

May 5, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
COGEMA MINING, INC.	)	Docket No. 40-8502-MLA
	)	
(Christensen & Irigaray Ranch Facilities)	)	
	)	

NRC STAFF RESPONSE TO REQUEST FOR HEARING  
FILED BY POWDER RIVER BASIN RESOURCE COUNCIL

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the NRC staff ("Staff") files this response to the request for hearing filed by the Powder River Basin Resource Council ("PRBRC" or "Petitioner") on April 10, 2009.<sup>1</sup> For the reasons stated below, the Staff respectfully requests that the petition be denied in accordance with 10 C.F.R. § 2.309(a) because the petition (a) fails to comply with the standing requirements set forth in 10 C.F.R. § 2.309(d), and (b) fails to meet the contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1).

BACKGROUND

This proceeding arises from the application of COGEMA Mining, Inc. ("COGEMA" or "Applicant") to renew its source material license to operate an in situ leach ("ISL") uranium recovery facility at the Irigaray and Christensen Ranch facilities located in Johnson and

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<sup>1</sup> See "Powder River Basin Resource Council Request for Hearing" for the License Renewal Proceeding for COGEMA MINING, INC., Christensen & Irigaray Ranch Facilities, SUA-1341 ("Petition"), filed April 10, 2009.

Campbell Counties, Wyoming. COGEMA submitted its application by letter dated May 30, 2008.<sup>2</sup> After performing an acceptance review, the NRC Staff formally accepted COGEMA's application for review on December 29, 2008.<sup>3</sup> On February 9, 2009, the NRC published notice in the *Federal Register* of an opportunity to request a hearing and intervene, with a deadline for filing petitions of April 10, 2009.<sup>4</sup> On April 10, 2009, the NRC received a timely petition from PRBRC.

## DISCUSSION

### I. Standing

#### A. General Standing Requirements

In accordance with the Commission's Rules of Practice,<sup>5</sup> "[a]ny person<sup>6</sup> whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing." 10 C.F.R. § 2.309(a). The regulations further provide that the

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<sup>2</sup> Letter from Tom Hardgrove, Manager, Environmental & Regulatory Affairs, COGEMA, to Bill von Till, Branch Chief, Uranium Recovery Licensing Branch, NRC, dated May 30, 2008 (ADAMS Accession No. ML081850689) ("Application").

<sup>3</sup> Letter from William von Till, NRC, to Tom Hardgrove, COGEMA, dated December 29, 2008 (ADAMS Accession No. ML082760265).

<sup>4</sup> 74 Fed. Reg. 6436 (February 9, 2009).

<sup>5</sup> See "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 C.F.R. Part 2 (2009).

<sup>6</sup> "Person" means "(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, trust, estate, public or private institution, group, government agency other than the Commission...; any State or any political subdivision of, or any political entity within a State, any foreign government or nation..., or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing." 10 C.F.R. § 2.4.

Licensing Board “will grant the request if it determines that the requestor has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].” *Id.*

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor’s/petitioner’s right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor’s/petitioner’s property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor’s/petitioner’s interest.

10 C.F.R. § 2.309(d)(1).

In making a standing determination, the presiding officer is to “construe the [intervention] petition in favor of the petitioner.” *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). In order to qualify for standing, a petitioner must allege “(1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 270 (2006) (citing *Yankee Atomic*, CLI-98-21, 48 NRC at 195). “The requisite injury may be either actual or threatened, but must arguably lie within the ‘zone of interests’ protected by” the governing statutes, here the Atomic Energy Act (“AEA”) and the National Environmental Policy Act of 1969 (as amended), 42 U.S.C. § 4321, *et seq.* (2000) (“NEPA”). *Id.* at 181 (internal citations omitted). Furthermore, the injury must be “concrete and particularized,” not “conjectural” or “hypothetical.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974)).

As a result, standing will be denied when the threat of injury is speculative. *Id.*

Additionally, a petitioner must establish a causal nexus between the alleged injury and the challenged action. *Ala. Dep't of Transp.*, CLI-04-26, 60 NRC 399, 405 (2004) (citations omitted). A determination that the injury is fairly traceable to the challenged action does not depend "on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible." *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Finally, the redressability element of standing requires a petitioner to show that the claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

Specifically, in a materials license amendment proceeding, the petitioner must show that the amendment will cause a "distinct new harm or threat' apart from the activities already licensed." *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001). "Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing." *Id.*

B. "Proximity Plus" Standing Requirements

Although the Commission has historically presumed standing in power reactor construction permit and operating license proceedings based on a petitioner's proximity to the facility, see, e.g., *Virginia Elec. Power Co.* (North Anna, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979), a presumption of standing based on geographic proximity alone is not applied in materials licensing cases. Rather, in materials cases, a presumption of standing based on geographical proximity "rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working, living, or regularly engaging in activities offsite but within a certain distance of that facility." *Amergen Energy Co., LLC* (Three Mile Island, Unit 1), CLI-05-25, 62 NRC 572, 574-75 (2005) (citing *Virginia Electric*, ALAB-522, 9 NRC at 56; *Fla. Power & Light Co.* (Turkey Point, Units 3 and 4), LBP-01-6, 53

NRC 138, 146-147, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001); *Pacific Gas & Electric Co.* (Diablo Canyon ISFSI), LBP-02-23, 56 NRC 413, 426-27 (2002), *petition for review denied*, CLI-03-12, 58 NRC 185 (2003)). Whether and at what distance a petitioner can be presumed to be affected must be determined on a case-by-case basis; "proximity standing" is determined by identifying "the radius beyond which it is believed "there is no longer an 'obvious potential for offsite consequences' by 'taking into account the nature of the proposed action and the significance of the radioactive source.'" *Id.* at 575 (quoting *Georgia Tech*, CLI-95-12, 42 NRC at 116; *Fla. Power & Light Co.* (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)). "Where there is no obvious potential for radiological harm at a particular distance frequented by a petitioner, it becomes the petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her." *USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005).

C. Organizational and Representational Standing

An organization may demonstrate standing by showing "either immediate or threatened injury to its organizational interests or to the interests of identified members." *Georgia Tech.*, CLI-95-12, 42 NRC at 115 (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). For an organization to assert standing on its own behalf, it must satisfy the same standing requirements as an individual by showing a discrete institutional injury to the organization itself. *Id.* For an organization to assert "representational standing" on behalf of one or more of its members, the organization "must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member." *N. States Power Co.* (Monticello; Prairie Island, Units 1 and 2; Prairie Island ISFSI), CLI-00-14, 52 NRC 37, 47 (2000). The purpose of the third requirement is to ensure that an organization is truly representing the interests of the member

and not “simply seeking the ‘vindication of its own value preferences.’” *Consumers Energy Co.* (Palisades), CLI-07-18, 65 NRC 399, 401 (2007) (quoting *Houston Lighting & Power Co.* (Allens Creek), ALAB-535, 9 NRC 377, 391 (1979)).

