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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Presiding Officer
Frederick J. Shon, Special Assistant

In the Matter of:
ATLAS CORPORATION
(Moab, Utah)

) Docket No. 40-3453-MLA-3
)
) ASLBP No. 99-761-04-MLA
)
) September 30, 1999

OFFICE OF THE
ADMINISTRATIVE
JUDGES

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GRAND CANYON TRUST'S RESPONSES TO THE NRC STAFF'S ANSWERS
TO QUESTIONS PRESENTED IN THE PRESIDING OFFICER'S
JULY 30, 1999 ORDER

INTRODUCTION

After months of insisting that this licensing action has nothing to do with groundwater cleanup and that the Grand Canyon Trust has absolutely no right to intervene in it, the NRC has finally backed down. First, the NRC staff has finally conceded in its latest round of answers that the Grand Canyon Trust is entitled to a new notice and opportunity for a hearing on at least one aspect of these new license amendments – the timing of groundwater cleanup. Second, the NRC Staff has conceded that amendment 41C sets substantive ammonia standards that apply to groundwater cleanup as part of this licensing action. Third, the NRC has as a practical matter abandoned its primary argument that the new license amendments have nothing to do with

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groundwater cleanup, conceding that it cannot distinguish between "existing" and "future" groundwater contamination.

The Grand Canyon Trust respectfully submits the following specific responses to the NRC Staff's answers to questions presented by the Presiding Officer in the Order of July 30, 1999.

QUESTIONS AND RESPONSES

QUESTION 1

In responding to the Presiding Officer's initial questions, the Staff did not answer, inter alia, questions 3, 4, and 5. Rather, the Staff disagreed with the one or more of the assumptions in the questions. Please answer questions 3, 4, and 5.

PREVIOUS QUESTION 3

Assuming the substance of proposed license conditions 41A, 41B, and 41C in Staff Exhibit G relates to groundwater remediation and is part of the same materials license amendment action initially noticed on April 7, 1994, and, assuming further, that the scope of the Commission's April 7, 1994, notice did not include groundwater remediation and the agency subsequently expanded the scope of the materials license amendment action to include matters relating to groundwater remediation, when and how could the Petitioners challenge the proposed license conditions or raise other matters regarding groundwater remediation?

RESPONSE

The NRC Staff has finally conceded that if the original April 1994 notice did not cover groundwater cleanup, the Grand Canyon Trust could not have known to intervene on that basis. By this answer, the NRC Staff effectively concedes that the Grand Canyon Trust is entitled to a hearing. First, the NRC Staff has already admitted that the original notice did not include groundwater remediation or groundwater cleanup within its scope. See NRC Answers of June at 2-3. Second, the NRC already has admitted that at least one of the new amendments, 41B, relates to groundwater remediation. See NRC Answers of June 4 at 9. Third, the NRC now

admits that assuming these first two facts to be true, it would have been impossible for the Grand Canyon Trust to file a timely hearing request on amendment 41B. Thus, at least with respect to amendment 41B, the Grand Canyon Trust must be allowed to intervene and receive a hearing.¹

PREVIOUS QUESTION 4

Making the same assumptions as in question 3, does 10 C.F.R. § 2.1205(d)(2)(ii) or (iii) require the Petitioners to wait until the license amendment is actually issued to request a hearing on the groundwater remediation matters? Please explain fully.

RESPONSE

As the NRC has now conceded, the Grand Canyon Trust is entitled to intervene and receive a hearing on some if not all of the issues raised in its Request for Hearing and Petition for Leave to Intervene. The Presiding Officer could grant the Grand Canyon Trust a hearing procedurally in at least three different ways. First, the Presiding Officer can order renoticing of the entire action and an opportunity to intervene because the licensee has proposed significant modifications to the original license amendment application and because the original notice has become stale. See, e.g., In the Matter of Sequoyah Fuels Corporation, Docket No. 40-8027-MLA-3, ASLBP No. 94-700-04-MLA-3A, 1995 WL 150732 (1995). For further discussion of this issue, please see the Grand Canyon Trust's Answers to the Questions Presented in the Presiding Officer's May 14, 1999 Order, May 28, 1999 ("Grand Canyon Trust's May 28 Answers") at 16-18.

