem is compounded by transfers, corporate reorganizations, mergers and acquisitions, subsidiaries, bankruptcies of subsidiaries, and other now common corporate practices that hide the identity of the culpable and promote their impunity.

In his latest report, the Special Representative of the Secretary General, Mr. Ruggie of the United States, in examining these common corporate practices, found that, “[F]actors such as these make it exceedingly difficult to hold the extended enterprise accountable for human rights harm.”⁷⁷ The result is that no-one is accountable.

It is highly likely that this uranium mining operation will be found to violate the rights of the Indigenous Peoples in the area, including the Oglala Delegation. In any event, it is highly likely that such violations will be alleged and litigated. The right to life itself is implicated. In order to preserve a proper record, the identity and nationality of all potentially responsible persons must be disclosed and made a matter of public record.

The failure of the Application to state the identities of the decisionmakers, as described above, violates the foregoing principles of international law.

B. It is in the National Interest that the United States not to continue to be identified internationally as a human rights violator.

Under international law, the United States bears the primary responsibility to ensure

⁷⁷ Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/8/5, 7 April 2008, paragraph 14.

that human rights and fundamental freedoms are observed and respected within the United States. If human rights are violated by the United States, or the United States allows other States or non-state actors to violate these rights in the United States, under international law, the United States itself is the violator. This is true even if the United States denies recognition of these rights internally. In such cases, the United States is still regarded as the human rights violator by the international community and under international law.

One example is the Dann v US case of the Organization of American States Inter-American Commission on Human Rights (IACHR).⁷⁸ In that case the United States was found to have denied the Dann sisters the right to property and equal protection before the law, right to a fair trial, and right to property as found in the American Declaration of the Rights and Duties of Man. The operative fact in this determination was that US Courts did not allow the Western Shoshone to raise the issue of title and determined unilaterally that they had somehow “lost” their land. The United States takes the position, *inter alia*, that it is not subject to the jurisdiction of the IACHR. Internationally, however, it is so subject by virtue of its membership in the Organization of American States (OAS). The United States is currently known internationally as the violator of Western Shoshone human rights. The Oglala Delegation has experienced similar violations of the human rights of the Oglala Lakota people at the hands of the United States. These violations of the past give rise to reason to be cautious in the present.

Whether or not the US would admit to the duty to respect and observe certain

⁷⁸ Inter-American Commission on Human Rights, REPORT No 75/02 (), CASE 11.140 MARY AND CARRIE DANN, UNITED STATES December 27, 2002, para. 172.

human rights internally, it is still bound internationally to its human rights obligations. We believe it is not in the National interest that the US be considered internationally as the violator of human rights. It *is* in the National Interest of the United States as a member State of the United Nations as well as the Organization of American States, that violators of internationally recognized human rights and fundamental freedoms (and its own law and regulation) be properly identified that they be held accountable.

C. It is in the National Interest of the United States to properly identify transnational corporations in order to provide effective remedies for violations of internationally recognized human rights and fundamental freedoms as well as its own domestic law.

It is a well settled principle in international law that it is the State's responsibility to protect, respect and remedy human rights abuses. Indeed, one would assume that the United States has a public policy to protect its citizens from violations of law, to respect its own laws, and to provide remedies, whether criminal or civil, for their violation. And again, the inability to properly identify the perpetrator of the wrong, particularly the intellectual authors, the persons who gain the most from the potentially gross and massive violations of human rights inherent in the very nature of uranium mining, frustrates not only the duty to protect and respect human rights, but more damaging in the end, the provision of effective remedies for their abuse.

The health and safety (well being) of the public, particularly in this case, Indigenous Peoples and individuals, requires that their human internationally recognized rights be respected and observed not only by the State but non-state actors, such as transnational corporations. Accountability of the State as well as non-state actors requires that they be properly identified. Internationally, impunity is defined as lack of

accountability.

It is also a well settled principle that human rights documents, such as the Universal Declaration on Human Rights and the eight (8) major United Nations human rights conventions define the requirements of a life of dignity. This dignity includes the right to life and physical integrity, the right to property (alone or in community with others), the right to food and water, freedom from racial or gender discrimination, among many others.

Another well settled principle of international human rights law is that all human rights are related. The denial of one right affects the enjoyment of all other rights. For example, the denial of the right to property, their ancestral lands to the Dann sisters affected their enjoyment of a great many other rights, including the right to health, to development and the right to enjoy the fruits of their labor as ranchers, remuneration worthy of human dignity as found in the UDHR.

The United States is also a State Party to the International Covenant on Civil and Political Rights (ICCPR)⁷⁹ and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).⁸⁰ It is also in the National Interest that these legally binding human rights obligations of the United States be upheld by the NRC as an agency of the United States government lest the United States itself be a violator of internationally recognized human rights.

The United Nations system includes Treaty Monitoring Bodies, committees of human rights experts elected periodically by States parties that monitor compliance with

⁷⁹ International Covenant on Civil and Political Rights New York, 16 December 1966, ratified by the United States 8 June 1992.

⁸⁰ International Convention on the Elimination of All Forms of Racial Discrimination New York, 7 March 1966, ratified 21 October 1968.

the requirements of the particular covenant or convention. All conventions require that the State party submit Periodic Report on their progress in implementing the human rights for which the State has assumed voluntarily a legally binding obligation under international law. The Treaty Monitoring Body examines the State pursuant to its report and the Shadow or Parallel reports of civil society, and issues Conclusions and Recommendations to the State with regard to its obligations.

The lack of proper identification by the United States of foreign corporations would frustrate this duty on the part of the foreign state under the ICERD and frustrate the duties of both member states in their UN Charter responsibilities to take joint and separate action with regard to human rights as required by the UN Charter. The US would become complicit in human rights violations if it failed to properly identify perpetrators, frustrating, *inter alia*, their binding Charter obligations. With regard to the United States, in 2008 the CERD Committee voiced the following concern and made the following recommendations:⁸¹

“The Committee is concerned about reports relating to activities – such as nuclear testing, toxic and dangerous waste storage, mining or logging – carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention. (Articles 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

“The Committee recommends that the State party take all appropriate measures – in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

⁸¹ Concluding observations of the Committee on the Elimination of Racial Discrimination, United States of America, UN Doc. CERD/C/USA/CO/6, February 2008, paragraph 29.

“The Committee further recommends that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.”

This Panel has dealt with areas of spiritual significance and the right of consultation in previous proceedings. The concern of the CERD Committee extends to the rights under the convention that include these and other rights, including the right to land and to spirituality. Whether or not formally recognized internally, these rights are inherently the international human rights of indigenous peoples. The United States has a binding obligation to observe these rights that protect the health and safety of Indigenous Peoples.

Indeed, the CERD Committee has directed the United States to recognize and observe the UN Declaration on the rights of Indigenous Peoples as a measure of compliance with the ICERD. Through the ICERD the United States is bound to respect and observe the rights under the UN Declaration on the rights of Indigenous Peoples. Since the 1998 EA quoted above refers to culturally valuable and sacred landscapes, and the Application omits any discussion of such cultural resources, the foregoing international law principles and obligations create a genuine dispute with Applicant.

With regard to the requirement of consultation, the UN Declaration would require that Indigenous Peoples give their free prior and informed consent *prior* to the approval of this project.⁸²

⁸² United Nations Declaration on the rights of indigenous peoples, GA res. A/61/L.67, Sixty-first Session, September 2007, Article 32.2.

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

This same Article, in part 3, requires that, “States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.” These Articles refer to a process that includes the right of Indigenous Peoples to themselves protect their own health and safety with regard to these dangerous projects.

It is clear within this examination of international law and obligation, that persons, and Indigenous People and individuals have access to international mechanisms to protect their rights (e.g., the Inter-American Commission and Court, the United Nations Special Procedures such as the Special Representative of the Secretary General and Treaty Monitoring Bodies). With regard to Indigenous Peoples these rights are critical for the protection of their health and safety. Without the identification of the perpetrator of violations of these rights, particularly foreign transnationals, Indigenous peoples would be effectively denied any redress or remedy for threats or harms to their health and safety at the international level.

The National interest as well as the protection of the health and safety of the public, including Indigenous Peoples and individuals, are best served by a proper and continuing identification of transnational alien corporations wishing to do business, particularly dangerous business such as uranium mining in the United States. Such a practice is necessary to fulfill the binding obligations of the United States in the United Nations (and the Organization of American States) and particularly its international human rights

obligations. Not to require it would frustrate the fulfillment of these obligations and threaten the health and safety of Indigenous Peoples and effectively deny them access to the international human rights mechanism established to protect their human rights, including rights related to their health and safety.

Indeed, it is difficult to imagine that a government would not be interested in identifying with a high degree of certainty those who would do business in the United States, in order to be able to ensure that its own laws are strictly observed. Such certainty must be required for those who would engage in such perilous and inherently dangerous activity as uranium mining that has been shown to result in severe harm to the health and safety of people, children and the unborn, our water and our Sacred Mother Earth.

VIII. ENVIRONMENTAL AND SAFETY CONTENTIONS

Sections I, II, III, IV, V, VI and VII above are hereby incorporated herein by this reference.

A. Water Restoration Values

The Application states:

6.1.1 TARGET RESTORATION VALUES

COGEMA's primary goal for restoration has been to return the quality of groundwater at the Irigaray and Christensen Ranch sites to baseline concentrations, using the best practicable technology and economic reasonableness. If the primary goal cannot be achieved, the groundwater, at a minimum, will be returned to the pre-mining use category.

Dispute: It is misleading to state that the primary goal is to return the quality of the groundwater to baseline when it has failed to do so in the prior restoration and

decommissioning and in fact no ISL operation has ever returned the groundwater to baseline levels. Application should have disclosed the irretrievable commitment of groundwater resources to the project.

Irretrievable Commitment of Resources: The failure to return groundwater to baseline constitutes an irretrievable commitment of resources which is required to be discussed in the Application in detail in accordance with 10 CFR §51.45(b)(5).

Analysis for Environmental Reports: 10 CFR §51.45(c) provides that:

...The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

The Application states:

7.2.3 IMPACTS TO WATER RESOURCES

Potential impacts to water resources from mining and restoration operations include: 1) groundwater consumption; 2) declines in groundwater quality; 3) impacts to surface water from construction or decommissioning activities; and 4) impacts to surface water from accidents. **These potential impacts to water resources in the area of the Irigaray/Christensen Ranch area are expected to be minimal**, as summarized in the following sections. Impacts to water resources are described in detail in Appendix D6, Hydrology of both the Irigaray WDEQ Application and the Christensen Ranch Amendment Application. (Emphasis added.)

7.2.3.1 Groundwater Consumption

At Christensen Ranch, the maximum total consumptive use of groundwater as a result of mining and restoration of one mine unit is estimated to range from **70 million gallons to 150 million gallons** or 215 to 460 acre-feet. **In the original Christensen Ranch mine permit**

amendment application, it was estimated that a total of 8,480 acre-feet to 8,960 acre-feet would be consumptively used for mining and restoration of all mine units. The water withdrawn from the ore zone aquifer consists of bleed water from the mining operation for lixiviant migration control and bleed water from the restoration process. Although the number and size of mine units has been decreased since the original application, the potential consumption has remained essentially the same because the estimate to complete mining in a unit has now increased to up to three years per mine unit.

Impact from the consumptive uses are considered to be temporary and should be mitigated by the withdrawal of the groundwater over the extended period of approximately twenty five years. **The primary potential impact will be the temporary lowering of water levels in wells completed in the production zone aquifer in the immediate vicinity of the well fields.** Water levels will be monitored during both mining and restoration to assess the amount of drawdown in surrounding wells.

Additionally, COGEMA will attempt to minimize the groundwater consumption during restoration, when the majority of the water is withdrawn, by utilizing state of the art technology. **Impacts of CBM extraction activity upon groundwater use are addressed in Appendix B of this submittal.**

7.2.3.2 Groundwater Quality

Impacts to groundwater are associated with consumptive use and temporary degradation of water quality. Potential groundwater quality impacts from operations at Irigaray and Christensen Ranch are associated with 1) uncontrolled excursions, 2) liner failures in the evaporation ponds, 3) accidental leaks or spills, of process solutions, and 4) improper or incomplete groundwater restoration. Additionally, local groundwater quality will be temporarily lowered by the mining process in the vicinity of the well fields. Potential impacts to groundwater quality are discussed:

Excursions

Migrations of lixiviant from the well fields, or excursions, occur during the mining operations due to varying aquifer properties and fluctuations in well field operations. The monitoring systems described in Section 5:0 ensure that any excursion from the well field are detected before lixiviant migrates a significant distance from the production zone. Operations at the Irigaray and Christensen

Ranch sites have demonstrated that this type of monitoring system is effective and that excursions can be controlled. Excursions within the ore zone are typically identified and controlled within a several week (and sometimes days) period.