D. Discussion of PRBRC Standing

PRBRC is a nonprofit, tax-exempt organization formed in 1973 by ranchers and concerned citizens of Wyoming to address the impacts of mineral development on rural people and communities. Petition at 2. It is unclear whether PRBRC asserts representational standing on behalf of its members or organization standing. In either case, PRBRC provides insufficient grounds to establish standing. PRBRC asserts organizational and/or representational standing based on the following statements: (1) PRBRC is an “organization located in Sheridan, Wyoming”; (2) “PRBRC has approximately 1,000 members, the majority of whom live in rural areas of the Powder River Basin”; and (3) “[t]his petition is brought on behalf of PRBRC and our members who live, work, and/or recreate near COGEMA’s past and planned facilities and will be impacted in a variety of ways stemming from air, land, and water impacts caused by the facilities.” *Id.* at 2. PRBRC claims that approval of the license renewal application “without substantial additions and modifications” will adversely affect PRBRC’s interests, which include: “(1) breathing clean air (2) drinking clean water that is vital to homes and businesses of PRBRC members (3) protecting the natural ecology, including wildlife and vegetation, of the region from unnecessary and potentially detrimental impacts and (4) having energy development near homes and communities where PRBRC members live, work, and/or recreate follow all applicable laws and regulations.” *Id.* at 2-3.

To obtain organizational standing, PRBRC must show with specificity an injury to the organization itself from the proposed action. *Georgia Tech*, CLI-95-12, 42 NRC at 115. In this case, PRBRC fails to show how its interests are harmed by the proposed COMEGA license renewal. PRBRC states that it “has a long standing history of advocacy working to protect

people and places in the Powder River Basin,” and, in the past few years, has become active in “uranium issues in the Powder River Basin and Black Hills areas of Wyoming.” Petition at 2. This demonstrates an interest in the issue but does not specify an injury that PRBRC could potentially suffer. General environmental and policy interests are insufficient to confer organizational standing. *White Mesa*, CLI-01-21, 54 NRC at 252. No alleged harm has been provided with a supported rational basis to explain how harm could come to PRBRC or its members as a result of the proposed license renewal. *See Ala. Dep’t of Transp.*, CLI-04-26, 60 NRC at 405. Although PRBRC has demonstrated an interest in the issues surrounding uranium mining, it is not enough, by itself, to confer standing.

PRBRC has also failed to satisfy the requirements for representational standing. The PRBRC petition does not state that it is made on behalf of particular members, does not provide the name or address of a member, and does not provide authorization from a member for PRBRC to request a hearing on that member’s behalf. *See Monticello*, CLI-00-14, 52 NRC at 47. Without this information, PRBRC cannot assert representational standing. For the reasons stated above, these interests are not concrete and particularized enough to confer standing to either an individual or organization.

Furthermore, PRBRC has failed to allege any concrete or particularized injury that it (or one of its members) will incur should the license renewal be issued. *See Sequoyah*, CLI-94-12, 40 NRC at 72. PRBRC has not disclosed its (or any of its members’) proximity to the facility and, thus, there is no way of determining whether PRBRC or one of its members falls within close proximity of the facility and should be granted standing on the basis that it “can be presumed to be affected” by the Applicant’s operations. *See Amergen*, CLI-05-25, 62 NRC at 575. Therefore, the PRBRC request for hearing should be denied.

II. Admissibility of the Petitioner's Proffered Contentions

A. Legal Requirements for Admissibility of Contentions

The legal requirements governing the admissibility of contentions are well established and are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice. For each contention, the petitioner must provide: (1) a specific statement of the issue of law or fact to be raised or controverted; (2) a brief explanation of the basis for the contention; (3) a demonstration that the issue raised in the contention is within the scope of the proceeding; (4) a demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) a concise statement of the alleged facts or expert opinions which support the requestor's position; and (6) sufficient information to show that a genuine dispute exists on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute or the identification of each failure to include necessary information in the application and the supporting reasons for the petitioner's belief. 10 C.F.R. § 2.309(f)(1); *see also USEC, Inc. (American Centrifuge Plant)*, CLI-04-30, 60 NRC 426, 429 (2004).

The requirements governing the admissibility of contentions have been strictly applied in NRC adjudicatory proceedings. The Commission has recently stated:

To intervene in a Commission proceeding, including a license renewal proceeding, a person must file a petition for leave to intervene. In accordance with 10 C.F.R. § 2.309(a), this petition must demonstrate standing under 10 C.F.R. § 2.309(d), and must proffer at least one admissible contention as required by 10 C.F.R. §§ 2.09(f)(1)(i)-(vi). The requirements for admissibility set out in 10 C.F.R. §§ 2.309(f)(1)(i)-(vi) are "strict by design," and we will reject any contention that does not satisfy these requirements. Our rules require "a clear statement as to the basis for the contentions and the submission of...supporting information and references to specific documents and sources that establish the validity of the contention." "Mere 'notice pleading' does not suffice." Contentions must fall within the scope of the proceeding – here, license renewal – in which the intervention is sought.

*Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-06-24, 64 NRC 111,



118-119 (2006) (footnotes omitted; emphasis added). Failure to comply with any of the above requirements is grounds for dismissal of a contention. *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006). Furthermore, the Board has explained that a contention should be rejected if:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

*Private Fuel Storage, LLC* (ISFSI), CLI-04-22, 60 NRC 125, 129 (2004) (citing *Philadelphia Electric Co.* (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)).

#### B. Analysis of the Petitioner's Proposed Contentions

In the event it is determined that PRBRC has standing to intervene in this proceeding, the Staff offers the following responses to PRBRC's contentions (labeled as "Relevant Facts and Positions" in the Petition). As discussed below, the contentions proffered by PRBRC raise matters which are outside the scope of this license renewal proceeding or are otherwise inadmissible for failure to satisfy the requirements of 10 C.F.R. § 2.309(f)(1) and/or Commission case law. The Staff's view concerning each of the contentions is set forth below in the order presented by the Petitioner.

#### General Issue Regarding 10 C.F.R. § 40.9:

PRBRC apparently reads the statement in 10 C.F.R. § 40.9(a) that "all information provided to the Commission by the Application shall be complete and accurate in 'all material

respects,” to mean that the Applicant must disclose in the Application all information that a reasonably prudent regulator would consider important in making a licensing decision. In the context of an application for a source material license, 10 C.F.R. § 40.9(a) only encompasses the completeness and accuracy of information that is otherwise required to be submitted to the NRC or is provided as additional supplementary information in the application.<sup>7</sup> That section does not create an independent obligation for the submission of certain information by the Applicant. Thus, if there is no requirement in NRC regulations that requires the Applicant to disclose information regarding a particular issue in its Application, 10 C.F.R. § 40.9(a) does not require the submission of information on that particular topic in the application. As the Petitioner can only contest the omission of information required to be submitted by the Applicant as part of the Application, within the scope of this proceeding, 10 C.F.R. § 40.9(b) is categorically unavailable to the Petitioner as cause for the materiality of an omission.

Contention (1)(A): Application lacks a complete description of local hydrogeology including groundwater flow direction and speed, confining layers, porosity, fractures, and fissures; an assessment of the integrity of confining layers needs to be disclosed. Petition at 3.

In support of Contention (1)(A), Petitioner asserts that fracturing and faulting, both natural and human-induced, “may contribute to cross-contamination of underground aquifers.” *Id.* As an example, Petitioner explains that the application provides no basis for the statement “‘The ore-bearing strata is physically and hydraulically separate from overlying and underlying aquifer.’ Application at 7-21.” *Id.*

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<sup>7</sup> 10 C.F.R. § 40.9(a) provides that:

[i]nformation provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

The Staff opposes the admission of Contention (1)(A), in that it incorrectly asserts that required information was omitted from or deficient in the Application, and thus fails to show the existence of a genuine dispute of material fact. 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, the contention lacks sufficient facts and contains no supporting expert opinions, needed to satisfy 10 C.F.R. § 2.309(f)(1)(v). In this regard, “[m]ere ‘notice pleading’ is insufficient... A petitioner’s issue will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’” *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (citing *GPU Nuclear, Inc.* (Oyster Creek), CLI-00-6, 51 NRC 193, 208 (2000)).

