Attachment 1

July 3, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
STRATA ENERGY INC.	)	Docket No. 40-9091-MLA
	)	
(Ross *In Situ* Uranium Recovery Site)	)	ASLBP No. 12-915-01-MLA
	)	

NRC STAFF ANSWER TO NATURAL RESOURCES DEFENSE COUNCIL'S AND POWDER RIVER BASIN RESOURCE COUNCIL'S STATEMENT OF MATERIAL FACTS FOR CONTENTION 1

1. On or about February 28, 2014 NRC Staff issued the Final Supplemental EIS (FSEIS) for the Ross ISR Project in Crook County, Wyoming. *See* 79 Fed. Reg. 13,683 (2014); *see also* http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1910/s5/ (link to FSEIS).

Response: Admitted.

2. On April 24, 2014, NRC Staff issued a Record of Decision (ROD) on the Ross ISR Project, deciding it would issue the license. *See* ML14073A107.

Response: Admitted.

3. On April 25, 2014 NRC Staff issued the license for the Ross ISR Project. *See* ML14069A335.

Response: Admitted.

4. Neither NRC Staff nor SEI collected the empirical data necessary to establish baseline water quality levels associated with the Ross IRS Project before the NEPA process was completed, and before making the final decision to issue the license on which the NEPA process was based. See Joint Intervenors' Mar. 31, 2014 Motion To Migrate or Amend Contentions, Declaration of Dr. Abitz and Larson (Abitz/Larson Decl.") ¶¶ 8-10 (copy attached as Exhibit 1 for the Board's convenience); see also Joint Intervenors' May 6, 2013 Motion to Resubmit Contentions, Declaration of Dr. Richard Abitz ("Abitz Decl.") ¶¶ 6-23 (copy attached as Exhibit 2 for the Board's convenience).

Response: Denied. The Staff does not agree with the Intervenors' claim that neither Strata nor the Staff collected the empirical data necessary to establish baseline groundwater quality levels. Strata collected empirical data necessary to satisfy the requirements of 10 C.F.R. 51.45 and 10 C.F.R. Part 40, Appendix A, Criterion 7, and provided that data in Addenda 2.7-I through 2.7-L

of the Technical Report (TR), and analysis of that data in Section 3.4.3.5 of its Environmental Report (ER), as referenced by the Staff in Section 2.1.1.1 of the SEIS.[1] This data "established pre-licensing, site-characterization" values of certain ground-water constituents, which "represent the constituent concentration currently present in the ground water under the Ross Project area."[2] The NRC staff reviewed this information, issued Requests for Additional Information (RAIs), and, based on the initial data and Strata's responses to the RAIs, found the data acceptable. The Staff then used the data to prepare SEIS Section 3, "Affected Environment," and Section 4, "Environmental Impacts and Mitigation Measures." This information is expressly discussed in Section 3.5.3.3 of the SEIS.[3]

5. The FSEIS does not consider such baseline water quality levels, but rather states the necessary water quality data will be collected *after* the license is issued. *See* FSEIS at 2-25. In particular, the FSEIS states as follows:

> Condition No. 11.3 of the Draft Source and Byproduct Materials License would require the applicant to install a monitoring-well ring around the perimeter of each wellfield as well as monitoring wells in the underlying and overlying aquifers (NRC, 2014b); this monitoring-well ring would be used to detect horizontal and vertical excursions of uranium recovery solutions during uranium-recovery operation (see SEIS Section 2.1.1.2) (Strata, 2011b). Prior to commencing ISR operations, these wells would allow sampling and analysis of ground water – in this SEIS, this type of monitoring is called "post-licensing, pre-operational." The resulting postlicensing, pre-operational concentration-based levels *would be used to calculate, using robust statistical procedures, groundwater protection standards called the Ross Project's upper control limits (UCLs)*. These post-licensing, pre-operational values and the calculated UCLs would be established for each separate uranium-recovery unit (these will be specified in the Source and Byproduct Materials License).

Id. (emphasis added); *see also* FSEIS at 3-37- 3-44 ("Affected Environment" section of FSEIS, which fails to establish baseline water quality in the affected area).

Response: Denied. The Staff disagrees with the Intervenors' claim that necessary water quality data will not be collected until after the license is issued. As discussed above, the Staff considered the baseline groundwater quality data submitted by Strata. SEIS Section 3.5.3.3 of the SEIS discusses the groundwater quality data submitted by Strata in its ER and TR.[4] The Staff does not dispute that Condition No. 11.3 of Strata Energy, Inc.'s Source and Byproduct Materials License describes the process that Strata will be required to implement for post-

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[1] *See* Strata Ross ISR Project USNRC License Application, Crook County, Wyoming, Technical Report, Volume 5, Addenda 2.7-I through 2.7L (ADAMS Accession Nos. ML110130318, ML110130319); Strata Ross ISR Project USNRC License Application, Crook County, Wyoming, Environmental Report, Volume 1, 3-113 through 2-233 (ADAMS Accession No. ML110130342).

[2] Environmental Impact Statement for the Ross ISR Project in Crook County, Wyoming: Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, 2-25 (Feb. 2014) (ADAMS Accession No. ML14056A096) (SEIS).

[3] *Id.* at 3-38 through 3-45.

[4] *Id.*

licensing, pre-operational groundwater monitoring. But consideration of this condition by itself does not provide an accurate picture of the Staff's consideration of groundwater quality. On page 2-25 of the SEIS, the Staff explains the difference between pre-licensing, site-characterization groundwater information and post-licensing, preoperational groundwater monitoring.[5] In short, an applicant is required to collect information regarding the area or site proposed for uranium recovery, including establishing monitoring wells to determine existing conditions at a particular site and submit that information as part of its application.[6] However, following issuance of the license and upon establishment of the applicant's well fields, but prior to operation, a licensee is required to take water quality samples from each well to establish baseline levels to which excursion-detection and/or aquifer-restoration monitoring are compared.[7] Strata's License Condition No. 11.3 establishes the requirement for the licensee to conduct this post-licensing, pre-operational groundwater monitoring. Thus, the Intervenors are incorrect in stating that the SEIS does not consider baseline groundwater quality levels.

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[5] *Id.*at 2-25.

[6] *Id.*

[7] *Id.*