At Christensen Ranch, several excursions to the ore zone have occurred and have all been controlled.

Waste Disposal Ponds

Liquid and solid wastes are temporarily stored in lined solar evaporation ponds. A leak detection system installed under the ponds ensures that any failure in the lining will be detected before solutions migrate significant distances from the pond area. At both the Irigaray and Christensen Ranch areas, the impact of pond leakage, should it occur, is expected to be small because of the dry strata beneath the ponds and the large vertical distances to groundwater. At Irigaray five ponds were decommissioned prior to the decision to restart production. If any of these ponds are rebuilt, new liners and leak detection systems will be installed.

Since the last license renewal there have been two incidents of pond leakage, both involving brine Pond 4 at Christensen Ranch. On November 15, 2004, a number of holes were found in the pond liner. The holes were repaired. The cause was traced to dragging a discharge line across the liner. The other problem with Pond 4 was discovered on March 16, 2005. There was a separation of a liner seam at a pond corner. That seam separation was repaired. The separation was caused by the weight of accumulated sediments in the pond that placed excessive strain on the liner at the corner.

Accidental Leaks or Spills

Accidental leaks or spills of process chemicals could potentially infiltrate shallow aquifers and locally reduce groundwater quality. Any leaks or spills would probably not be of a sufficient volume to significantly degrade near surface groundwater quality. The potential for these chemicals to migrate into deeper strata is also considered very low due to the large vertical distance between the near surface aquifers and the lower aquifers.

Spills within the well field areas do occur on occasion. The spills are typically a result of an injection line separation inside or adjacent to the mine unit module buildings, as these lines are pressurized and have connections to other piping or valves at the surface. Spills of injection solution are barren of uranium, but do contain radium-226. Spill locations

are mapped and soil samples collected when a spill occurs. Soil analyses from past spills indicate that radium-226 does not tend to adsorb in the soil, and the soils have otherwise been unaffected.

Restoration

Should groundwater restoration be incomplete, groundwater quality could be locally degraded. Previous restoration conducted at both Irigaray and Christensen Ranch has shown that the return of groundwater quality to near baseline conditions is feasible. The restoration of the Irigaray wellfields has been approved by both WDEQ and the NRC. The reader is referred to the restoration reports for Irigaray (COGEMA, 2004) and Christensen Ranch (2008) for complete discussions of wellfield restoration success.

Petitioner believes that the Mine's operations have lowered the water table. See Letter dated March 1, 2001 from J. Vasein, RSO of Applicant, to P. Ting, NRC Fuel Cycle Licensing Branch re: Monitor Well Sampling Problems During Groundwater Sweep ("water levels have dropped as much as 129 feet in these monitor wells.") This supports Petitioner's contention that the mine's operations consume large amounts of water and reduce the water table.

The Application describes excursions, spills and leaks in theory without reference to actual excursions, spills and leaks at the mine site, in violation of Section 51.45(e) which requires disclosure of adverse information relevant to the environmental report.

B - There is no evidence based science for the Applicant's conclusion that "these potential impacts to water resources in the area of the Irigaray/Christensen Ranch area are expected to be minimal". Application 7.2.3.

Sections I, II, III, IV, V, VI, VII and VIII.A above are hereby incorporated herein by this reference.

The Application states:

4.2.1.4 –

In order to prevent fracturing of the confining strata, injection volume and/or pressure are controlled and monitored. The injected fluid is analyzed and sampled quarterly for TDS, bicarbonate, carbonate, and total radium. Results of this testing are submitted in a quarterly report to WVDEQ. Mechanical integrity tests of the wells are performed with the test reports submitted to the WDEQ for review and approval.

Section 7.2.4 of the Application also states:

7.2.4 ECOLOGICAL IMPACTS

Principal impacts on terrestrial biota will be caused by the disturbance of soils and vegetation

This implies that there will be no other material ecological impacts from the mine.

The Application also states:

7.3.1 Exposure Pathways

Figure 7.3-1 presents exposure pathways from all potential sources at the Facility. The predominant pathways for planned and unplanned releases are identified. Atmospheric radon- 222 is expected to be the predominant pathway for impacts on human and environmental media.

The foregoing implies that there are no other material pathways for contaminants to reach humans or the environment which ignores the impacts of Arsenic produced by the Mine's operations.

The Application states:

7.3.2 Exposures from Water Pathways

The mining solutions in the ore zone will be controlled and adequately monitored to ensure that migration does not occur. The overlying aquifer will also be monitored.

This fails to disclose the instances in which human error at Applicant's operations resulted in major spills. Section 51.45(e) requires disclosure of adverse information. The Application fails to disclose adverse information needed to make the information that was disclosed not misleading. Just because the mining solutions will be monitored does not mean that there will not be excursions and spills. Further, the operation of the mine concentrates Arsenic as discussed below.

The Application states:

7.4 NON-RADIOLOGICAL EFFECTS

The in-situ solution mine is by design a self-contained mining circuit. Wastes generated by the facility are contained and eventually removed to disposal elsewhere. *The potential non-radiological effects of the operation include the possibility of lixiviant excursion, evaporation pond leakage and temporary disturbance of the land during site preparation, construction and operations.* The effects of these possible occurrences are considered small as discussed in Section 7.2 above. The environmental monitoring programs given in Section 5.8 are designed to quickly identify any adverse conditions that may result during operations. *No long term irreversible effects are anticipated.*

The foregoing fails to disclose the potential for faults, fractures and artesian pressures as well as the impacts from CBM projects and oil drilling and from nearby water wells (irrigation, livestock and domestic uses) make the system not fully self-contained. Further, it is misleading to say that the possible occurrences of non-radiological effects are small and that no long-term irreversible effects are anticipated.

7.5.1.2 Pipe Failure

The rupture of a pipeline within the process plant is easily visible and can be repaired quickly. The maintenance equipment within the satellite process plant will be adequate to handle this type of problem.

The rupture of an injection or recovery line between the plant and well field will result in either barren or pregnant leach solution contaminating the ground near the break. A large and sudden rupture will be detected by a drop in pressure in the system and interruptions in the flow of liquids. A small break will be detected visually during routine inspection of

the lines. Any ground contamination will be removed to disposal. Procedures to be followed in the event of an uncontrolled liquid release in a well field are described in Standard Operating Procedure E-2, Well Field Solution Spills.

Section 7.5.1.2 fails to comply with Section 51.45(e) by failing to disclose adverse information related to the 110,000 gallon leak by leaving a pump on for 16 days until discovered. The foregoing section also fails to disclose the risks associated with using longer trunklines as described in the Application relative to potential pipe failures.

The Application states:

9.2 QUANTIFIABLE BENEFITS AND COSTS

...Environmental impacts of the project are and will be minimal.

Issue of law – NEPA requires that federal agencies prepare a “detailed statement” or environmental impact statement, for every major federal action “significantly affecting the quality of the human environment”. 42 U.S.C § 4332(2)(C). In the licensing and regulatory actions, the NRC is required to consider “the alternatives available for reducing or avoiding adverse environmental and other effects.” 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90).

Applicant does not recognize that leaks could occur and go undetected if the scheduled testing did not coincide with a leak. Such was the case when the leak persisted for 16 days until discovered or when Ponds 3 and 4 leaked for weeks until discovered. Actual leaks and spills, described in Section II above, should have been disclosed in the Application pursuant to Section 51.45(e).

Furthermore, the Ground Water Monitoring described in the Application does not indicate that the monitoring wells are tested for uranium whether radioactive or depleted,

and other heavy metals known to be toxic and linked to the development of cancer if ingested over time. There is no scientific basis for excluding uranium from the monitor well testing.

Issue raised in this contention are within the scope of this proceeding – The contentions Petitioner raises is within the scope of the proceeding because the contentions are with the application for source material license renewal. In 10 C.F.R 40.32(c)(d) General Requirements for Specific License it states: (c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and (d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Additionally, the accuracy and completeness of the application is called into question under 10 C.F.R 40.9 (a) and(b) Domestic Licensing of Source Material General Provisions for completeness and accuracy of information provided on the application for licensure.

Under (a) the applicant or licensee is required to provide information that “is complete and accurate in all material respects”. And under (b) the applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for the public health and safety or common defense and security.

The issue raised in this contention is material to the findings of the NRC of whether Applicant should be granted a renewal of its license for source material - The law is clear under NEPA that the NRC must produce a “specific statement” in a major federal

action, such as granting a license renewal, where there is a significant impact on the human environment. 42 U.S.C. § 4332(2)(C). Given the Trustee relationship of the NRC to the Oglala Delegation, health and safety should be material to and have the highest priority in consideration in these license renewal proceeding. The issues of accuracy of information provided on the application particularly where the information is related to the health and safety of the Oglala Lakota people is also material to the finding of whether to issue a renewal permit for Applicant's source mining license.

Statement of facts and opinions – Current scientific literature: In an NIH funded study published in 2005, Diane Stearns, PhD and her research team at Northern Arizona University, found a direct correlation between exposure to depleted uranium and mutations in cells.⁸³ Dr. Stearns posits from her findings that “health risks for uranium exposure could go beyond those for radiation exposure”.⁸⁴ The basis of her study was the interest in environmental exposure risks to uranium in drinking water. Stearns identifies insufficiency in the study of environmental uranium exposure and Native American populations other than miners.⁸⁵ Until the findings of the Stearns' study were published, it was thought that only radiation exposure from uranium caused the risk for cancers and other health problems. Stearns found that both the radioactivity of uranium, and the non radiological active form of uranium caused cell mutations.

Dr. Stearns concluded: “This possibility of direct U-DNA interaction should be

⁸³ Uranyl acetate induces hprt mutations and uranium-DNA adduct in Chinese hamster ovary EM9 cells. Diane M. Stearns et. al. *Mutagenesis* vol. 20 no. 6 pp. 417 – 423, 2005. See ML082170264 and attachments thereto at pages 25-45 of the PDF file which are referenced herein, which are incorporated herein by this reference as if set forth at length.

⁸⁴ Id. At 417.

⁸⁵ Id.

considered when extrapolating potential risks for people exposed to uranium in the absence of measurable radioactivity, for example in soil and drinking water, and in DU – containing shrapnel.”⁸⁶ Recent research includes a study published in 2007 through the NIH, by Stefanie Raymond-Whish et al. from the Department of Biological Sciences at Northern Arizona University, and the College of Medicine at the University of Arizona.⁸⁷ The paper addresses drinking water containing uranium and concludes that populations exposed to uranium, even at levels outlined by the EPA, should be followed for increased risk of fertility problems and reproductive cancers.⁸⁸ The Raymond-Whish study on drinking water also recognized the impact of heavy metals, many of which are byproducts of uranium mining as exhibiting properties that stimulate proliferation of breast cancer cells.⁸⁹ Raymond -Whish used drinking water with uranium levels that were within the EPA standards of 30 µg/L and within the measured drinking water samples from numerous water resource samples on the Navajo Indian Reservation.⁹⁰

The NRC must not ignore the connection between higher cancer rates at Pine Ridge Reservation and current practices of ISL mining that produce cancer causing agents. Recent research on cancer rates specifically concerning the Oglala Lakota, is found in a study published in the American Journal of Public Health 2005 by Deborah Rogers and Daniel Petereit. The study reviews the high cancer mortality rates for 3 western South

⁸⁶ Id. at 421.

⁸⁷ Drinking Water with Uranium below the US EPA Water Standard Causes Estrogen Receptor-Dependant Responses In Female Mice. Stefanie Raymond-Whish et. Al., Environmental Health Perspectives. Vol 115 No. 12 Dec 2007.

⁸⁸ Id. at 1711.

⁸⁹ Id. at 1711.

⁹⁰ Id. at 1714.