Second, the Presiding Officer can grant the Grand Canyon Trust's Request for Hearing and Petition for Leave to Intervene as timely pursuant to 10 C.F.R. § 2.1205(d) based upon the new license conditions 41A-41C, which were never noticed. For more discussion of this issue,

¹ Of course, the Grand Canyon Trust maintains that all the new amendments, which are designed to implement the requirements of the FWS' FBO, must be renoticed because they were not part of the original notice.

please see Grand Canyon Trust's May 28 Answers at 18-20. Even assuming, as does the NRC Staff, that the Grand Canyon Trust was required to file a hearing request as soon as it learned that the NRC was considering or adding new amendments or issues not covered in the April 1994 notice, the Grand Canyon Trust has done so. The Grand Canyon Trust learned that the NRC was planning to add new conditions to the license amendment by a January 13, 1999 letter from NRC Chairman Shirley Ann Jackson to Congressman George Miller. See Petitioners' Request for Hearing and Petition for Leave to Intervene, January 27, 1999 ("Grand Canyon Trust's Intervention Petition"), at 30. The Grand Canyon Trust obviously intervened within 30 days of receiving that notice.²

Third, the Presiding Officer can grant the Grand Canyon Trust Request for Hearing and Petition for Leave to Intervene based upon the availability of new information, including the FBO. For a discussion of these issues, please see Grand Canyon Trust's Intervention Petition at 27-29; Grand Canyon Trust's Reply in Support of Their Request for Hearing and Petition for Leave to Intervene, April 2, 1999 at 1-18 and 21-24; Grand Canyon Trust's Responses of May 28 at 2-16.

Any one of these actions is clearly within the authority of the Presiding Officer pursuant to the caselaw and NRC regulations. Under the circumstances described here, some type of renoticing and/or granting of permission to intervene and receive a hearing is required by the Presiding Officer's duty to conduct a fair and impartial proceeding according to law. See 10 C.F.R. § 2.1209. The NRC is required to provide a reasonable opportunity for an individual to receive a hearing on a material issue in a licensing proceeding. See 42 U.S.C. § 2239(a);

² Although the Grand Canyon Trust cannot provide a precise date when it received Chairman Jackson's letter, it was sometime during the 14 days after the letter was written on January 13, 1999 and before the Petition for Hearing and Request for Leave to Intervene was filed on January 27, 1999.

Nuclear Info. & Resource Serv. v. NRC, 918 F.2d 189, 197 (D.C. Cir. 1990); Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1451 (D.C. Cir. 1984).

PREVIOUS QUESTION 5

Making the same assumptions as in question 3, is 10 C.F.R. § 2.1205(d)(2)(i) or any other provision of the Commission's Rules of Practice applicable? If so, please explain.

RESPONSE

Please see the Grand Canyon Trust's Answer to Question 4 of this writing and the Petitioners' June 15 Responses at 19-21.

QUESTION 2

In its answer to the Presiding Officer's question 1f, the Staff states (at 5) that the issues relating to future groundwater and river water contamination from the stabilized tailings pile "were apparent as part of the original amendment request." The Staff's answer then refers to the DTER, the TER, and the DEIS -- all of which were issued long after the notice of opportunity for hearing -- and concludes that the possible ramifications of on-site reclamation on groundwater and river water "were readily apparent." Please identify and provide copies of the portions of the material license amendment application and that application modifications filed prior to the Commission notice that make it "apparent" and "readily apparent" that groundwater and river water contamination from the groundwater were the subject of the license amendment application referred to in the notice of opportunity for hearing.

RESPONSE

This response exemplifies the confusion caused by the Staff's artificial distinction between "remediation of existing groundwater contamination" and "reclamation of future groundwater contamination." The Staff concedes that existing contamination cannot as a practical matter be separated from future contamination. See NRC Answer of Sept. 17 at 19. But the Staff nonetheless claims that the Grand Canyon Trust should have known that reclamation of future contamination was encompassed in the 1994 notice, while remediation of

existing contamination was not. Whether or not this artificial distinction is simply a post-hoc attempt to insulate a decision from review, it was certainly never conveyed to the public.

First, the April 7, 1994 notice called for capping of the tailings pile in place and was confined to the technical aspects of the cap. See 59 FR 16665. It said nothing about groundwater, and certainly nothing about the distinction between existing and future contamination that suddenly appeared in the briefing here.

Second, the documents referenced by the NRC Staff in answer to this question actually establish that the public was not put on notice that groundwater cleanup – whether “remediation” or “reclamation” – would be addressed in this proceeding back in 1994. See Petitioners’ Reply in Support of Their Request for Hearing and Petition for Leave to Intervene, April 2, 1999, at 6-14. For example, the NRC on March 30, 1994 in its Notice of Intent to Prepare an EIS stated that “Extensive water monitoring has identified *no contamination in the Colorado River*; therefore, there are *no effects* on river biota, and they *will not be assessed*.” Exhibit 6 to NRC Answers at 3 (emphasis added). As the Grand Canyon Trust noted in its April 2, 1999 Reply brief, one could only imagine the scorn with which, in April of 1994, the NRC would have met claims that the capping plan would jeopardize endangered species through groundwater contamination.