PRBRC incorrectly alleges that the Application lacks a complete description of local hydrogeology, including an assessment of the “integrity of the confining layers.” Petition at 3. In fact, the Application incorporates Appendix D6, Hydrology, of the January 5, 1988 Christensen Ranch license amendment application<sup>8</sup> by reference and refers to it several times in the Application.<sup>9</sup> Appendix D6 contains comprehensive cross-sections and reports on hydrology that were previously reviewed by NRC Staff and found to be sufficient to issue the 1988 SUA-1341 license amendment for commercial-scale uranium production at Christensen Ranch. NRC Staff reviews, such as this, are documented in Safety Evaluation Reports and Environmental reviews throughout the thirty-year licensing history of the site.<sup>10</sup> Applicable

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<sup>8</sup> Malapai Resources Co., “Application for amend to License SUA-1341, authorizing operation of proposed Christensen Ranch in situ U mining operations,” dated January 5, 1988 (Available in NRC Public Document Room, ADAMS Accession No. 8802040260).

<sup>9</sup> See, e.g., references on pages 2-12 through 2-15 of section 2.7, Hydrology, of the Application.

<sup>10</sup> See, e.g., NUREG-0399, Draft Environmental Statement Related to the Operation of Irigaray Uranium Solution Mining Project, Wyoming Mineral Corporation, dated April 1978 (ADAMS Accession No. ML091050582); NUREG-0481, Final Environmental Statement Related to Operation of Irigaray Uranium Solution Mining Project, Wyoming Mineral Corporation, dated September 1978 (ADAMS (continued. . .))

regulations and guidance do not require the NRC Staff to re-evaluate aspects of a facility, such as hydrogeology, if they have not changed since the last license renewal or amendment.<sup>11</sup>

Standard Review Plan for In Situ Leach Uranium Extraction License Applications (NUREG-1569), published June 2003, Appendix 1. As such, information previously submitted to the Commission may be incorporated into the application by reference. Regulatory Guide 3.46, Standard Format and Content of License Applications, Including Environmental Reports, for In Situ Uranium Solution Mining, dated June 1982, page vii. The Applicant has provided a description of local hydrogeology through the present license renewal application and by

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Accession No. ML091120676); Safety Evaluation Report, Source Material License, Wyoming Mineral Corporation, Docket No. 40-8502, SUA-1341, dated November 17, 1978 (ADAMS Accession No. ML091120640); Environmental Assessment for Westinghouse Electric Company Irigaray Site, dated February 3, 1987 (ADAMS Accession No. ML09030533); Safety Evaluation Report Supporting Renewal of License SUA-1341, dated February 3, 1987 (Available in NRC Public Document Room, ADAMS Accession No. 8702170534); Environmental Assessment by the Uranium Recovery Field Office in Consideration of a Major Amendment to Source Material License SUA-1341 for Malapai Resources Company Christensen Ranch In Situ Leach Satellite Operation Campbell and Johnson Counties, Wyoming, dated May 4, 1988 (ADAMS Accession No. ML090300532); Safety Evaluation Report Supporting Proposed Amendment to License SUA-1341, dated August 23, 1988 (Available in NRC Public Document Room, ADAMS Accession No. 8809280299); Environmental Assessment for Renewal of Source Material License No. SUA-1341, Cogema Mining, Inc., Irigaray and Christensen Ranch Projects, Campbell and Johnson Counties, Wyoming, dated June 18, 1998 (ADAMS Accession No. ML081060063); Safety Evaluation Report for Renewal of Source Material License SUA-1341, COGEMA Mining, Inc., Irigaray and Christensen Ranch Projects, Campbell and Johnson Counties, Wyoming, dated June 1998 (ADAMS Accession No. ML081060065); Environmental Assessment for Surface Decommissioning Plan Source Material License No. SUA-1341, Cogema Mining, Inc., Irigaray and Christensen Ranch Projects, Wyoming, dated December 2001 (ADAMS Accession No. ML013460397); and Environmental Assessment Regarding the License Amendment Request to Return to Operating Status from Decommissioning Status, Cogema Mining, Inc., Irigaray and Christensen Ranch Projects, Wyoming, dated September 2008 (ADAMS Accession No. ML082110026).

<sup>11</sup> "If, after a review of these historical aspects of site operations, the staff concludes that the site has been operated so as to protect health and safety and the environment and that no unreviewed safety-related concerns have been identified, then only those changes proposed by the license renewal or amendment application should be reviewed using the appropriate sections of this standard review plan. Aspects of the facility and its operations that have not changed since the last license renewal or amendment should not be reexamined." Standard Review Plan for In Situ Leach Uranium Extraction License Applications (NUREG-1569), published June 2003, at A-1.

reference to its previous license amendment and renewal submissions to the NRC. The Petitioner does not specify how the Applicant's description is insufficient.

Regarding the Petitioner's assertion that the application provides no basis for the statement that the "ore-bearing strata is physically and hydraulically separate from overlying and underlying aquifer," the Environmental Assessment for the 1988 license amendment request explains:

The-L fluvial system consists of those sediments between the Fort Union/Wasatch contact and the base of the lowest uranium bearing host sandstone. It consists of one to two continuous sandstone aquifers separated by shales, mudstones and siltstones. The L facies of prime concern is the shale/mudstone interval immediately underlying the lowest uranium host sandstone of the K fluvial system. This interval is the lower aquitard which serves as the confining layer separating aquifers of the L and K fluvial systems. The average thickness of the L fluvial system is approximately 241 feet, while the lower aquitard averages 65--feet in thickness. The K fluvial system consists of those sediments between the lower aquitard at the top of the L system and the upper aquitard. This aquitard serves as the upper confining barrier to vertical fluid migration."<sup>12</sup>

PRBRC fails to state or explain why or how the Applicant's description of the local hydrogeology is incomplete or insufficient. Accordingly, PRBRC Contention (1)(A) should be rejected.

Contention (1)(B): Application lacks a complete disclosure of COGEMA's compliance history. Petition at 3.

PRBRC argues that the Applicant should have included a "complete disclosure" of the facilities' compliance history, including "documentation of past spills, underground excursions, and evaporation pond liner leaks." *Id.* PRBRC asserts that "[t]his compliance history is a key indicator of COGEMA's future ability to protect public health and the environment." *Id.*

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<sup>12</sup> Environmental Assessment by the Uranium Recovery Field Office in Consideration of a Major Amendment to Source Material License SUA-1341 for Malapai Resources Company Christensen Ranch In Situ Leach Satellite Operation Campbell and Johnson Counties, Wyoming, dated May 4, 1988, p.8 (ADAMS Accession No. ML090300532) (emphasis added).

The Staff opposes the admission of Contention (1)(B) on the grounds that it incorrectly asserts that required information was omitted from or deficient in the Application, and thus fails to show the existence of a genuine dispute of material fact. 10 C.F.R. § 2.309(f)(1)(vi). The Applicant did not need to submit a complete compliance history in the application.