Dakota tribes including the Oglala Lakota.⁹¹ In their study funded by the National Cancer Institute, Rogers and Peteriet cite data from the Indian Health Services based on reports for the years 1994 and 1998.⁹²

These tribes had cancer mortality rates an astounding 40% higher than the national averages.⁹³ Lung cancer mortality was 62% higher than the national average, and colorectal cancer mortality was 58% higher than the national average.⁹⁴ One of the leading causes of death was malignant neoplasm at a rate 15% higher than the national average.⁹⁵ More recently in a report of cancer rates to the National Cancer Institute, American Indians have shown high rates of cancer, despite the overall decline of cancer nationally.⁹⁶ Specifically in the northern plains, cancer rates for lung, colon uterine, kidney, and non hodgkin lymphoma were between 2% to nearly 50% higher than the national average.⁹⁷

Native Americans have a long history of the US government inadequately addressing the health impacts from poorly managed uranium mining facilities. On October 23, 2007, Doug Brugge, PhD, MS a Harvard educated Developmental Biologist and Industrial Hygienist, gave testimony on the inadequacy of the government response

⁹¹ Cancer Disparities Research Partnership in Lakota Country: Clinical Trials, Patient Services, and Community Education for the Oglala, Rosebud, and Cheyenne River Sioux Tribes. Deborah Rogers, MS, and Daniel Peteriet, MD. American Journal of Public Health. Pages 2129 – 2132. Vol.95, No.12, December 2005.

⁹² Id. at 2129.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Annual Report to the Nation on the Status of Cancer, 1975 – 2004, Featuring cancer in American Indians and Alaska Natives. David K. Espey, MD et. Al. Cancer. Vol 110 Issue 10 Pages 2119 – 2152. Oct 15, 2007.

⁹⁷ See supplemental Tables 7 – 8.

to Native American health issues rising from government approved uranium mining.⁹⁸

He emphasized the inadequacies in three ways:

1. Delay in providing timely compensation to uranium mine workers. Dr. Brugge testified that it took over 4 decades of testimony to Congress before Navajo miners were given some semblance of compensation for their injuries.
2. Lack of appropriate health impact studies on the effects of uranium mining in the Native American communities. In his testimony before Congress, Dr. Brugge states that despite a clear showing of a connection of uranium and heavy metals to the development of cancer and birth defects, the only study on health impact is for kidney function.
3. The disparity in treatment between Indian and Non-Indian communities following a major radioactive waste spill. Dr. Brugge referred to Church Rock, New Mexico, where the largest radioactive waste spill in US history occurred, and testified about how this was treated in comparison to the incident at Three Mile Island (TMI). Dr. Brugge stated: “This release, which was substantially larger than the release at TMI, flowed into a low-income, largely Native American community. This incident has been virtually ignored in the press and scientific literature.”

Given the high rates of death from cancers, and the historical treatment of American Indians regarding health effects of exposure to toxins from uranium mining by the US Government, the issues of health and safety must to be addressed by the NRC with specificity.

⁹⁸ See Testimony by Dr. Brugges to the Committee on Oversight and Government Reform Congress of the United States House of Representatives. October 23, 2007.

The NRC has an opportunity that is within their scope of power to insure that ISL proposed mining practices meet the standard to insure safety in a preventive manner. The NRC must not ignore current scientific evidence that suggests that acceptance of prior health impact statements in applications are now grossly inadequate and not specific. The health impacts of ISL mining must be addressed as a requirement for a license renewal application and should include the impact of both radioactive and non radioactive uranium in drinking water of the Oglala Lakota people. It is the legal responsibility of the NRC as Trustee and protector of the health and safety of the Oglala Lakota, to require, with specificity, a statement of the effects on the human environment prior to granting a renewal license to Applicant.

**C. Environmental Harm to Willow Creek and Powder River,
Groundwater and Surface Water**

The Application does not accurately address the potential for environmental harm to the Willow Creek and the Powder River.

Sections I, II, III, IV, V, VI, VII, VIII.A and VIII.B above are hereby incorporated herein by this reference.

COGEMA will negatively impact ground and surface water quality. The mined aquifer (the Wasatch aquifer) provides water for local domestic and stock wells, application at 2-14, and mining activities may endanger these water resources. Contaminants include Radon-222, uranium, arsenic, selenium, aluminum, iron and manganese which are mobilized during mining operations. Application at 3-23.

During restoration activities, COGEMA may inject hydrogen sulfide (H₂S) to clean-up some of the heavy metals mobilized during mining operations. H₂S is a highly

toxic substance and injection into the aquifer may produce health and safety impacts.⁹⁹ Compliance with hazardous waste law and the Emergency Planning and Community Right-to-Know Act (EPCRA) is required. Additionally, environmental impacts analysis must be conducted pursuant to the National Environmental Policy Act (NEPA) prior the injection of chemical agents if impacts have not previously been analyzed in prior NEPA documents.

Issue of law – NEPA requires that federal agencies prepare a “detailed statement” or environmental impact statement, for every major federal action “significantly affecting the quality of the human environment”. 42 U.S.C § 4332(2)(C). In the licensing and regulatory actions, the NRC is required to consider “the alternatives available for reducing or avoiding adverse environmental and other effects.” 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90).

The Application states:

2.7 HYDROLOGY

2.7.1 GROUNDWATER

Extensive investigation of the groundwater systems at the Irigaray and Christensen Ranch project areas were conducted to assess the impact of the proposed in-situ mining activities during initial permitting. The studies included a review of the hydrogeology of the area, extensive aquifer testing and field sampling to determine water quality. At Christensen Ranch, initial investigations included the "L" sandstone (underlying aquifer), lower confining layer, the "K" sandstone (mineralized zone), upper confining layer and the "J" sandstone (overlying aquifer). Potentiometric surfaces were developed for each aquifer and recharge and discharge areas were researched. There were nine aquifer - aquitard investigations performed at six test sites within the Christensen Ranch permit area to define aquifer characteristics. There were 10 horizontal permeability tests performed

⁹⁹ The application does not disclose what amounts of H₂S will be injected nor how the injected H₂S will be removed after operations.

within the "K" sandstone at different locations within the permit area, to confirm permeability values calculated from pumping test data. Water quality was determined for the "K" sandstone, or mineralized aquifer, and the next overlying and underlying aquifer through a quarterly field sampling program using some 27 different wells at 10 different hydrologic test sites on the permit area. The water chemistry of the 3 aquifers sampled is summarized in Appendix D6 of the Christensen Ranch permit application.

Groundwater test site locations, methods and results of the aquifer tests and water quality sampling program for both Irigaray and Christensen Ranch are provided for review in Appendix D6 of each project's permit application.

In addition to the initial groundwater investigations done for permitting at each site, numerous hydrologic studies have been conducted at each site for the approval of individual production wellfields. These studies include detailed aquifer/aquitard properties analysis, confirmation of monitor well communication through pumping, and the sampling and water quality analysis of all monitor wells and ore zone restoration wells (baseline water quality wells).

All of the above studies previously submitted to the NRC and DEQ confirm and 2-13 substantiate the baseline hydrologic conditions established and discussed in Appendix D6 of both the Irigaray and Christensen license applications. This includes groundwater hydrologic characteristics such as directional gradient, transmissivities, permeabilities, storage coefficients, and the strong vertical anisotropy of the host K sandstone. All of the hydrologic testing conducted since the original application support the following generalizations:

When stressed, the host K Sandstone and Upper Irigaray Sandstone responded as a single hydraulic unit with strong directional anisotropy.

Monitoring of the overlying and underlying aquifers did not demonstrate any hydraulic connections to the K Sandstone. The lack of response attributable to the pumping of the K Sandstone indicates the presence of vertical isolation of the overlying and underlying aquifers.

The confining layers separating the K Sandstone from other water-bearing strata act as continuous, low permeability barriers within each mine unit tested.

Groundwater quality data collected since the last license renewal has also been confirmed and substantiated to be essentially the same as that identified in Appendix D6 of the original applications. Groundwater generally tends to be classed as sodium-sulfate in the eastern half of Christensen Ranch, trending towards sodium bicarbonate in the western half of the licensed area. Irigaray groundwater is primarily sodium bicarbonate based. **Although total dissolved solids concentrations in the western half of Christensen and all of Irigaray tend to**

average below drinking water standards, the water cannot be considered potable within the ore zones due to excessive concentrations of radium-226 and radon gas.

Groundwater in the eastern half of Christensen demonstrates elevated levels of sodium-sulfate which cause the total dissolved solids concentrations to be greater than drinking water standards. In these areas (Mine Units 5, 61 and 7), the water is classified by the State of Wyoming as Class IV, Industrial Use.

To date groundwater usage in the vicinity of the Irigaray and Christensen Ranch license areas has not changed since the original issuance of the license. Groundwater usage has been limited to agricultural use (livestock), industrial use (uranium in situ mining, oil and gas development), and limited domestic use (Christensen Ranch house and Irigaray Ranch house). There are no new domestic or livestock developments in the area as the properties are located on the large Christensen and Irigaray ranches. *With the completion of five coal bed methane (CBM) wells (as yet not produced) in the immediate vicinity of COGEMA's Christensen Ranch operations and plans to install a substantial number of CBM wells over the next few years in the vicinity of both Irigaray and Christensen Ranch, there will be significant changes to groundwater use in the general area, but the CBM groundwater withdrawals are not anticipated to have a significant impact on the Wasatch aquifer, the zone of completion for COGEMA's wells and local ranch wells. See Appendix B to this submittal.*

2.7.2 SURFACE WATER

Surface water characteristics for the Irigaray project are described in Section D6 of the Irigaray permit application document. The descriptions are rather general, due to the relatively small size of the Irigariay project (less than 1,000 acres). **Willow Creek, considered an intermittent stream, crosses the permit area to the north, and is the only surface water feature in the immediate vicinity of the permit area. Willow Creek flows northwesterly from the edge of the Irigaray permit area approximately two miles before its confluence with the Powder River. Water quality and available hydrologic characteristics for both Willow Creek and the Powder River are given in Section D6 of the Irigaray application document.**

Regional and site specific surface water studies were conducted to develop quantitative and qualitative data and to assess the potential impact of the proposed mining operation on the surface water and drainage system within the Christensen Ranch permit area. The drainages basins within and adjacent to the area were mapped and described. ***They include 18 watersheds of the Willow Creek drainage basin which provide surface drainage for the majority of the area. Surface water bodies in the permit area and adjacent to it were characterized including***

Willow Creek, its primary tributaries and permanent stockponds. Drainage channel profiles were constructed for Willow Creek and its major tributaries.

Results indicate that drainages in the Christensen Ranch project area are ephemeral. Intermittent surface water occurs only in the extreme north west portion of the permit area.

Flood frequency analyses were calculated from field data and indicate a range of flood events for the watershed.

Surface water quality was sampled along Willow Creek and its major tributaries. Appendix D6 of the Christensen permit application provides the surface water quality data. Drainage basin characteristics are also provided for review in Appendix D6, as well as sedimentation as related to the ongoing mining disturbance.

Appendix C - 2007 Wildlife Survey

A four season baseline wildlife study was conducted on the Christensen Ranch permit area and adjacent areas to evaluate any potential adverse impacts to the native fauna. The only species of commercial value in the vicinity are domestic, principally range cattle. ***Wildlife species with some recreational value include the pronghorn antelope, mule deer, cottontail rabbit, sage grouse and mourning dove, which are hunted.*** Non-game species are typical of the sage brush grassland habitat in the region. Searches for threatened and endangered wildlife were conducted. ***The only potential conflict identified was with the nesting site of a golden eagle pair, a species of high Federal interest. A special study was commissioned in 1987 to evaluate the potential for mining activities conflicting with the eagle pair. The results of the wildlife baseline study and golden eagle study are included in Appendix D9, as are discussions of other potential impacts and mitigation measures for wildlife during the mining operation.***

Wildlife species at the Irigaray project site are very much the same as found on the Christensen project site, and are described in detail in Appendix D9 of the Irigaray permit application.

COGEMA annually conducted wildlife surveys on and proximate to the permit area for a number of years. The surveys consisted of big game surveys, sage grouse lek censuses, and nesting raptor surveys. The accumulated data showed no impacts attributable to the mine operations. ***Due to the termination of mining activities and the initiation of restoration/reclamation activities exclusively in 2001, all wildlife monitoring had been suspended. The big game surveys are permanently terminated. Anticipating a return to mining, wildlife surveys were reinitiated in 2007 and 2008. Sage grouse and raptor surveys have been conducted. Additionally, big game surveys were also performed despite the deletion of that requirement.*** The 2007 annual wildlife survey report is included with this submittal as Appendix C. In future years big game surveys will not be done.