Beyond that, the NRC’s argument is essentially that potential intervenors have a duty to look at every document that might relate to a licensing proceeding and attempt to intervene on every possible claim or action raised by those documents, even if the notice does not mention them. As a practical matter, the Staff cannot really want this to happen.

QUESTION 3

In responding to the Presiding Officer’s question 1, the Staff states that the Commission’s April 7, 1994, notice of opportunity for hearing does not include groundwater remediation within its scope. The Staff’s answer and an accompanying affidavit further explain that, in its regulatory activities, the Staff

differentiates between the cleanup of existing groundwater contamination (*i.e.*, groundwater remediation) and the future effects on groundwater after the reclamation of the tailings pile (*i.e.*, future groundwater contamination). Further, in answering the Presiding Officer's questions 2a, 2h, and 10, the Staff concedes that license condition 41B, which requires the Applicant to file by May, 2000, a revised corrective action plan (CAP) so that contaminated groundwater will meet groundwater standards within seven years of the NRC's approval of the CAP, relates to groundwater remediation. Finally, the Staff's answers to questions 2 and 2g indicate that the substance of license condition 41B was first made public in January 1999. In light of these answers, explain precisely how (and when) the Petitioners could challenge any or all aspects of Staff-initiated license condition 41B without running afoul of the fundamental principle of NRC adjudication that the scope of a materials license amendment proceeding is confined to the matters relating to the license amendment set forth in the Commission's notice of opportunity for hearing.

RESPONSE

The Grand Canyon Trust welcomes the NRC Staff's concession that the Grand Canyon Trust should be permitted the opportunity for a hearing on License Condition 41B. However, the Grand Canyon Trust also is entitled to a hearing on License Conditions 41A and 41C, which also implement terms and conditions of the FBO and also were added as new license conditions by the staff. In addition, each of the new license amendments, 41A to 41F, should be renoticed to give the entire public an opportunity to comment and request intervention and a hearing.

The Grand Canyon Trust notes that the NRC Staff's new assertion that the new license conditions were somehow not important enough to merit publication in the Federal Register is ridiculous. These conditions represent the NRC's final decision on what is required for this license amendment to comply with the ESA. The terms and conditions set in the FBO and added by the NRC in this licensing action are critical to the Grand Canyon Trust and to the endangered fish in this river because they represent the timeframe and substantive groundwater cleanup standards that the licensee must meet to avoid jeopardy to the fish. The Grand Canyon Trust has

set forth a detailed analysis concerning why the NRC's actions violate the ESA. See Grand Canyon Trust's Intervention Petition at 19-27.

In addition, the NRC's NEPA regulations require notice of new licensing actions as part of the duty to conduct an environmental assessment and prepare a finding of no significant impact, or (in the case of major actions significantly affecting the environment) an environmental impact statement. See 10 C.F.R. part 51. Amendments to part 41 of a materials license are not subject to a categorical exclusion from NEPA review under the NRC's NEPA regulations; therefore, the NRC must conduct a NEPA analysis³ for any new amendments to condition 41 of Atlas' license. See 10 C.F.R. § 51.22(c).

QUESTION 4

License condition 41B states that "[t]he licensee shall provide, by May 1, 2000, a revision to the corrective action program identified in the license condition 17.C. that will meet ground-water standards within 7 years from the date of approval by NRC." In part, the Staff's response to the Presiding Officer's initial question 2a states (at 9): "only to the extent that the licensee is required to submit a revised CAP, as required by License Condition 41B, under which groundwater cleanup would be accomplished within seven years [do license conditions 41A, 41B, and 41C relate to groundwater remediation]. The NRC has not prescribed any requirements on the contents of the CAP through these license conditions." Does license condition 41B require that the revised CAP must meet "groundwater standards"? Answer yes or no and explain.