Furthermore, the Applicant's compliance history is reflected in the docket file of over 2500 public documents documenting more than thirty years of history relating to license SUA-1341. License Condition 12.1 requires that effluent reports be submitted to the NRC on an annual basis in accordance with 10 C.F.R. § 40.65, detailing spills, excursions, and other monitoring and operational details that have occurred at the facility in the past twelve months. NRC, Materials License, License Number SUA-1341, Amendment No. 14, dated February 24, 2009 (ADAMS Accession No. ML090210506). License Condition 12.2 requires COGEMA to keep records of and report releases to the NRC within 24 hours, per the requirements of 10 C.F.R. § 40.60 and 10 C.F.R. Part 20, Subpart "M". *Id.* PRBRC fails to identify any regulatory requirement that a detailed compliance history be included in a license renewal application and, as such, Contention (1)(B) should be rejected.

Contention (1)(C): Application fails to document the amount of groundwater that will be consumed during mining operations and wellfield restoration activities; application must contain a full analysis of groundwater drawdown and aquifer discharge. Petition at 3.

PRBRC asserts that the application must 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." *Id.*

The Staff opposes the admission of Contention (1)(C), in that it incorrectly asserts that required information was omitted from or deficient in the Application, and thus fails to show the existence of a genuine dispute of material fact. 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, the contention does not present any expert opinion or documentation as required by 10 C.F.R. §

2.309(f)(1)(v) to support a view that the application has not adequately analyzed groundwater impacts. The Applicant has provided estimates of groundwater use in this license renewal application and by reference to past license amendment and renewal applications. Application at Sections 2.7.1, 7.2.3.1 (Groundwater Consumption), and Appendix B. Additionally, actual groundwater withdrawals have been documented in semi-annual and annual reports to the NRC. See references in Application at 2-13. The Petitioner has not identified a requirement for the Applicant to restate this information in the present renewal application.

Regarding PRBRC's assertion that the application fails to document the amount of Class I groundwater supplies that will be consumed during operations, the Staff directs PRBRC to a letter to COGEMA dated July 21, 2008, from the Wyoming Department of Environmental Quality ("Wyoming DEQ").<sup>13</sup> This letter explains that groundwater in the production zones of the Christensen Ranch mine units 2-6 have been classified as Class IV Industrial, based on naturally occurring (*i.e.*, pre-mine) concentrations of radium greater than 5 pCi/l, not Class I as the area was previously classified.

Petitioners do not present any expert opinion or documentation to support their view that the Application fails to fully document the amount of groundwater consumed and do not present any indication how additional information on this subject would impact the conclusions in the Application. As such, Contention (1)(C) is not sufficient to raise a genuine issue of fact or law and should be rejected.

Contention (1)(D): Application does not contain a description of baseline (pre-mining) groundwater quality; baseline data for new mine fields should be disclosed.  
Petition at 4.

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<sup>13</sup> Letter to W. von Till, NRC, from T. Hardgrove, COGEMA, "Docket No. 40-8502, License No. SUA-1341, NRC Correspondence Dated May 13, 2008," dated July 21, 2008 (ADAMS Accession No. ML082140063). See *also* discussion in Application at 6-2.

The Staff opposes the admission of Petitioner's Contention (1)(D) because it fails to identify a genuine dispute of material fact with the Application as required by 10 C.F.R. § 2.309(f)(1)(vi). PRBRC asserts that the Application does not contain a description of baseline (pre-mining) groundwater quality. However, the Applicant provided estimates of baseline groundwater quality in the original licensing document for Christensen Ranch. Application at 2-13 (referencing Appendix D6 of the January 5, 1988 Christensen Ranch license amendment application). Thus, the Applicant has presented this information in the renewal application. The Petitioner has not identified a regulatory obligation to describe this or additional information in the present renewal application. Neither has Petitioner presented a factual basis to support its view that additional information should be included in the present Application.

Contention (1)(D) also improperly raises an issue (baseline data for new mine fields) that is not within the scope of these proceedings. 10 C.F.R. § 2.309(f)(1)(iii). Insofar as the Contention questions the proper disclosure of baseline data for new mine fields, these issues are outside the permissible scope of this license renewal proceeding. The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceedings to the Licensing Board. *Tenn. Valley Auth.* (Watts Bar, Unit 1; Sequoyah, Units 1 and 2; Browns Ferry, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004). As stated in the Notice of Opportunity to Request a Hearing, this proceeding covers the license renewal application submitted on May 30, 2008. 74 Fed. Reg. 6436 (February 9, 2009). Thus, the instant proceeding is limited to the action being licensed as described in the Application. The Application does not discuss new mine fields and as such, a discussion of baseline data for these "new mine fields" is outside the proper scope of this proceeding.

Contention (1)(E): Application must disclose the likelihood of returning water to baseline characteristics; application should contain an alternatives analysis of restoration methods and determine best available technology that will be required for restoration if alternative concentration limits are allowed. Petition at 4.



In support of this contention, PRBRC asserts that “[g]iven past experience, it is unlikely that groundwater quality will be restored to pre-mining conditions.” *Id.*

The Staff opposes the admission of Contention (1)(E) because it lacks sufficient facts and contains no supporting expert opinions needed to satisfy 10 C.F.R. § 2.309(f)(1)(v). Throughout its thirty-year history and in the current application, COGEMA and its predecessor companies have stated that the goal of restoration in the production zone is a return to background (*i.e.*, baseline).<sup>14</sup> However, they have also acknowledged that this may not occur and groundwater resources may be impacted as a result.<sup>15</sup> The NRC Staff has also acknowledged that long-term impacts may occur in groundwater resources in the production zone, but the goal of restoration in NRC licenses is a return to background.<sup>16</sup> Further, the restoration criteria in 10 C.F.R. Part 40, Appendix A, Criterion 5B(5) and the discussion at 5B(6) acknowledge that background may not be practically achievable at a specific site and allow for alternate standards to be considered. Petitioner fails to provide any documentation or expert opinions to support their claim that additional information regarding the likelihood of returning water to baseline characteristics is necessary or required.

Furthermore, Petitioner’s assertion that the “application should contain an alternatives analysis of restoration methods and determine best available technology that will be required for

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<sup>14</sup> See Malapai Resources Company, Request for Amendment to Source Material License No. SUA-1341, Incorporation of the Christensen Ranch Amendment Area, dated January 5, 1988, sections 1.3.4, Groundwater Restoration, and 1.4, Environmental Impact; Application at section 6.1.1, Target Restoration Values.

<sup>15</sup> See Application at Section 7.2.3.2, Restoration.

<sup>16</sup> See NUREG-0481, Final Environmental Statement Related to Operation of Irigaray Uranium Solution Mining Project, Wyoming Mineral Corporation, dated September 1978 (ADAMS Accession No. ML091120676), at Chapter 9.3.2.

restoration if alternative concentration limits are allowed” is presented with no legal basis to support the assertion that such an analysis is required, nor can any support for that interpretation be found. As such, Contention (1)(E) should be rejected.

Contention (1)(F): Application needs to disclose the effectiveness of evaporation ponds as a waste disposal method; if not effective, COGEMA should prioritize the use of deep disposal wells as a waste disposal method. Petition at 4.