Preparatory to the resumption of mining, COGEMA also commissioned an update report in early 2008 on the occurrence of threatened or endangered species of plants and animals in the vicinity of the mine permit area. *No threatened or endangered species were identified in the recent re-evaluation. The report is included here also in Appendix C.*

Basis for Contention – In its application, Applicant ignores the Willow Creek and Powder River as a potential surface water that is affected in the event of an accident. Applicant contradicts their own claim that there is no surface water that would be affected in the event of an accident, by identifying in that the 110,000 gallon spill was soaked into a dry draw adjacent to Willow Creek, that Willow Creek lies within the area of the license, and that Willow Creek flows into the Powder River. The river alluvium can receive contaminants from three sources 1) from surface spills at the mine site 2) from water transmitted through the artesian pressures and/or CBM or oil wells, where it is exposed at the land surface, and 3) through faults.

Issue raised is within the scope of the proceeding – The purpose of the proceeding is to determine whether or not to grant a renewal license to APPLICANT. Therefore information contained in its application is within the scope, both in terms of accuracy, and specific impact of ISL mining on the environment. In 10 C.F.R 40.32(c)(d) General Requirements for Specific License it states: (c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and (d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Additionally, the accuracy and completeness of the application is called into question under 10 C.F.R 40.9 (a) and(b) Domestic Licensing of Source Material General Provisions for completeness and accuracy of information provided on the application for licensure. Under (a) the

applicant or licensee is required to provide information that “is complete and accurate in all material respects”. And under (b) the applicant or license shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for the public health and safety or common defense and security.

The issue raised in this contention is material to the findings of the NRC of whether Applicant should be granted a renewal of its license for source material. - The law is clear under NEPA that the NRC must produce a “specific statement” in a major federal action, such as granting a license renewal, where there is a significant impact on the human environment. Given the Trustee relationship of the NRC to the Oglala Lakota, environmental protection should be material and have the highest priority in consideration in this license renewal proceeding. The issues of accuracy of information provided on the application particularly where the information is related to the possible harm to the environment of the Oglala Lakota is also material to the finding of whether to issue a renewal permit for APPLICANT’s source mining license.

Statement of facts and opinions – Applicant provides no scientific data to support its claim that an accident would have no impact on surface waters of the Willow Creek or the Powder River. The law is clear under both NEPA the NRC has a duty to provide “specific statement” regarding the effects of a major federal decision, such as licensing of source material, where it has substantial affect on the human environment. Additionally the NRC is required by 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90) to provide the alternatives available for reducing or avoiding adverse environmental and other effects. As Trustees of the Oglala Lakota, the

NRC has a legal duty to protect the water and environment from harm. Since the Willow Creek and the Powder River are within the treaty territory, and there is scientific evidence of the potential and actual contamination (documented excursions and leaks), the NRC must require a specific statement of the potential and current damage of the Willow Creek and Powder River prior to granting a renewal of Applicant's license. Additionally, it is within the scope of this proceeding to require additional information on contamination, and respond to scientific data showing the need for water sampling **beyond** the mining site, and in particular along the Willow Creek and Powder River prior to granting a license renewal.

D. Contention re: Impacts of CBM on Planned ISL Operations

The Application does not accurately address the potential for environmental harm from the relationship between known Coal Bed Methane (CBM), described in Appendix B to the Application, and the planned ISL operations.

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B and VIII.C above are hereby incorporated herein by this reference.

Issue of law – NEPA requires that federal agencies prepare a “detailed statement” or environmental impact statement, for every major federal action “significantly affecting the quality of the human environment”. 42 U.S.C § 4332(2)(C). In the licensing and regulatory actions, the NRC is required to consider “the alternatives available for reducing or avoiding adverse environmental and other effects.” 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90).

Basis for Contention – In Appendix B of the Application, Applicant ignores the impacts on the environment that is affected in light of existing and planned CBM operations. The

river alluvium can receive contaminants from three sources 1) from surface spills at the mine site 2) from water transmitted through the artesian pressures and/or CBM or oil wells, where it is exposed at the land surface, and 3) through faults.

Appendix B of the Application states, at Sections B.3, B.6 and B.7:

B.3 Potential Artificial Connections

Artificial connections through the shales above the first major CBM coal seam could be developed through deep exploration drillholes or deep wells which penetrate the coal seam.

B3.1 Deep Exploration Drillholes

Typically, drillholes in the Christensen Ranch area are drilled only down into the L Sandstone. Some deeper exploration drillholes were drilled and penetrated the coal seam. Table B. 1

The remainder of the other deep drillholes are far enough from the well field that they should not create a potential problem relative to ISR containment of solutions.

In the Powder River Basin (PRB), the uranium production sand/sandstones are within the Wasatch Formation and are separated from the CBM production coal seams by a substantial thickness of sand/sandstone and silt/shale sequences. The fine-grained silt or shale layers act as aquitards and greatly restrict or preclude the vertical movement of ground water. This in turn limits the vertical propagation of drawdown. In order to evaluate the potential hydrologic impacts of CBM production on the uranium ore-bearing sands in the PRB, a multi-layer MODFLOW model was constructed to represent a typical stratigraphic column at the Cogema Christensen Ranch project area. The modeled 13 layer stratigraphic column extends from the coal seam up through a sandstone representing a likely uranium production sand in order to evaluate the hydrologic impacts on the sequence of layers from the coal to the uranium production sand. The horizontal modeled area was set as a rectangle 15,000 feet by 5,000 feet. This quasi-strip configuration facilitated the placement of a separate constant head boundary for each layer at one end of the strip to represent the regional supporting aquifer system. The boundary condition at the other end of the strip was set as a variable head boundary. Well extraction stresses were placed in the coal seam layer approximately one-third of the total strip dimension from the variable head boundary end of the strip. In order to evaluate drawdown impacts, the resulting drawdown in the coal and overlying layers was analyzed for a location directly over the area where the well stresses were applied.

All layers in the model were established as confined aquifers with a uniform storage coefficient of 1.0×10^{-5} . The top layer was a 40 foot thick sand layer with a transmissivity of 424 gal/day/ft which corresponds to a hydraulic conductivity of 5.0×10^{-4} cm/sec. Shale/silt intervals were broken into two layers for modeling purposes to further refine estimates of drawdown within the finer grained material where large gradients could potentially develop. Layers 2 and 3 were 50 foot thick shale layers with a transmissivity of 0.5 gal/day/foot. Layers 4, 5, and 6 repeated the thickness and properties sequence of layers 1 through 3. Layers 7, 8, and 9 also repeated this sequence. Layer 10 was modeled as a 40 foot thick sand with a modest transmissivity of 21 gal/day/foot. Layers 11 and 12 were 20 foot thick shale intervals with a transmissivity of 0.5 gal/day/foot. Layer 13 was a 40 foot thick coal seam with a transmissivity of 21 gal/day/foot. The total sequence thickness is 500 feet and can generally be described as the uranium production ore sand (top) and CBM production coal seam (bottom) separated by an alternating sequence comprised of four shale layers and three intermediate sand layers.

The initial water level elevation (hereafter termed head) for each layer was scaled in a generally linear manner from an arbitrary value of 500 feet for the coal seam (layer 13) to 560 feet for the upper sand aquifer (layer 1). The difference between the head in the upper and lower layers represents the likely condition of progressively higher head in overlying aquifers. A simulation was also conducted with a much larger differential in initial head between upper and lower aquifers and the results were generally similar to those presented in the following discussion.

The model simulation period was 20 years in 15 stress periods. The stress period intervals were selected to provide complete definition of the transient drawdown response for the coal and adjacent layers. The magnitude of the wells stresses in the coal seam was varied to produce a large drawdown in the coal at the end of the simulation. The vertical conveyance between layers (termed V_{cont} in MODFLOW) was set as a uniform value for the interface between all layers

B.6 Effects on ISR Excursions

The CBM drawdowns in the coal aquifer should not increase the potential for vertical excursions. The numerous aquitards between the coal and the ore sands should prevent the occurrence of significant drawdowns in the ore sands from CBM production. An artificial connection between the ore sand and the coal aquifer through a deep drillhole or deep well is the most likely pathway for a vertical excursion and thus the potential for such a connection should be evaluated.

CBM drawdowns could potentially cause drawdown in an ore sand if there are artificial connections with the production coal. In most cases, this CBM induced drawdown is not expected to appreciably affect gradients within a mine unit and therefore will not significantly increase the potential for horizontal excursions. Unless the artificial connection is directly within a mine unit, the changes in the piezometric surface should affect the mining in a relatively uniform manner. If drawdown occurs within a mine unit it is due to an artificial connection, this actually

reduces the potential for horizontal excursion while, as previously noted, raising concerns for vertical excursion.

B.7 Conclusions

The modeling of the vertical propagation of CBM drawdown through the shale and sand layers shows that the first continuous shale will greatly dampen the drawdowns in the aquifers above the shale. ***Some drawdown is likely to occur in the first aquifer above the coal aquifer but drawdowns should be very small beyond the first sand. Some of the sands near the coal aquifer may have direct connection with the coal at some locations and, therefore, significant drawdown may develop in these connected aquifers.*** Ore sands, which are several hundred feet above the top of the coal, should not exhibit drawdown from the coal bed production unless artificial connections between the sand and the coal aquifer. ***It will be very important to determine if artificial connections exist within an ISR well field area and to correct any potential connections. Artificial connections that exist at some distance from the well field should not affect the potential for vertical or horizontal excursions.***

Issue raised is within the scope of the proceeding – The purpose of the proceeding is to determine whether or not to grant a renewal license to APPLICANT. Therefore information contained in its application is within the scope, both in terms of accuracy, and specific impact of ISL mining on the environment. In 10 C.F.R 40.32(c)(d) General Requirements for Specific License it states: (c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and (d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Additionally, the accuracy and completeness of the application is called into question under 10 C.F.R 40.9 (a) and(b) Domestic Licensing of Source Material General Provisions for completeness and accuracy of information provided on the application for licensure. Under (a) the applicant or licensee is required to provide information that “is complete and accurate in all material respects”. And under (b) the applicant or licensee shall notify the Commission

of information identified by the applicant or licensee as having for the regulated activity a significant implication for the public health and safety or common defense and security.

The issue raised in this contention is material to the findings of the NRC of whether Applicant should be granted a renewal of its license for source material. - The law is clear under NEPA that the NRC must produce a “specific statement” in a major federal action, such as granting a license renewal, where there is a significant impact on the human environment. Given the Trustee relationship of the NRC to the Oglala Lakota, environmental protection should be material and have the highest priority in consideration in this license renewal proceeding. The issues of accuracy of information provided on the application particularly where the information is related to the possible harm to the environment of the Oglala Lakota is also material to the finding of whether to issue a renewal permit for Applicant’s source mining license.

Statement of facts and opinions – Applicant provides no scientific data to support its claim that the CBM has no material impact on the ISL operations. The law is clear under both NEPA the NRC has a duty to provide “specific statement” regarding the effects of a major federal decision, such as licensing of source material, where it has substantial affect on the human environment. Additionally the NRC is required by 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90) to provide the alternatives available for reducing or avoiding adverse environmental and other effects. As Trustees of the Oglala Lakota, the NRC has a legal duty to protect the water and environment from harm. Since the mine site is within the treaty territory, and there is scientific evidence of the potential and actual contamination (documented excursions and

leaks), the NRC must require a specific statement of the potential and current damage of the environment from artificial connections and drawdowns related to the interaction between CBM and ISL operations, prior to granting a renewal of Applicant's license. Additionally, it is within the scope of this proceeding to require additional information on contamination, and respond to scientific data showing the need for water and environmental sampling **beyond** the mining site, and in particular along the Willow Creek and Powder River, prior to granting a license renewal.

E. Communication Among Aquifers

The Application incorrectly states there is no communication among the aquifers, when in fact, the aquifer, where mining occurs, and the aquifer, which provides drinking water, communicate with each other, resulting in the possibility of contamination of the potable water.

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C and VIII.D above are hereby incorporated herein by this reference.

The Application states that there is transmission and communication among the aquifers, see Appendix Section B3.1:

...The top layer was a 40 foot thick sand layer with a transmissivity of 424 gal/day/ft which corresponds to a hydraulic conductivity of 5.0 E-04 cm/sec. Shale/silt intervals were broken into two layers for modeling purposes to further refine estimates of drawdown within the finer grained material where large gradients could potentially develop. Layers 2 and 3 were 50 foot thick shale layers with a transmissivity of 0.5 gal/day/foot. Layers 4, 5, and 6 repeated the thickness and properties sequence of layers 1 through 3. Layers 7, 8, and 9 also repeated this sequence. Layer 10 was modeled as a 40 foot thick sand with a modest transmissivity of 21 gal/day/foot. Layers 11 and 12 were 20 foot thick shale intervals with a transmissivity of 0.5 gal/day/foot. Layer 13 was a 40 foot thick coal seam with a transmissivity of 21 gal/day/foot. The total sequence thickness is 500 feet and can generally be described as the uranium production ore sand (top) and CBM production coal seam (bottom) separated by an alternating sequence comprised of four shale layers and three intermediate sand layers.

Issue of law – NEPA requires that federal agencies prepare a “detailed statement” or environmental impact statement, for every major federal action “significantly affecting the quality of the human environment”. 42 U.S.C § 4332(2)(C). In the licensing and regulatory actions, the NRC is required to consider “the alternatives available for reducing or avoiding adverse environmental and other effects.” 10 C.F.R §51.71 (d) (incorporated by reference in 10 C.F.R. 51.90). Also, the irretrievable commitment of resources must be described pursuant to Section 51.45(b)(5).

Basis for Contention- the Application uses its assertion that the aquifers do not communicate to support its contention that the ISL mining is not a threat to the water sources of the surrounding areas. If the aquifers do communicate, whether by faults or other means, that calls into question the true safety of this method.

Issue raised in this contention are within the scope of this proceeding - Pursuant to 10 CFR 40.9, information provided by the applicant must be complete and accurate in all respects. The Oglala Delegation contends that the information provided by the Applicant in its application are neither complete nor accurate.

The issue raised in this contention is material to the findings of the NRC of whether Applicant should be granted a renewal of its license for source material. The contentions petitioner raises is within the scope of the proceeding because the contentions are with the application for source material license renewal. In 10 C.F.R 40.32(c)(d) General Requirements for Specific License it states: (c) The applicant's proposed

equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and (d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

Additionally, the accuracy and completeness of the application is called into question under 10 C.F.R 40.9 (a) and(b) Domestic Licensing of Source Material General Provisions for completeness and accuracy of information provided on the application for licensure. Under (a) the applicant or licensee is required to provide information that “is complete and accurate in all material respects”. And under (b) the applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for the public health and safety or common defense and security.

As a federal agency, the NRC has an affirmative obligation to apply federal law in its actions. In this instance, not only is the NRC required to act consistent with its trust responsibility to the Oglala Lakota, but further apply the *Winters* doctrine in its decision-making process when ruling on the application. As a trustee to the Oglala Lakota, the NRC must not act in a way that damages the interests of the Oglala Lakota. The Oglala Lakota needs sufficient quantities of clean water to carry out its ranching and agricultural pursuits, as well as provide clean, safe water for its people.

Facts to support this contention include -

a.. The aquifers do communicate, and therefore there is the potential for contamination of the domestic water supply by Applicant’s activities.

b. The Powder River Basin already has severe problems with adequate potable water to meet the needs of its residents, including humans and wildlife. Continued and increased mining of these communicative aquifers poses a serious health and safety risk to the residents.

F. Arsenic Contamination

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D and VIII.E above are hereby incorporated herein by this reference.

The Oglala Delegation contends that in-situ leach mining operations at the Mine will cause an increase in the natural level of Arsenic in the water of the target aquifer and that such Arsenic laden water leaks into the surface and underground water sources that supply drinking water to the people and wildlife who live near the Mine. The Oglala Delegation further contends that the increased level of Arsenic in the drinking water results in a corresponding increase in the incidence of diabetes among the people, including the Oglala Lakota, thereby evincing a detrimental effect on the public health and safety by the renewal of the operation of the Mine.

The Application states that Arsenic levels increased 60 times from the prior operation of the Mine. Application at Table 3.2. No data is provided to demonstrate the current Arsenic level in the restored Mine Units.

Applicant acknowledges that Arsenic is produced by the oxidation of uranium ore that is the substance of in-situ leach mining, but does not address its eventual disposition nor any procedures to ensure that Arsenic is contained in the aquifer or elsewhere in the

waste stream. Further, Applicant's claim of "restoration" of assumes "secondary" standards that are not articulated and that do not address Arsenic levels.

Arsenic laden water may travel from the Mine location to the populated areas and wildlife habitats via the Willow Creek alluvium or underground faults and/or fractures, artesian pressures and impacts from Coal Bed Methane (CBM) and/or oil drilling operations in the area immediately adjacent to the permit area.

On August 20, 2008, a new study by the Johns Hopkins Bloomberg School of Public Health was published in the Journal of the American Medical Association (the "Johns Hopkins Study")¹⁰⁰. The Johns Hopkins Study shows that low level exposures of inorganic arsenic in the water such as that resulting from ISL uranium mining increases the risk of Type 2 Diabetes in adults. Diabetes is already an epidemic at Pine Ridge Indian Reservation reported to be 800% higher than the national average.¹⁰¹

A related article in the same issue of the Journal of the American Medical Association states that diabetes is the seventh leading cause of death in the United States and complications from diabetes profoundly affect the quality of life and contribute to high morbidity and mortality.¹⁰²

The Application states:

3.2.1 ORE BODY

Uranium deposits amenable to solution mining are generally associated with relatively shallow aquifers which are confined by impermeable stratigraphic units.

¹⁰⁰ Arsenic Exposure and Prevalence of Type 2 Diabetes in US Adults, Ana Navas-Acien, MD, PhD; Ellen K. Silbergeld, PhD; Roberto Pastor-Barriuso, PhD; Eliseo Guallar, MD, DrPH; Journal of the American Medical Association (August 20, 2008) (Vol. 300(7):814-822). http://www.jhsph.edu/publichealthnews/press_releases/2008/navas_acien_arsenic.html.

¹⁰¹ See, e.g., http://www.backpacksforpineridge.com/Stats_About_Pine_Ridge.html.

¹⁰² Environmental Arsenic Exposure and Diabetes, Molly L. Kile, MS, ScD; David C. Christiani, MD, MPH, MS; Journal of the American Medical Association (August 20, 2008) (Vol. 300(7): 845-46).

Uranium was transported to these locations as a soluble anionic complex by the natural movement of oxygenated groundwaters. Uranium deposition occurs in areas where chemical conditions change from an oxidizing to a reducing state. This condition produces a roll front deposit with uranium concentrated at the interface between the oxidized and unoxidized sandstones. This interface is commonly called the redox interface.

The orebodies at both the Irigaray and Christensen Ranch projects are typical roll front deposits. Uranium minerals occur as sand grain coatings and interstitial fillings in medium to fine-grained sandstones and arkosic sandstones of the Eocene Wasatch Formation. ***The uranium was derived from volcanics and granitic detritus by oxygen containing waters which leached and transported it via aquifers to where the oxidation potential of the groundwater was overcome by the reducing conditions in the aquifer.*** At that point, the uranium and some other dissolved metals became insoluble and precipitated as coatings and interstitial fillings in the aquifer.

The redox interface is more commonly termed a roll front. The roll front is actually a zone but relative to the broad extent of the aquifer; it is quite confined. This zone is represented by a sinuous and narrow area in plain view along which the commercial uranium occurrences are found as discontinuous masses. The roll fronts are found in more than one layer of an aquifer particularly where that aquifer is broken up by stratigraphic units (mudstones and/or siltstones) ***which are relatively impervious to the passage of groundwater.*** The roll fronts, therefore, converge and diverge causing variations in the concentrations of uranium in a given area. Detailed geologic characterization of the Irigaray and Christensen Ranch areas is provided in Appendix D5, Geology, of each permit application.

The Application states:

3.3.3 WELL FIELD OPERATIONS

3.3.3.1 Lixiviant Composition

The lixiviant is the mining solution which is used to solubilize the uranium from the ore deposit. The lixiviant composition is designed to reverse the natural geochemical conditions which led to the uranium deposition. After injection into the mineralized zone, the solution is pumped to the surface for uranium extraction. Following the removal of uranium, the groundwater is refortified with lixiviant and reinjected into the mineralized zone. This cycle continues until mining is complete.

The lixiviant used during operations consists of either sodium bicarbonate/carbonate or carbon dioxide gas (contributes a carbonate complex), using gaseous oxygen or hydrogen peroxide as the oxidant.

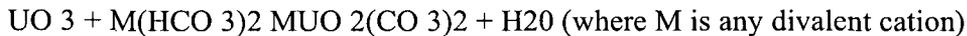
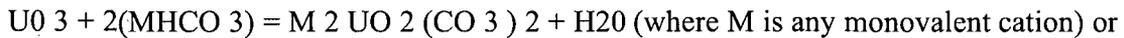
The Application states:

3.3.3.2 Anticipated Geochemical Reactions

The major geochemical reactions which occur during the mining operation are the oxidation and mobilization of the uranium ore. Oxidation is accomplished through the introduction of gaseous oxygen or hydrogen peroxide with the lixiviant-fortified injection stream. The uranium, existing in the insoluble +4 valence state, is oxidized to the more soluble +6 valence by the following reaction:



Once the uranium has been oxidized to the + 6 valence state, the complexing agent in the lixiviant (bicarbonate) aids in the mobilization or dissolution of the uranium. The following reactions are examples of the leaching process when using a bicarbonate lixiviant:



The uranium is then recovered from the solution in the ion exchange process of the satellite extraction plant.

Other geochemical reactions that are anticipated are the dissolution of other metals in the formation and the ion exchange of lixiviant cations with any clays present in the formation. *Analysis of the recovered mining solutions indicate that trace metals such as arsenic, selenium, vanadium, aluminum, iron and manganese are liberated during the leaching process. The mobilization of these metals did not cause significant problems during the groundwater restoration phase at Irigaray, nor at the Christensen Willow Creek R & D test; a chemical reductant was used to reverse the oxidizing characteristics of the groundwater after mining and to precipitate the referenced metals underground at both sites. A summary of the changes in groundwater composition which occur during the mining process is provided in Table 3.2.*

Table 3.2 mentions Arsenic increasing from <0.0025 to 0.148 = 25 to 1480; a factor of 60x.



The Application states:

6.11.2

Metals Reduction

If the aquifer is left highly oxidized (which occurs during mining), metals and other constituents will continue to leach and remain at higher than desired levels during and after restoration. Accordingly, it may be necessary to alter the oxygenated

environment during restoration by the addition of one or more of the chemical agents described below. The amount of chemical agent applied will ultimately depend upon the redox potential (Eh) of the well field at the time of the addition and the agent used as a reductant. The chemical agents that may be used as oxygen scavengers or metals reductants during the restoration process include primarily sulfur-based compounds, ranging from hydrogen sulfide gas (H₂S) and sodium

The Application also states the following without any mention of Arsenic:

3.4.2.4 Wastewater Management

Two liquid waste streams are produced during the mining operations. The first stream is the 1P/o bleed taken in the plant for lixiviant control in the well field. The 40 gpm stream consists of the brine from the RO unit- discussed above in the ion exchange/lixiviant makeup circuit section. The 40 gpm of brine (less than two percent of the total injection flow) will be sent to a lined evaporation pond or disposed via deep well injection. The permeate not used for lixiviant makeup or process stream recycle, is currently stored in a compacted clay-bottomed pond adjacent to the plant site (a second pond is licensed, but not yet installed). ***Synthetic liners and leak detection systems are not necessary for the permeate storage ponds due to the good quality of the water; uranium and radium will meet NPDES surface discharge criteria for uranium mines after treatment through the IX systems, reverse osmosis unit and, if necessary, radium removal resin in the plant.*** Additionally, because the water source is process water, NRC standards in 10 CFR 20, Appendix B, Table 2 values for uranium and radium will be met for discharge into the pond. Anticipated water quality concentration ranges of the permeate storage pond solutions are:

The Arsenic is released due to the oxidizing of the Uranium by Applicant's mining operations. Such levels of Arsenic have adversely impacted public health particularly causing ailments associated with the pancreas such as diabetes and pancreatic cancer.