The Staff opposes the admission of Contention (1)(F) because Petitioner provides no legal basis, facts, or expert opinion to support its assertion or to demonstrate that a genuine dispute exists on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(v)-(vi). The primary operational method for liquid waste disposal is deep well injection into approved Wyoming DEQ-permitted Class I disposal wells. Application at 3-44, 4-7, and 4-10. Because PRBRC has not met the requirements of a properly filed contention by presenting legal or factual support for their otherwise general claim that the application needs to disclose the effectiveness of evaporation ponds as a waste disposal method, Contention (1)(F) should be rejected. *Private Fuel Storage*, CLI-04-22, 60 NRC at 129.

Contention (1)(G): Application needs to disclose whether the deep disposal well permit will be amended or re-issued prior to use, or disclose whether regulatory requirements have changed since the permit was issued in 1992. Petition at 4.

The Staff opposes the admission of Contention (1)(G) because it improperly raises an issue (deep well disposal permits) that is not within the scope of this proceeding, fails to identify an omission from the application, and fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi). The deep disposal well permits are not within the scope of the present license renewal proceeding. The Application discloses that an application has been submitted “for two additional deep disposal wells at the Irigaray site” which are currently under review. Application at 8-1. A discussion of the deep disposal well permits currently in effect at the facility is also presented in section 4.2 of the Application. Further, there is no regulatory requirement that the application disclose whether the deep disposal well permit will be amended or re-issued prior to

use, or discuss regulatory changes for such permits since 1992, and PRBRC fails to present any legal support for this assertion. Thus, PRBRC has failed to identify any omission from the application or material fact in dispute which is properly within the scope of this proceeding. As such, Contention (1)(G) should be rejected.

Contention (1)(H): Application fails to disclose and analyze impacts to wildlife and livestock habitat as a result of mining operations and after surface reclamation; application does not discuss loss of brush density or other irreversible impacts of mining operations; application needs to detail surface reclamation plans for future well fields. Petition at 4.

The Staff opposes the admission of Contention (1)(H) because it fails to identify an omission from the application, fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), is vague, and improperly raises an issue (future well fields) that is not within the scope of this proceeding. To the extent that PRBRC asserts that the Application fails to disclose and analyze the impacts of operations on wildlife and livestock habitat, the Petitioner is incorrect in that the Application discusses this in section 2.8, Ecology (Soils, Vegetation and Wildlife) and by reference to Appendix D8 of the January 5, 1988 Christensen Ranch license amendment application and Appendix D8 of the 1977 Irigaray permit application, Attachment D-6.<sup>17</sup> Petitioner does not present any legal basis, documentation of factual support or expert opinion for its assertion that the Application is in some way deficient in its analysis of impacts to wildlife and livestock habitat, loss of brush density or other impacts of mining operations. The Application need not restate information in the present renewal application where no changes

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<sup>17</sup> Malapai Resources Co., "Application for amend to License SUA-1341, authorizing operation of proposed Christensen Ranch in situ U mining operations," dated January 5, 1988 (Available in NRC Public Document Room, ADAMS Accession No. 8802040260). See also Environmental Assessment for Renewal of Source Material License No. SUA-1341, Cogema Mining, Inc., Irigaray and Christensen Ranch Projects, Campbell and Johnson Counties, Wyoming, dated June 18, 1998 (ADAMS Accession No. ML081060063), Section 5.6m, Impacts on Ecological Systems.

have occurred,<sup>18</sup> and Petitioner has presented no legal or factual basis to support their view that such information should be included in the present Application.

Additionally, Petitioner's claim that the Application needs to detail surface reclamation plans for future well fields is outside the proper scope of this license renewal proceeding and should be rejected.

Contention (1)(I): Application does not contain results and analysis from recent wildlife surveys and does not disclose whether additional surveys will be conducted prior to installation of new well fields; application fails to demonstrate consultation with Fish and Wildlife Services regarding whether proposed operations pose a threat to species protected by the Endangered Species Act and/or the Migratory Bird Treaty Act. Petition at 4-5.

PRBRC argues in support of Contention (1)(I) that the Application "fails to demonstrate any attempt to initiate consultation or otherwise ascertain from the Fish and Wildlife Service whether the proposed operations, including but not limited to the evaporation ponds, holding ponds, and any other open water, pose a threat to species protected by the Endangered Species Act and/or the Migratory Bird Treaty Act." *Id.*

The Staff opposes the admission of Contention (1)(I) because it is vague, fails to identify an omission from the application, fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), and improperly raises an issue (future well fields) that is not within the scope of this proceeding. Specifically, PRBRC does not identify what "recent wildlife surveys" it believes should be included in the Application. Contrary to the Petitioner's assertions, a discussion of wildlife is found in the Irigaray and Christensen Ranch 2007 Wildlife Monitoring report and Irigaray and Christensen Ranch Threatened & Endangered Species Report included in the Application at Appendix C. Additionally, the Application discusses the annual wildlife surveys conducted on

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<sup>18</sup> Standard Review Plan for In Situ Leach Uranium Extraction License Applications (NUREG-1569) at A-1.

the site in section 2.8, Ecology (Soils, Vegetation and Wildlife). The application explains the details of COGEMA's annual wildlife surveys and gives no indication to suggest that the annual surveys will not continue to occur. Petitioner provides no factual support or expert opinion to argue that the annual surveys are deficient in any way.

Regarding the Application's alleged failure "to demonstrate consultation with Fish and Wildlife Services," Petitioners have provided no legal support for this consultative requirement, nor can any support for this interpretation be found. As such, Contention (1)(I) should be rejected.

Contention (1)(J)<sup>19</sup>: Application lacks an analysis of whether the Pathfinder Mines Corporation Shirley Basin tailings facility will be available for byproduct waste disposal throughout the lifetime of COGEMA's facilities; an analysis of the storage capacity of licensed byproduct disposal facility is needed and, if insufficient, an alternative waste disposal plan must be included in application. Petition at 5.

The Staff opposes the admission of Contention (1)(J) because it fails to identify any omission in the Application, fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), and presents issues outside the proper scope of this proceeding. Contrary to Petitioner's assertion, an analysis of the Pathfinder Mines Corporation Shirley Basin ("Shirley Basin") tailings facility's availability and storage capacity is not required. The Applicant is responsible for disposing of its 11e.(2) byproduct material in a licensed facility, and the Shirley Basin site is one of several in the country that are licensed to accept 11e. (2) byproduct material. License Condition 9.7 states:

The licensee shall dispose of 11e.(2) byproduct material, including evaporation pond residues, from the Irigaray and Christensen Ranch Satellite facilities at a site licensed by the NRC or an NRC Agreement State

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<sup>19</sup> Please note that Contention (1)(J) is mislabeled in Petitioner's brief as Relevant Fact and Position (1)(G) on page 5 of the petition. The lettering of contentions has been corrected for consistency and ease of identifying Petitioner's contentions.

to receive 11e.(2) byproduct material. The licensee shall identify the disposal facility to the NRC in writing.<sup>20</sup>

Petitioners have identified no legal basis to support inclusion of the stated information in the Application and, therefore, Contention (1)(J) should be rejected for failing to meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

Contention (1)(K)<sup>21</sup>: Application should disclose whether OP-254 operating permit for dryer facility will be modified to comply with current air quality regulations, if they have changed since the permit was issued. Petition at 5.

The Staff opposes the admission of Contention (1)(K) because it fails to identify any omission in the Application, presents no material issue of fact, is unsupported, outside the scope of these proceedings, and speculative. Specifically, PRBRC does not identify any legal support for the assertion that the Application should disclose “whether the operating permit OP-254 for the dryer facility will be modified to comply with current air quality regulations (if regulations have changed since the permit was issued).” *Id.* Contention (1)(K) does not assert that air quality regulations have changed since OP-254 was issued or that the Application is somehow inadequate in this regard. Furthermore, Petitioner fails to establish how modifications to operating permit OP-254, a permit issued by the State of Wyoming, relate to this license renewal proceeding. Because PRBRC has failed to satisfy the requirements of 10 C.F.R. § 2.309(f)(1), Contention (1)(K) should be rejected.

Contention (1)(L)<sup>22</sup>: Application needs to discuss whether new air quality monitoring

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<sup>20</sup> NRC, Materials License, License Number SUA-1341, Amendment No. 14, dated February 24, 2009 (ADAMS Accession No. ML090210506). Staff notes that the NRC was notified of the waste disposal agreement currently in effect between COGEMA and Pathfinder Mines Corp. by letter dated August 20, 2007 (ADAMS Accession No. ML0724300981).

<sup>21</sup> Please note that Contention (1)(K) is mislabeled in Petitioner’s brief as Relevant Fact and Position (1)(H) on page 5 of the petition. The lettering of contentions has been corrected for consistency and ease of identifying Petitioner’s contentions.

<sup>22</sup> Please note that Contention (1)(L) is mislabeled in Petitioner’s brief as Relevant Fact and (continued. . .)

stations will be added and whether previously used stations are active and ready to be used for the re-start of operations; application should include a map of air quality monitoring stations; application should detail monitoring plan for particulate matter at the Christensen project. Petition at 5.

The Staff opposes the admission of Contention (1)(L) because it fails to identify an omission in the Application, does not identify a material issue of fact, and provides no documentation of fact or expert opinion as required under 10 C.F.R. § 2.309(f)(1)(vi). Petitioner does not provide any support, legal or factual, for the assertion that the Application needs to discuss the addition of new air quality monitoring stations, include a map of air quality stations, or detail an air monitoring plan for the Christensen project. Regarding establishment of an air monitoring plan for particulate matter at the Christensen Ranch Facility, section 4.1.1 of the Application specifically explains that such a particulate monitoring plan at the Christensen Ranch facility is needless:

Since the satellite process is entirely a wet process and uranium is not concentrated onsite, there are no uranium particulate effluents from the facility. Spills inside the plant are immediately washed down which eliminates the potential for any buildup of radioactive particulates.

Because no changes to this process have been identified, there is no reason to expect that particulate monitoring would now be required. Because Petitioner has provided no legal or factual basis for requiring that the Application include this additional information regarding the Applicant's air quality monitoring program, Contention (1)(L) should be rejected.

Contention (2): Applicant's foreign ownership should be assessed in light of U.S.C. § 2133(d). Petition at 6.

In support of Contention (2), Petitioner argues that the "[t]he NRC may not issue a

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(. . .continued)

Position (1)(I) on page 5 of the petition. The lettering of contentions has been corrected for consistency and ease of identifying Petitioner's contentions.

license to a corporation that is 'owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.' 40 CFR § 40.38(a)." *Id.* Petitioner asserts that "[i]t 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.' U.S.C. § 2133(d)." *Id.*

The Staff objects to the admission of Contention (2) on the grounds that it fails to state a valid legal argument and fails to present a material issue of fact or law in dispute. 10 C.F.R. § 2.309(f)(1)(iv)-(v). Petitioner's reference to 40 C.F.R. § 40.38(a) is misplaced in that section 40.38 was promulgated to implement the USEC Privatization Act ("Act"), which amended the AEA, and applies exclusively to uranium enrichment facilities. See USEC Privatization Act: Certification and Licensing of Uranium Enrichment Facilities, 62 Fed. Reg. 6664, 6666 (Feb. 12, 1997). "Corporation," as used in section 40.38, refers exclusively to the "licensing of the Corporation (USEC) or its successor for operation of the AVLIS facility." *Id.* at 6664.

Similarly, Petitioner mistakenly suggests that Section 103(d)<sup>23</sup>, of the Atomic Energy Act ("AEA") provides guidance for assessing foreign ownership. Petition at 19-20. AEA Section 103(d), which prohibits the Commission from granting a license to 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, only applies to production and utilization facilities. COGEMA's facility is neither a production nor a utilization facility. AEA Section 69, which is applicable to in situ leach facilities, does not contain the prohibition in AEA Section 103(d).

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<sup>23</sup> 42 U.S.C. § 2133(d).



Additionally, PRBRC does not present a material issue of fact or law with respect to the NRC's assessment of foreign ownership. Specifically, 10 C.F.R. § 40.32 states that "[a]n application for a specific license will be approved if: (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." Foreign ownership of the Applicant, in terms of its impact and significance, is one potential factor in the analysis of "inimicality to common defense and security." PRBRC has not presented any documentation or expert opinion to demonstrate inimicality based on the Applicant's foreign ownership. Thus, Petitioner has failed to raise a material issue of fact or law with respect to foreign ownership of the Applicant under 10 C.F.R. § 40.32(d), and as such, Contention (2) is not an admissible contention and should be rejected.

Contention (3): COGEMA operations will consume vast amounts of groundwater. This consumption will have negative impacts on local and regional groundwater supplies used by residents, including PRBRC members, 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. Petition at 6.

The Staff opposes the admission of Contention (3) on the grounds that there is not sufficient information to show that a genuine dispute exists on a material issue of fact or law, the contention is speculative and lacks specificity. See 10 C.F.R. § 2.309(f)(1). It is unclear what issue the Petitioner contends is omitted, incomplete, or incorrect with respect to the Applicant's discussion of water resource impacts. The Petitioner provides no documentation of facts or expert opinion in support of its contention that COGEMA operations will negatively impact groundwater supplies, nor does it provide any information to evaluate whether a genuine dispute exists. Contention filing standards "do not allow mere notice pleading," and, therefore, the Commission does not permit the "filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support." *Palisades*, CLI-07-18, 65 NRC at 414 (quoting *Power Auth. of N.Y.* (FitzPatrick, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000)). A

petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. See *Fansteel*, CLI-03-13, 58 NRC at 203. The Petitioner has failed to offer any basis upon which the Board may evaluate whether a genuine issue of material fact or law exists and, as such, should be rejected.

Contention (4): Operations will negatively impact ground and surface water quality.  
Petition at 6.

In support of Contention (4), Petitioner states that “[t]he ore zone aquifer (the Wasatch formation) provides water for local domestic and stock wells...and mining activities may endanger these water resources.” *Id.* Petitioner further asserts that contaminants “include Radon-222, uranium, arsenic, selenium, aluminum, iron and manganese” and are mobilized during mining operations. *Id.*

The Staff opposes the admission of this contention because it fails to meet the requirements for a properly admitted contention under 10 C.F.R. § 2.309(f)(1). Specifically, Petitioner fails to supply any information to show that a genuine dispute exists on a material issue of fact or law, and the contention is speculative and lacks specificity. It is unclear what issue the Petitioner contends is omitted, incomplete, or incorrect with respect to the Applicant’s assessment of surface and groundwater resources. PRBRC provides no documentation of facts or expert opinion in support of its contention, nor does it provide any information to evaluate whether a genuine dispute exists. Contention filing standards “do not allow mere notice pleading,” and, therefore, the Commission does not permit the “filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support.” *Palisades*, CLI-07-18, 65 NRC at 414. A petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. See *Fansteel*, CLI-03-13, 58 NRC at 203. The Petitioner has failed to offer any basis upon which the Board may evaluate whether a genuine issue of material fact or law exists and, as such, Contention (4) should be

rejected.