The issue raised by this contention is that Arsenic being released by the oxidizing of Uranium due to Applicant's injection of lixiviant and that such levels of Arsenic (even if within US drinking water standards) constitutes ongoing low-level exposure to Arsenic which causes failures in the pancreas to people drinking water affected into which the Arsenic flows. Such pancreatic failures result in diabetes and pancreatic cancer.

The basis for this contention is that the AEA and NRC Regulations cited herein require Applicant's operations to be conducted without harm to public health and safety. Further, NEPA requires that the water not be contaminated with Arsenic to the detriment of the health of the people drinking water affected by the mine.

Facts and references are those discussed above including that the Johns Hopkins Study shows a link between low-levels of Arsenic in the drinking water and Type 2, Adult-Onset Diabetes. Diabetes reflects a failure in the pancreas. In addition, further testing needs to be done to show the exact levels of Arsenic in the drinking water of the people of the area surrounding the mining sites.

Diabetes can be caused by pancreatic failure. See Pancreatic Cancer Symptoms and Signs, Pancreatic Cancer UK, at <http://www.pancreaticcancer.org.uk/PCSymptoms.htm>. There is a link between diabetes and pancreatic cancer. See Probability of Pancreatic Cancer Following Diabetes: A Population-Based Study, Journal of the Institute of the American Gastroenterological Association, Vol. 129, No. 2 at 504-511 (August 2005) ("Approximately 1% of diabetes subjects aged ≥ 50 years will be diagnosed with pancreatic cancer within 3 years of first meeting criteria for diabetes.")

The Application shows that Applicant is aware that its ISL Uranium mining causes oxidation of the Uranium and the release of Arsenic into the water including the Wasatch Formation. These exposures to Arsenic from Applicant's mine are related to the incidence of diabetes and pancreatic cancer and appear to be a causal and contributing factor to such diseases that may be suffered by the people nearby the mine. The foregoing shows a plausible link between low levels of Arsenic in the water and failures of the

pancreas in the form of diabetes and pancreatic cancer for the people downstream and downgrade of the Mine.

Appendix A to Part 40 provides, in pertinent part:

5B(1)--Uranium and thorium byproduct materials must be managed to conform to the following secondary ground-water protection standard: **Hazardous constituents entering the ground water from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the Commission pursuant to paragraph 5B(2) of this criterion.** Specified concentration limits are those limits established by the Commission as indicated in paragraph 5B(5) of this criterion. The Commission will also establish the point of compliance and compliance period on a site specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to the ground water. The point of compliance must be selected to provide prompt indication of ground-water contamination on the hydraulically downgradient edge of the disposal area. The Commission shall identify hazardous constituents, establish concentration limits, set the compliance period, and may adjust the point of compliance if needed to accord with developed data and site information as to the flow of ground water or contaminants, when the detection monitoring established under Criterion 7A indicates leakage of hazardous constituents from the disposal area.

5B(2)--A constituent becomes a hazardous constituent subject to paragraph 5B(5) only when the constituent meets all three of the following tests:

- (a) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;
- (b) The constituent has been detected in the ground water in the uppermost aquifer; and
- (c) The constituent is listed in Criterion 13 of this appendix.

5B(3)--Even when constituents meet all three tests in paragraph 5B(2) of this criterion, the Commission may exclude a detected constituent from the set of hazardous constituents on a site specific basis if it finds that the constituent is not capable of posing a substantial present or potential

hazard to human health or the environment. In deciding whether to exclude constituents, the Commission will consider the following:

(a) Potential adverse effects on ground-water quality, considering--

(i) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering--

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

5B(4)--In making any determinations under paragraphs 5B(3) and 5B(6) of this criterion about the use of ground water in the area around the facility, the Commission will consider any identification of underground sources of drinking water and exempted aquifers made by the Environmental Protection Agency.

5B(5)--At the point of compliance, the concentration of a hazardous constituent must not exceed--

(a) The Commission approved background concentration of that constituent in the ground water;

(b) The respective value given in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(c) An alternate concentration limit established by the Commission.

5B(6)--Conceptually, background concentrations pose no incremental hazards and the drinking water limits in paragraph 5C state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for Commission consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the Commission must consider. The Commission will establish a site specific alternate concentration limit for a hazardous constituent as provided in paragraph 5B(5) of this criterion if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the Commission will consider the following factors:

(a) Potential adverse effects on ground-water quality, considering--

(i) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering--

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters; (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

5C-Maximum Values for Ground-Water Protection

Constituent or property Maximum concentration

Milligrams per liter:

Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05

Picocuries per liter:

Combined radium-226 and radium-228	5
Gross alpha-particle activity (excluding radon and uranium)	15

5D-If the ground-water protection standards established under paragraph 5B(1) of this criterion are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than eighteen (18) months after the Commission finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for Commission approval prior to putting the program into operation, unless otherwise agreed to by the Commission. The objective of the program is to return hazardous constituent concentration levels in ground water to the concentration levels set as standards. The licensee's proposed program must address removing hazardous constituents that have entered the ground water at the point of compliance or treating them in place. The program must also address removing or treating any hazardous constituents that exceed concentration limits in ground water between the point of compliance and the downgradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater standard. The Commission will determine when the licensee may terminate corrective action measures based on data from the ground-water monitoring program

and other information that provide reasonable assurance that the ground-water protection standard will not be exceeded.

7A--The licensee shall establish a detection monitoring program needed for the Commission to set the site-specific ground-water protection standards in paragraph 5B(1) of this appendix. For all monitoring under this paragraph the licensee or applicant will propose for Commission approval as license conditions which constituents are to be monitored on a site specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set ground-water protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the Commission to establish the standards under Criterion 5B. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the Commission to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the Commission in orders or license conditions. Once ground-water protection standards have been established pursuant to paragraph 5B(1), the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in ground water continue to comply with the standards set by the Commission. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

Dispute: By failing to test for or monitor or filter Arsenic, the mine poses a threat to the public health and safety as well as the health of the environment and wildlife, including prey for sacred Eagles. Such failures make it impossible for the

Applicant to comply with Criterion 5A, 5B, 5C and 5D and 7A of the Appendix A to Part 40; therefore the renewal must fail.

Scope: The NRC is required to determine the Applicant's impact on the Arsenic levels in the area surrounding the mine site in order to make the determinations referred to in the foregoing Criterion of Appendix A of Part 40.

G. Failure to Update Research and Analysis pursuant to 10 CFR §51.60(a); Failure to Make Required Disclosures of Environmental Impact pursuant to 10 CFR §51.45

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E and VIII.F above are hereby incorporated herein by this reference.

Section 51.60(a) provides, in pertinent part:

If the application is for ... a renewal of a license ...for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be ...updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities.

When read with Section 51.45 and Section 40.9, the Application is required to update the research and analysis and not merely incorporate the old 1996 data without verifying that there have been no changes in geologic interpretations or hydrological circumstances.

Further, an ADAMS search did not reveal a copy of the 1996 data referred to in Sections 2.5, 2.6 and 2.7 of the Application¹⁰³, despite the fact that the Application purports to incorporate such document by reference. Therefore, the Application is incomplete and fails to comply with Section 51.45 or NUREG-1569.

The Application is lacking a complete description of local hydrogeology, including groundwater flow direction and speed, confining layers, porosity, fractures, and fissures. The application fails to discuss analysis of fracturing and faulting which may contribute to cross-contamination of underground aquifers. The Application needs to disclose how the integrity of the confining layer has been assessed.¹⁰⁴

The Environmental Report does not contain information and analysis compliant with NEPA and the “hard look” required by NEPA. The NRC must conduct an Environmental Impact Statement pursuant to NEPA prior to renewing the license (a major federal action significantly impacting the environment). In particular, the Environmental Report does not contain a complete impacts analysis of cumulative impacts of uranium operations relative to other past, current, and reasonably foreseeable development activities, including other uranium operations, coalbed methane (CBM) development, other oil and gas operations, and abandoned exploration wells. Cumulative impacts may include cross-contamination of aquifers, cumulative surface water impacts because of discharges to Willow Creek, increased groundwater drawdown, increased air quality impacts – particularly fugitive dust, and cumulative land quality and wildlife

¹⁰³ “Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA- 1341, January 5, 1996.”

¹⁰⁴ The Application states that “The ore-bearing strata is physically and hydraulically separate from overlying and underlying aquifer.” Application at 7-21.

impacts.

If a license renewal is granted in this matter (for example, post-divestiture to US ownership), the NRC must require legally enforceable mitigation measures to minimize impacts to surface, air, and water resources. To the extent standard operating procedures or best management practices are relied on to reduce impacts to below significance, they must be enforceable license or regulatory requirements not merely statements without teeth in an Environmental Report. The weighing of risks against benefits in view of the circumstances of particular projects is required by NEPA in view of Atomic Energy Act. The two statutes and the regulations promulgated under each must be viewed in *para material*. Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1299 (DC Cir. 1975).

The Application states:

2.5 CLIMATOLOGY AND METEOROLOGY

2.5.1 GENERAL AREA CHARACTERISTICS

The Irigaray and Christensen Ranch areas are classified as a semi-arid continental climate. Meteorological data collection sites operated by the National Oceanic and Atmospheric

Administration (NOAA) in the vicinity of the area include: Midwest - 30 miles SW, Kaycee - 31 miles W, Gillette - 4-3 miles NE, Buffalo - 51 miles NW, and Casper - 68 miles SW. Records from these locations provide general long term weather data for areas surrounding the sites.

This regional data may be supplemented by meteorological data collected at industrial sites, primarily coal mines located east of the Christensen Ranch and generally south of Gillette. Meteorological monitoring was conducted at Irigaray for one full year, December 1980 through December 1981. This data provides insight to local conditions and has served as the primary source of meteorological information for the Irigaray and Christensen Ranch projects. Copies of the two semi-annual meteorological reports for the Irigaray Mine are provided for review in Appendix D4 of the Christensen Ranch permit application. No onsite meteorological data

collection was required or done since the early 1980s. The historical meteorological data for the area was summarized in the "Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA- 1341, January 5, 1996." That summary found in Sections 2.5.2 through 2.5.5 of the The historical meteorological data for the area was summarized in the "Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA-1341, January 5, 1996." That summary found in Sections 2.5.2 through 2.5.5 of the

2.6 GEOLOGY AND SEISMOLOGY

2.6.1 REGIONAL GEOLOGY

The regional geology associated with the Irigaray and Christensen Ranch project areas was thoroughly discussed in "Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA-1 341, January 5, 1996." The reader is referred to Section 2.6.1 of that document (pages 2-25 and 2-28 to 2-29 for a discussion of the regional geology.

2.6.3 SEISMOLOGY

The seismology associated with the Irigaray and Christensen Ranch projects was discussed in "Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA-1341, January 5, 1996", as revised September 3, 1997. The reader is referred to Section 2.6.3 of that document (page 2-33 for a discussion of the site seismology.

2.7 HYDROLOGY

2.7.1 GROUNDWATER

Extensive investigation of the groundwater systems at the Irigaray and Christensen Ranch project areas were conducted to assess the impact of the proposed in-situ mining activities during initial permitting. The studies included a review of the hydrogeology of the area, extensive aquifer testing and field sampling to determine water quality. At Christensen Ranch, initial investigations included the "L" sandstone (underlying aquifer), lower confining layer, the "K" sandstone (mineralized zone), upper confining layer and the "J" sandstone (overlying aquifer). Potentiometric surfaces were developed for each aquifer and recharge and discharge areas were researched. There were nine aquifer - aquitard investigations performed at six test sites within the Christensen Ranch permit area to define aquifer characteristics.

There were 10 horizontal permeability tests performed within the "K" sandstone at different locations within the permit area, to confirm permeability values calculated from pumping test data. Water quality was determined for the "K" sandstone, or

mineralized aquifer, and the next overlying and underlying aquifer through a quarterly field sampling program using some 27 different wells at 10 different hydrologic test sites on the permit area. The water chemistry of the 3 aquifers sampled is summarized in Appendix D6 of the Christensen Ranch permit application.

Monitoring of the overlying and underlying aquifers did not demonstrate any hydraulic connections to the K Sandstone. The lack of response attributable to the pumping of the K Sandstone indicates the presence of vertical isolation of the overlying and underlying aquifers.