Contention (5): Applicant's use of hydrogen sulfide during restoration activities may produce health and safety impacts; applicant must comply with "hazardous waste law" and the Emergency Planning and Community Right-to-Know Act; environmental impacts analysis must be conducted pursuant to NEPA prior to injection of chemical agents, if impacts have not previously been analyzed. Petition at 7.

In support of Contention (5), Petitioner asserts that "H<sub>2</sub>S is a highly toxic substance and injection into the aquifer may produce health and safety impacts." *Id.*

The Staff opposes the admission of Contention (5) on the grounds that it fails to supply any documentation or expert opinion to show that a genuine dispute exists on a material issue of fact or law, and the contention is vague and speculative. The Petitioner has provided no factual support or expert opinion to support its assertion that the Applicant's use of hydrogen sulfide during restoration activities will have any impact on public health and safety. Petitioner's assertion that Applicant must comply with "hazardous waste law" and the Emergency Planning and Community Right-to-Know Act is vague and provides no documentation of facts or expert opinion in support of its assertion that the Applicant must comply with various laws, and has not set forth an assertion that the Applicant has failed to comply with applicable laws. Contention filing standards "do not allow mere notice pleading," and, therefore, the Commission does not permit the "filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support." *Palisades*, CLI-07-18, 65 NRC at 414. A petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. *See Fansteel*, CLI-03-13, 58 NRC at 203.

Petitioner also argues that an "environmental impacts analysis must be conducted pursuant to NEPA prior to injection of chemical agents, if impacts have not previously been analyzed" under the National Environmental Policy Act ("NEPA"). The Staff is preparing an Environmental Assessment to determine whether an Environmental Impact Statement is

necessary as to this license renewal. PRBRC provides no document of facts or expert opinions identifying any material issue of fact or law with respect to its assertion regarding the Staff's NEPA analysis. As such, Contention (5) should be rejected for failing to meet any of the requirements of 10 C.F.R. § 2.309(f)(1) for a properly filed contention.

Contention (6): Application needs to fully reflect past experiences with restoration to more accurately predict future activity, specifically with respect to financial assurance calculation and environmental impacts. Petition at 7.

Petitioner argues that the Applicant “underestimates the length of operations, including restoration and reclamation activities” which, in effect, “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.” *Id.* According to Petitioner, “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.” *Id.*

The Staff opposes the admission of Contention (6) because there is insufficient information to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). The NRC Staff reviews the surety bond to ensure that it is adequate to provide for site reclamation and, if required, restoration by a third party. PRBRC fails to provide any documentation of fact or expert opinion to support its claim that the Applicant has or would underestimate the cost of restoration and environmental cleanup. PRBRC does not identify how past experience invalidates Applicant’s assumptions. Because Contention (6) fails to meet the requirements of 10 C.F.R. 2.309(f)(1)(vi), showing that a material issue of law or fact exists with respect to the Application, it should be rejected.

Contention (7): Application lacks a substantive discussion about possible sage-grouse impacts; NRC must comply with the Sensitive Species Policy and other legal requirements; application must analyze impacts to migratory birds. Petition at 7-8.

In support of Contention (7), Petitioner states that “[m]ining 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.” *Id.* at 8. Petitioner provides a discussion of “greater sage-grouse” population declines in the Powder River Basin and throughout the West and refers to a number of scientific studies focusing on the impacts of oil and gas development. *Id.* According to Petitioner, the Wyoming Bureau of Land Management (“BLM”) has listed the sage-grouse as a “Special Status Species” under the BLM’s Sensitive Species Policy. Petitioner goes on to assert that “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 population in and around the permit area.” *Id.* Petitioner explains that species, such as the sage-grouse, are designated as “sensitive” under BLM’s Sensitive Species Policy “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.” *Id.*

The Staff opposes the admission of Contention (7) because it is vague, fails to identify an omission in the application, improperly raises an issue (NRC compliance with the Sensitive Species Policy) that is not within the scope of this proceeding, and fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi). Although Petitioner has provided some factual documentation in support of this contention, it has failed to establish that a material issue of law or fact exists with respect to the Application. See 10 C.F.R. § 2.309(f)(1)(vi). Insofar as the contention questions the NRC’s compliance with the Sensitive Species Policy, these issues are outside the permissible scope of this license renewal proceeding. The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceedings to the Licensing Board. *Tenn. Valley*, CLI-04-24, 60 NRC at 204. As stated in the Notice of Opportunity to Request a Hearing, this proceeding covers the license renewal application submitted on May 30, 2008. 74 Fed. Reg. at 6436. Thus, the instant proceeding is limited to

the action being licensed as described in the Application.

Additionally, Petitioner asserts that the Application lacks a substantive discussion of sage-grouse impacts and an analysis of migratory bird impacts. However, Petitioner fails to specify in what way the Application is deficient. The Application states that COGEMA conducts annual surveys directly assessing actual impacts to wildlife, including sage grouse.<sup>24</sup>

Furthermore, License Condition 9.13 states that “Sage Grouse leks at the Irigaray and Christensen Ranch sites shall be monitored on an annual basis. The licensee shall consult with the Fish and Wildlife Service or the Bureau of Land Management for mitigative measures to reduce potential impacts.” NRC, Materials License, License Number SUA-1341, Amendment No. 14, dated February 24, 2009 (ADAMS Accession No. ML090210506). Contention filing standards “do not allow mere notice pleading,” and, therefore, the Commission does not permit the “filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support.” *Palisades*, CLI-07-18, 65 NRC at 414. A petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. See *Fansteel*, CLI-03-13, 58 NRC at 203. Because Petitioner fails to specify in what way the discussion is deficient with respect to sage-grouse and raises issues (NRC compliance with the Sensitive Species Policy) that are outside the scope of this proceeding, Contention (7) should be rejected because it is vague, fails to identify an omission from the application and does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (v) and (vi).

Contention (8): “COGEMA’s operations will negatively impact local and regional air quality. The facilities will produce substantial amounts of fugitive dust and will be a significant source of particulate matter in the area. COGEMA fails to consider paving roads, using dust suppressant, or other alternatives to mitigate impacts to air resources that are utilized by PRBRC members and other Wyoming citizens.”

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<sup>24</sup> See *supra*, Contention (1)(I).

Petition at 9.

The Staff opposes the admission of Contention 8 because it fails to meet any of the requirements of 10 C.F.R. § 2.309(f)(1). Specifically, Petitioner provides no legal basis, facts, or expert opinion to support its assertion that a genuine dispute exists on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(v)-(vi) and fails to identify an omission in the application. The Application discusses the ways in which production may produce fugitive dust emissions and calculates estimates of these emissions. See Application at 7-2 through 7-3. Petitioner provides no documentary support or expert opinion to support its assertion that COGEMA's operations "will negatively impact local and regional air quality" or "will produce substantial amounts of fugitive dust and will be a significant source of particulate matter in the area." Petition at 9. Contention filing standards "do not allow mere notice pleading," and, therefore, the Commission does not permit the "filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support." *Palisades*, CLI-07-18, 65 NRC at 414. A petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. See *Fansteel*, CLI-03-13, 58 NRC at 203.