The confining layers separating the K Sandstone from other water-bearing strata act as continuous, low permeability barriers within each mine unit tested.

Groundwater quality data collected since the last license renewal has also been confirmed and substantiated to be essentially the same as that identified in Appendix D6 of the original applications. Groundwater generally tends to be classed as sodium-sulfate in the eastern half of Christensen Ranch, trending towards sodium bicarbonate in the western half of the licensed area. Irigaray groundwater is primarily sodium bicarbonate based. **Although total dissolved solids concentrations in the western half of Christensen and all of Irigaray tend to average below drinking water standards, the water cannot be considered potable within the ore zones due to excessive concentrations of radium-226 and radon gas.**

Groundwater in the eastern half of Christensen demonstrates elevated levels of sodium-sulfate which cause the total dissolved solids concentrations to be greater than drinking water standards. In these areas (Mine Units 5, 61 and 7), the water is classified by the State of Wyoming as Class IV, Industrial Use.

To date groundwater usage in the vicinity of the Irigaray and Christensen Ranch license areas has not changed since the original issuance of the license. Groundwater usage has been limited to agricultural use (livestock), industrial use (uranium in situ mining, oil and gas development), and limited domestic use (Christensen Ranch house and Irigaray Ranch house). There are no new domestic or livestock developments in the area as the properties are located on the large Christensen and Irigaray ranches. *With the completion of five coal bed methane (CBM) wells (as yet not produced) in the immediate vicinity of COGEMA's Christensen Ranch operations and plans to install a substantial number of CBM wells over the next few years in the vicinity of both Irigaray and Christensen Ranch, there will be significant changes to groundwater use in the general area, but the CBM groundwater withdrawals are not anticipated to*

have a significant impact on the Wasatch aquifer, the zone of completion for COGEMA's wells and local ranch wells. See Appendix B to this submittal.

2.7.2 SURFACE WATER

Surface water characteristics for the Irigaray project are described in Section D6 of the Irigaray permit application document. The descriptions are rather general, due to the relatively small size of the Irigariay project (less than 1,000 acres). ***Willow Creek, considered an intermittent stream, crosses the permit area to the north, and is the only surface water feature in the immediate vicinity of the permit area. Willow Creek flows northwesterly from the edge of the Irigaray permit area approximately two miles before its confluence with the Powder River. Water quality and available hydrologic characteristics for both Willow Creek and the Powder River are given in Section D6 of the Irigaray application document.***

Regional and site specific surface water studies were conducted to develop quantitative and qualitative data and to assess the potential impact of the proposed mining operation on the surface water and drainage system within the Christensen Ranch permit area. The drainages basins within and adjacent to the area were mapped and described. ***They include 18 watersheds of the Willow Creek drainage basin which provide surface drainage for the majority of the area. Surface water bodies in the permit area and adjacent to it were characterized including Willow Creek, its primary tributaries and permanent stockponds. Drainage channel profiles were constructed for Willow Creek and its major tributaries.***

Results indicate that drainages in the Christensen Ranch project area are ephemeral. Intermittent surface water occurs only in the extreme north west portion of the permit area.

Flood frequency analyses were calculated from field data and indicate a range of flood events for the watershed.

Surface water quality was sampled along Willow Creek and its major tributaries. Appendix D6 of the Christensen permit application provides the surface water quality data. Drainage basin characteristics are also provided for review in Appendix D6, as well as sedimentation as related to the ongoing mining disturbance.

2.9 BACKGROUND RADIOLOGICAL CHARACTERISTICS

The reader is referred to Section 2.9 (pages 2-38 to 2-47) of "Permit to Mine No. 478, A-2 Update and U.S. NRC License Renewal Application: Source Material License SUA-1 341, January 5, 1996" for a discussion of background radiological characteristics of the Christensen Ranch permit area.

The Application lacks a complete disclosure of COGEMA's compliance history, including documentation of past spills, underground excursions, and evaporation pond liner leaks. This compliance history is a key indicator of COGEMA's future ability to protect public health and the environment.

The Application fails to fully document the amount of groundwater, including Class I groundwater supplies, that will be consumed during mining operations and wellfield restoration activities. The Application must be amended to contain a full and scientifically defensible analysis of groundwater drawdown and aquifer recharge in order to determine the significance (including severity and length) of groundwater impacts.

The Application does not contain a description of baseline (e.g. pre-mining) groundwater quality. In particular, baseline data for new mine fields should be disclosed in the application.

Given past experience, it is unlikely that groundwater quality will be restored to pre-mining conditions. The Application must fully disclose the likelihood of returning water to baseline characteristics.¹⁰⁵ The Application should also contain an alternatives analysis of restoration methods and determine best available technology that will be required for restoration if alternative concentration limits are allowed (e.g. returning to class of use).

¹⁰⁵ It is also unclear from the application what baseline water quality is. Has baseline water quality testing already been conducted (for instance prior to any mining activity) or will it be conducted prior to re-start/expansion?

The Application needs to disclose the effectiveness of evaporation ponds as a waste disposal method.

The Application lacks an analysis of whether the Pathfinder Mines Corporation Shirley Basin tailings facility will be available throughout the lifetime of COGEMA's facilities for byproduct waste disposal. An analysis of storage capacity of the licensed byproduct disposal facility is needed. This is particularly important since the 2007 violations of its license included a failure to maintain an effective waste disposal agreement with its sister-company, Pathfinder Mines Corporation (due to management oversight).

The Application should disclose whether operating permit OP-254 for the dryer facility be modified to comply with current air quality regulations (if regulations have changed since the permit was issued).

H. Failure to Include Economic Value of Environmental Benefits of Willow Creek

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E, VIII.F and VIII.G above are hereby incorporated herein by this reference.

The costs and benefits discussion in the Application omits any discussion of the economic value environmental benefits of the 18 watersheds associated with Willow Creek. A University of Adelaide study has put an economic value on the wetlands of the River Murray, highlighting the ramifications of cutting off water flows in times of drought. The study has concluded that every hectare of permanent wetland provides more than \$7,000 worth of water purification each year.

<http://www.adelaide.edu.au/adelaidean/issues/23221/news23241.html>

According to one assessment of natural ecosystems, the dollar value of wetlands worldwide was estimated to be \$14.9 trillion. (Source: Costanza et al. 1997). See also Economic Benefits of Wetlands, EPA 843-F-06-004, Office of Water (May 2006), and Economic Reasons for Conserving Wild Nature, Science Vol. 297 (August 9, 2002), www.sciencemag.org. Watersheds have a recognized economic value based on the environmental benefits they provide. Therefore, such economic value should be considered in Section 9.0 of the Application which states:

9.0 BENEFIT-COST SUMMARY

9.1 GENERAL

The general need for uranium is subsumed in the operation of nuclear power reactors. In reactor licensing evaluations, the benefits of the energy produced are weighed against related environmental costs, including a prorated share of the environmental costs of the uranium fuel cycle. These incremental impacts in the fuel cycle are justified in terms of the benefits of energy generation. However, it is appropriate to review the specific site-related benefits and costs of an individual fuel-cycle facility such as Irigaray/Christensen Ranch.

9.2 QUANTIFIABLE BENEFITS AND COSTS

The operation of the Irigaray/Christensen Ranch project will accrue monetary benefits to the surrounding communities from local expenditures and state and local taxes paid by the project. The project operation will add employment to the local communities.

Environmental impacts of the project are and will be minimal. ***Groundwater impact, radiological impact and the disturbance of the land are the three potential uncompensated environmental costs associated with the project.*** The groundwater will be restored to premining usage quality, as demonstrated by the Irigaray and Christensen Ranch restorations to date; the radiological impacts of the project are small as no tailings are produced and waste materials are transported off-site; the disturbance of the land is also a very small impact which should be mitigated by the proposed surface reclamation techniques to bring the land back to its pre-mining uses. Interim reclamation efforts have demonstrated that this goal is achievable. ***The benefits involved with the production of uranium and the power***

generated as a result are considered to offset the relatively small risk associated with the above noted environmental impacts.

See also Section 8.5 of the Application which states:

8.5 ALTERNATIVE TO NO LICENSING ACTION

If the NRC chooses to deny the renewal of License SUA-1341 for production on a commercial scale, COGEMA would be forced to resume the decommissioning and reclamation of the site, leaving a valuable mineral unmined. This denial would also result in the loss of large investments incurred to date by COGEMA for the rights to and development of the Irigaray/Christensen Ranch site. COGEMA currently has contracts for the sale of uranium to be used as fuel in nuclear reactors; the denial of the application will impair COGEMA's ability to deliver on their contracts.

I. Surety Bond –

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E, VIII.F, VIII.G and VIII.H above are hereby incorporated herein by this reference.

The Application states:

6.4.2 FINAL SURETY ARRANGEMENTS

COGEMA currently maintains an irrevocable letter of credit number SB 22.737 issued by Credit Industriel et Commercial (CGC) in favor of the State of Wyoming for the purpose of complying with 10 CFR 40, Appendix A, Criterion 9 regarding restoration and reclamation costs.

Dispute: The surety bond is issued by a French bank which may be ordered by the Government of France to not pay under the letter of credit thereby frustrating the purpose of the cleanup bond. COGEMA underestimates the financial cost of restoration and environmental clean-up.

Calculation of Surety Bond Fails to Consider Reasonably Foreseeable Costs of Restoration and Decommissioning. The bond calculation fails to consider post-restoration, post-decommissioning monitoring, or related ecological monitoring. The inflation adjustment needs to be fixed as of April 2009.

COGEMA underestimates the length of operations, including restoration and reclamation activities. This allows them to underestimate the financial assurance calculation and also allows them to underestimate environmental impacts, including the length of time of surface disturbance and groundwater consumption during restoration. The Application needs to be amended to fully reflect past experiences with restoration, which will allow COGEMA to more accurately predict future activity. For instance, based on past experience, it is unlikely that “Restoration of each mine unit is designed to be accomplished within a two to three year period to keep up with the mining schedules” as stated in the application. Application at 6-8.

COGEMA underestimates the financial cost of restoration and environmental clean-up. The financial surety calculation also fails to consider post-restoration, post-decommissioning monitoring, or related ecological monitoring. COGEMA’s bond estimate is only \$9.5 million. Application Attachment 6.1 at 2. Underestimating the bond leaves the public at risk – both financially and environmentally.

J. Water Consumption

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E, VIII.F, VIII.G, VIII.H and VIII.I above are hereby incorporated herein by this reference.

COGEMA operations will consume vast amounts of groundwater. This

consumption will have negative impacts on local and regional groundwater supplies used by residents, including Oglala Lakota, for domestic and stock purposes. Groundwater consumption may directly impact current uses of the aquifer, especially artesian wells, and will likely impact future uses of the aquifer.

K. Wildlife Impacts

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E, VIII.F, VIII.G, VIII.H, VIII.I and VIII.J above are hereby incorporated herein by this reference.

COGEMA's operations will negatively impact wildlife populations, which are of major importance to the Oglala Delegation, other local residents, and visitors to the area. Although the Application discloses that eight sage-grouse leks and habitat are present in the survey area, the application lacks a substantive discussion about possible sage-grouse impacts. Mining activities, including fencing, surface disturbing activities, use of overhead power lines, noise, and access roads, will negatively impact wildlife species including the greater sage-grouse.

Appendix C to the Application contains a 2007 Wildlife survey:

A four season baseline wildlife study was conducted on the Christensen Ranch permit area and adjacent areas to evaluate any potential adverse impacts to the native fauna. The only species of commercial value in the vicinity are domestic, principally range cattle. ***Wildlife species with some recreational value include the pronghorn antelope, mule deer, cottontail rabbit, sage grouse and mourning dove, which are hunted.*** Non-game species are typical of the sage brush grassland habitat in the region. Searches for threatened and endangered wildlife were conducted. ***The only potential conflict identified was with the nesting site of a golden eagle pair, a species of high Federal interest. A special study was commissioned in 1987 to evaluate the potential for mining activities conflicting with the eagle pair. The results of the wildlife baseline study and golden eagle study are included in Appendix D9, as are discussions of other potential impacts and mitigation measures for wildlife during the mining operation.***

Wildlife species at the Irigaray project site are very much the same as found on the Christensen project site, and are described in detail in Appendix D9 of the Irigaray permit application.

COGEMA annually conducted wildlife surveys on and proximate to the permit area for a number of years. The surveys consisted of big game surveys, sage grouse lek censuses, and nesting raptor surveys. The accumulated data showed no impacts attributable to the mine operations. ***Due to the termination of mining activities and the initiation of restoration/reclamation activities exclusively in 2001, all wildlife monitoring had been suspended. The big game surveys are permanently terminated. Anticipating a return to mining, wildlife surveys were reinitiated in 2007 and 2008. Sage grouse and raptor surveys have been conducted. Additionally, big game surveys were also performed despite the***

COGEMA fails to disclose and analyze impacts to wildlife and livestock habitat that will occur during mining operations and after surface reclamation. COGEMA does not discuss loss of brush density or other irreversible impacts of mining operations. The application needs to detail surface reclamation plans for the future well fields, not just reference reclamation for past well fields. Application at 6-13.

The Application does not contain results and analysis from recent wildlife surveys and does not disclose whether additional wildlife surveys will be conducted prior to installation of new well fields.

Mining activities, including fencing, surface disturbing activities, use of overhead power lines, increased truck traffic and noise, evaporation ponds (and resulting spread of west Nile virus), and habitat fragmentation caused by additional access roads, will negatively impact wildlife species including the greater sage-grouse. Greater sage-grouse populations are declining in the Powder River Basin and recent scientific studies have

shown that one of the leading causes for this decline is mineral development.¹⁰⁶ In light of these population declines locally and throughout the West, the U.S. Fish & Wildlife Service is now considering emergency-room protection by listing sage-grouse pursuant to the Endangered Species Act.¹⁰⁷ The Wyoming Bureau of Land Management (BLM) has also taken actions to protect the species and the greater sage-grouse is listed as a Special Status Species under the BLM's Sensitive Species Policy.

Species are designated as "sensitive" to ensure actions on BLM administered lands consider the welfare of these species and do not contribute to the need to list a Special Status Species under the provisions of the Endangered Species Act. BLM Wyoming Sensitive Species Policy and List at 1. NRC's actions in this matter, especially if conducted in consultation with BLM, must comply with the Sensitive Species Policy and other legal requirements to protect sage-grouse populations in and around the permit area. Additionally, the application must analyze impacts to migratory birds. Migratory waterfowl are drawn to open water during their migration.

COGEMA's facility is located within what is commonly known as the Central Flyways. The Fish and Wildlife Service has recently conducted a successful criminal

¹⁰⁶ See, Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Walker et al. 2007a, Doherty et al. 2008. Findings from the studies were summarized and highlighted in a 2008 guidance memo from the Western Association of Fish and Wildlife Agencies. Memorandum from Tom Christiansen and Joe Bohne, Wyoming Game and Fish Department, to Terry Cleveland and John Emmerich (Jan. 29, 2008), with attached report Using the Best Available Science to Coordinate Conservation Actions that Benefit Greater Sage-Grouse Across States Affected by Oil & Gas Development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming). Although focused on oil and gas impacts, the studies are highly relevant to other drilling operations, such as in-situ leach uranium facilities.

¹⁰⁷ See 73 Fed. Reg. 23172, announcing the Fish and Wildlife Service's current, ongoing "status review" which will determine if the Service will pursue listing the sage-grouse.

prosecution pursuant to the Migratory Bird Treaty Act against Cotter Corporation, a uranium mill operator whose activities resulted in the death of migratory waterfowl at the uranium mill near Canon City, Colorado, which is also located on the same well-established migratory route. US v. Cotter, 08-po-01022 (D. Colo. 2008)(judgment in criminal proceeding entered on March 12, 2008, consisting of a \$15,000.00 fine and compliance plan). Accordingly, the Application's fails to include an adequate discussion of the impact of its proposed operations on such migratory birds that use the Central Flyways.

L. Air Contamination

Sections I, II, III, IV, V, VI, VII, VIII.A, VIII.B, VIII.C, VIII.D, VIII.E, VIII.F, VIII.G, VIII.H, VIII.I, VIII.J and VIII.K above are hereby incorporated herein by this reference.

COGEMA's operations will release radioactive materials into the air. Radon gas will be released directly into the atmosphere from lixiviant makeup tanks, Application at 4-1, ion exchange facilities, Application at 4-2, evaporation ponds, and other facilities.

While the Application discusses past air quality monitoring activities, the Application needs to discuss whether new air quality monitoring stations will be added and whether previously used stations are active and ready to be used for the re-start of operations. The Application should include a map of air quality monitoring stations that will be active for this project. Additionally, the stations at Irigaray monitor both radon and particulate matter whereas the Christensen stations only monitor radon. Application at 5-59-60. The Application should detail an appropriate monitoring plan for particulate matter at the Christensen project.

IX. MOTION FOR E-MAIL FILINGS

Petitioner hereby moves for leave to make filings by email due to problems with the NRC's EIE document system encountered by Counsels for Petitioner due to computer system and software incompatibilities. Petitioner hereby moves that the Commission issue an Order allowing Petitioner to file documents in this proceeding as PDF documents sent by email together with an appropriate Certificate of Service to everyone listed on the NRC's EIE system.

Counsels for Petitioner use Apple computers and the Firefox browser. Although the Firefox browser is compatible with the NRC's EIE system, there are problems with compatibility with Apple computers and operating systems. The NRC has attempted to address this problem by offering Apple computer users a MAC version of the IBM Workplace Forms Viewer software that is compatible. Counsels for Petitioner have used this MAC version of the IBM Workplace Forms Viewer to successfully view and download filings made by the Board and the other parties in other NRC proceedings.

However, after repeated attempts with NRC EIE technical support staff, Counsels for Petitioner have not been able to achieve a successful filing using the NRC EIE system and have submitted filings by email which have been accepted by the Board and the parties in other NRC proceedings.

Based on the foregoing, and in order to ensure efficient filing of documents, Petitioner respectfully requests that the Commission issue an Order allowing Petitioner and its attorneys who use Apple computers to make filings in this Proceeding by email (without sending any paper hard copies) provided the documents are PDF documents, are

accompanied by a Certificate of Service and are sent to Hearing.Docket@nrc.gov and all judges and parties' counsels of record and parties listed in the EIE Service List (as it may be amended from time to time). Petitioner will continue to receive filings through the NRC's EIE system. Similar motions have been granted in two other NRC proceedings and filings have been made as described above in such other NRC proceedings without incident. (See Docket 40-8943).

Attached is a Certificate of Service conformed to include all persons currently on the EIE service list.

X. CONCLUSION

For the reasons described above, Petitioner requests a hearing and intervention on the foregoing contentions.

Respectfully Submitted

/s/ ~ signed electronically

/s/ ~ signed electronically

Thomas J. Ballanco,
Attorney for Petitioner

David Frankel,
Attorney for Petitioner

Attachments:

Chief Red Cloud Affidavit (April 2009)
Thomas J. Ballanco Notice of Appearance
David Frankel Notice of Appearance
Areva NC Inc. Organizational Chart
Certificate of Service (EIE Conformed)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of:

COGEMA MINING, INC.
(License Renewal)

Docket No. 40-8502
ASLBP No. _____
April __, 2009

AFFIDAVIT

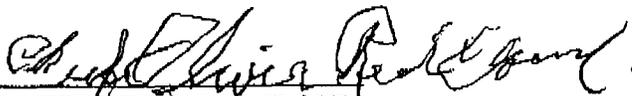
I am Chief Oliver Red Cloud, chairman of the Oglala Delegation of the Black Hills Sioux Nation Treaty Council. I reiterate, and hereby incorporate by reference, each and every point of my July 28, 2008 AFFIDAVIT filed in the Crow Butte Resources, Inc. ("CBR") licensing renewal proceeding; and my statements therein concerning Canadian owned CBR equally apply to French owned COGEMA Mining, Inc. as well as any other uranium companies operating or seeking to operate within the territory of the Oglala Lakota.

The Oglala Delegation of the Black Hills Sioux Nation Treaty Council ("Oglala Delegation") shall participate in the licensing renewal proceedings.

I shall be the designated representative of the Oglala Delegation and, Thomas J. Ballanco and David C. Frankel, shall be our counsels for these proceedings.

This Affidavit is submitted in accordance with 10 C.F.R. Section 2.304(d) and 28 U.S.C. Section 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April __, 2009, at Pine Ridge, South Dakota.


CHIEF OLIVER RED CLOUD
Chairman, Oglala Delegation
Black Hills Sioux Nation Treaty Council

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

COGEMA MINING, INC.
(In Situ Leach Facility, Irigaray &
Christensen Ranch, WY)

Docket No. 40-8502
License SUA-1341
April 10, 2009

NOTICE OF APPEARANCE

COMES NOW, attorney Thomas J. Ballanco, pursuant to 10 CFR Section
2.314(b) enters his appearance in this matter.

1. **Identification:** Thomas J. Ballanco
945 Taraval Ave. # 186
San Francisco, CA 94116
(650) 296-9782
HarmonicEngineering1@mac.com
2. **Client Identification:** Oglala Delegation
Great Sioux Nation Treaty Council
Chief Oliver Red Cloud, Chairman
Pine Ridge, South Dakota 57770
3. **Professional Affiliation:**

I am licensed to practice law by the State of California, State Bar # 194345. I am also
licensed to practice in the U.S. District Court for the Eastern District of California, the
U.S. District Court for the Central District of California, the United States Court of
Appeals for the 9th Circuit and the United States Court of Appeals for the 8th Circuit.

I am authorized by my client to take all actions necessary, reasonable and

appropriate in my representation in this matter.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Thomas J. Ballanco
Attorney for Petitioner

Hearing Docket

From: David Cory Frankel [davidcoryfrankel@gmail.com]
Sent: Friday, April 10, 2009 10:28 PM
To: Hearing Docket; OCAAMAIL Resource; Catherine Marco; Brett Klukan; Ron Linton; Shannon Anderson; Tom Ballanco; communication@areva.com; Deb White Plume; Elizabeth Lorina; Bruce Ellison; Shane Robinson; Anthony Baratta; Anthony Eitrem; Rebecca Giitter; Nancy Greathead; Nancy Greathead; Roy Hawkens; Emile Julian; Brett Klukan; Linda Lewis; Catherine Marco; Evangeline Ngbea; MSHD Resource; OGCMailCenter Resource; Christine Pierpoint; Tom Ryan
Subject: Docket No. 40-8502; License SUA-1341
Attachments: Cogema Petition Oglala Delegation GSNTC 04102009.pdf; COR Affidavit Cogema.pdf; NoticeAppearanceWY final Ballanco.pdf; COGEMA Renewal NOA David C. Frankel 04102009.pdf; AREVA NC, Inc. Organization.pdf; COGEMA (Renewal) EIE conformed COS 0410009.pdf

Dear Sir or Madam,

Attached for timely filing is the Request for Hearing and Petition for Leave to Intervene of the Oglala Delegation of the Great Sioux Nation Treaty Council, Chief Oliver Red Cloud, Chairman (containing a motion to make filings by email), together with the following attachments and Certificate of Service (EIE Conformed):

Affidavit of Chief Red Cloud in this matter,

Notice of Appearance of Thomas J. Ballanco

Notice of Appearance of David C. Frankel

Areva NC Inc. Organizational Chart

Sincerely,

David Frankel
Attorney for Petitioner
POB 3014
Pine Ridge, SD 57770
308-430-8160
Arm.legal@gmail.com

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(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Tue, 24 Mar 2009
14:06:54 -0400

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X-IronPort-Anti-Spam-Result:

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Tue, 24 Mar 2009 11:06:53 -0700 (PDT)

Return-Path: <davidcoryfrankel@gmail.com>

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by mx.google.com with ESMTPS id 30sm222472yXk.52.2009.03.24.11.06.51

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User-Agent: Microsoft-Entourage/11.4.0.080122

Date: Tue, 24 Mar 2009 08:06:47 -1000

Subject: Docket No. 040-08502 Cogema Christensen and Irigaray Ranch -
SUA-1341

From: David Cory Frankel <davidcoryfrankel@gmail.com>

To: <HEARINGDOCKET@NRC.GOV>

Message-ID: <C5EE4517.2B439%davidcoryfrankel@gmail.com>
Thread-Topic: Docket No. 040-08502 Cogema Christensen and Irigaray Ranch -
SUA-1341
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