Further, Petitioner provides no legal basis for the assertion that the Application has failed in any way to meet applicable regulations regarding consideration of "paving roads, using dust suppressant, or other alternatives to mitigate impacts to air resources." Petition at 9. To the contrary, the Application discusses how "[e]fforts to reduce fugitive dust are made when it becomes apparent that it is a problem. This has been accomplished by applying dust control media (only water to date) to the access roads." Application at 7-2. Absent a showing of legal or factual authority, Petitioner fails to set forth a genuine issue of material fact or law regarding Applicant's impact on local and regional air quality and, therefore, Contention (8) should be rejected.

Contention (9): Application does not indicate the extent of radon gas emissions or

contain an analysis of public health impacts, such as a Health Impact Assessment to fulfill its NEPA responsibilities. Petition at 9.

In support of Contention (9), Petitioner asserts that “COGEMA’s operations will release radioactive materials into the air. Radon gas will be released directly into the atmosphere from lixiviant makeup takes, Application at 4-1, ion exchange facilities, Application at 4-2, evaporation ponds, and other facilities” *Id.* Petitioner discusses the legislative history of NEPA and regulations requiring “agencies to consider ‘the degree to which the proposed action affects public health or safety.’ 40 C.F.R. § 1508.27(b).” *Id.* at 10.

The Staff opposes the admission of Contention (9) because it fails to identify an omission in the application, and there is insufficient information to show that a genuine dispute exists on a material issue of law or fact. The Application and previous amendment and renewal documentation provide extensive analyses of radiological impacts, including exposure pathways and population dose estimates. *See, e.g.*, Application at section 7.3, Radiological Impacts. Petitioner does not provide any documentation, expert opinions, or legal basis for its assertion that the Application is deficient in its analysis of public health impacts or its discussion of radon gas emissions. Contention filing standards “do not allow mere notice pleading,” and, therefore, the Commission does not permit the “filing of a vague, unparticularized contention, unsupported by fact or expert opinion and documentary support.” *Palisades*, CLI-07-18, 65 NRC at 414. A petitioner may not rely on mere speculation nor bare assertions as support for the admission of a proffered contention. *See Fansteel*, CLI-03-13, 58 NRC at 203. Because Petitioner has provided no legal or factual basis for its assertions, Contention (9) should be rejected.

Contention (10): COGEMA underestimates the financial cost of restoration and environmental clean-up. Petition at 10.

In support of Contention (10), Petitioner states that “COGEMA’s bond estimate is only \$9.5 million.” *Id.* As a result, Petitioner asserts, “[u]nderestimating the bond leaves the public at risk – both financially and environmentally.” *Id.*



The Staff opposes admission of Contention (10) because there is insufficient information to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). The NRC Staff reviews the surety bond to ensure that it is adequate to provide for site reclamation and, if required, restoration by a third party. PRBRC fails to provide any explanation, documentation of fact or expert opinion to support the claim that the Applicant has underestimated the cost of restoration and environmental cleanup. Because Contention (10) fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), showing that a material issue of law or fact exists with respect to the Application, it should be rejected.

Contention (11): Environmental Report does not contain a complete impacts analysis pursuant to NEPA of cumulative impact of uranium operations relative to other past, current, and reasonably foreseeable development activities. Petition at 10-11.

In support of Contention (11), Petitioner discusses the legal requirements of NEPA under 40 C.F.R. sections 1500.1(b) and 1502.5(c) and presents examples of possible cumulative impacts to be evaluated. *Id.*

The Staff opposes admission of Contention (11) on the grounds that it fails to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Environmental analyses will be conducted as part of the NRC Staff's review of this license renewal application. PRBRC fails to provide any explanation, documentation of fact or expert opinion to support the claim that, based on material submitted in the Application, the environmental analysis will be insufficient. Because Contention (11) fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), showing that a material issue of law or fact exists with respect to the Application, it should be rejected.

Contention (12):<sup>25</sup> The NRC must require legally enforceable mitigation measures to

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<sup>25</sup> Please note that Contention (12) is mislabeled in Petitioner's brief as Relevant Fact and Position (11) on page 11 of the petition. The numbering of contentions has been corrected for (continued. . .)

minimize impacts to surface, air, and water resources. Petition at 11.

In support of Contention (12), Petitioner sets forth:

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 [the] Atomic Energy Act. The two statutes and the regulations promulgated under each must be viewed in *para material*.

*Id.*

The Staff opposes admission of Contention (12) on the grounds that it fails to show that a genuine dispute exists with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). The contention reflects concerns regarding NRC's enforceability of statements made in the Application, but does not challenge the Application itself. Further, license SUA-1341 places legally binding license conditions on COGEMA, many of which can be considered mitigation measures. Additionally, License Condition 9.3 requires COGEMA to "conduct operations in accordance with the commitment, representations, and statements contained in the...approved license application." COGEMA is legally bound to operate its facility as written in the approved COGEMA license application and in accordance with NRC regulations.

In addition, the materials license contains several mitigation measures to which COGEMA is legally bound to adhere (*e.g.*, License Condition 9.9 (preservation of cultural resources) and License Condition 9.13 (consultation with the Fish and Wildlife Service or the Bureau of Land Management to reduce potential impacts)). PRBRC fails to provide any explanation, documentation of fact or expert opinion to support the claim that mitigation

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(. . .continued)

consistency and ease of identifying Petitioner's contentions.

measures included in the Application are not adequate. As such, Contention (12) fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), showing that a material issue of law or fact exists with respect to the Application, and should be rejected.

CONCLUSION

For the reasons set forth above, the petition for hearing filed by PRBRC (a) fails to comply with the standing requirements set forth in 10 C.F.R. § 2.309(d), and (b) fails to meet the contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). Therefore, PRBRC's hearing request should be denied.

Respectfully submitted,

**Executed in Accord with 10 CFR 2.304(d)**

Submitted by Brett Klukan on behalf of  
Christine Jochim Boote  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-2756

[Christine.JochimBoote@nrc.gov](mailto:Christine.JochimBoote@nrc.gov)

Dated at Rockville, Maryland  
This 5<sup>th</sup> day of May, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
COGEMA MINING, INC.	)	Docket No. 40-8502-MLA
	)	
(Christensen & Irigaray Ranch Facilities)	)	
	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	Christine Jochim Boote
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Mail Stop: O-15 D-21 Washington, D.C. 20555
Telephone Number:	(301) 415-2756
E-mail Address:	Christine.JochimBoote@nrc.gov
Facsimile Number:	(301) 415-3725
Admissions:	State of Maryland
Name of Party:	NRC Staff

**Executed in Accord with 10 CFR 2.304(d)**

Submitted by Brett Klukan on behalf of  
Christine Jochim Boote  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop: O-15 D21  
Washington, D.C. 20555-0001  
(301) 415-2756  
[Christine.JochimBoote@nrc.gov](mailto:Christine.JochimBoote@nrc.gov)

Dated at Rockville, Maryland  
this 5<sup>th</sup> day of May 2009

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	)	
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	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF RESPONSE TO REQUEST FOR HEARING FILED BY POWDER RIVER BASIN RESOURCE COUNCIL" in the above captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 5<sup>th</sup> day of May 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

**Executed in Accord with 10 CFR 2.304(d)**

Submitted by Brett Klukan on behalf of  
Christine Jochim Boote  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop: O-15 D21  
Washington, D.C. 20555-0001  
(301) 415-2756  
[Christine.JochimBoote@nrc.gov](mailto:Christine.JochimBoote@nrc.gov)