RESPONSE

The NRC Staff's insistence that license conditions 41B and 41C somehow are insignificant and do not relate to groundwater remediation is completely contradicted by its own

³ Moreover, once the Staff undertakes an EIS, the Staff has a duty to supplement if "[t]here are substantial changes in the proposed action that are relevant to environmental concerns . . . or [if] [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action and its impacts." 10 C.F.R. § 51.72. The supplement must be prepared and noticed in the same manner as the draft EIS. See id. at § 51.80. Obviously the proposed new license amendments implementing the FBO represents a substantial change, particularly from an environmental standpoint. Similarly, the new studies and revelations about the impacts to endangered fish at this site constitute significant new information relevant to environmental concerns and the impacts of the action.

statements in the FEIS. In its March 12, 1999 cover letter announcing publication of the FEIS, the NRC stated that "[a]ll other environmental aspects of the proposed action are acceptable with the condition that Atlas fulfill the reasonable and prudent alternative (RPA) and the reasonable and prudent measures (RPMs) outlined in the FBO." See Exhibit A. According to the FEIS, "the NRC will include the terms and conditions specified in the Final Biological Opinion as conditions of the license amendment for the proposed reclamation." FEIS at xxx. Over and over again in the FEIS, the NRC says that the licensing action is conditioned upon meeting the requirements of the FBO. See FEIS at xxx, xxxi-xxxii, 1-1, 2-15, 2-34, 4-51, 4-85, 4-93, 5-19.

If the NRC's statements to the public are accurate, the "groundwater standards" in License Condition 41B cannot solely represent future standards to be determined by the NRC. The FBO requires that the site meet the standard for ammonia in the FBO, NRC regulatory standards, *and* the state of Utah's surface water quality standards for the protection of aquatic life. See FBO at 99. The FEIS acknowledges that the FBO requires NRC to ensure that Atlas cleans up contaminated groundwater within seven years "to the extent that Colorado River water quality will comply with relevant Utah surface water quality standards for the protection of aquatic life." FEIS at 4-51.

If the NRC's argument is to be taken at face value, then the NRC has omitted from the license amendment the FBO's requirement that Colorado River water quality comply with relevant Utah surface water quality standards for the protection of aquatic life. And if that is the case, then the NRC's statements to the public that the terms and conditions of the FBO are included in the license amendment are false.

It is clear that regardless of what the NRC does in its review of the CAP, it has already set a significant part of the substantive standards for groundwater cleanup in this licensing

action. While the NRC apparently plans to consider the nuts and bolts of a groundwater remediation plan and some undefined group of regulatory standards in a later proceeding, the NRC has as a practical matter set the timing and many standards of groundwater cleanup necessary to protect endangered fish in this licensing action under the new license conditions 41A, 41B, and 41C. The NRC has already conceded that these conditions will not be subject to challenge in a future licensing proceeding. See NRC Staff's Answers to the Questions Posed By the Presiding Officer in the May 14, 1999 Order, at 15.

Given the course of the NRC staff's arguments to date, there is little question that any attempt to discuss the standards for groundwater reclamation in a future amendment proceeding would be met with the argument that those standards have already been set in this proceeding, and are no longer subject to challenge. One way or another, the public must be afforded a full opportunity to review and request a hearing on groundwater cleanup.

QUESTION 4.a.

Identify all the "ground-water standards" referred to in license condition 41B that the revised CAP must meet?

RESPONSE

Please see the Grand Canyon Trust's response to Question 4.

QUESTIONS 4.b.- 4.d.

b. Are the 7-year compliance period and the groundwater standards referred to in license condition 41B derived from "Terms of Conditions" 1.b. of the Fish and Wildlife Service's July 29, 1998 Final biological Opinion (FBO). Answer yes or no and explain.

c. Are the 7-year compliance period and the groundwater standards referred to in the license condition 41B derived from "reasonable and prudent alternatives" 1.b. of the FBO? Answer yes or no and explain.

d. If the 7-year compliance period and the groundwater standards referred to in license condition 41B are not derived from the terms and conditions and/or the

reasonable and prudent alternatives of the FBO, identify the source from which the 7-year compliance period and the groundwater standards referred to in license condition 41B are derived and explain why these provisions were placed in license condition 41B.

RESPONSE

Although the NRC Staff in its answer states that the "groundwater standards" referred to in license condition 41B are not derived from the FBO, as noted above the FEIS again contradicts the NRC. The FEIS is based on the assumption that the final license amendment includes as license conditions the reasonable and prudent alternatives and measures to avoid jeopardy. See FEIS at 1-1. The FEIS also clearly acknowledges that the FBO requires a groundwater cleanup to NRC standards as well as "[cleanup of] contaminated groundwater to the extent that Colorado River water quality will comply with relevant Utah surface water quality standards for the protection of aquatic life." FEIS at 4-51; see also FEIS at 4-93 ("NRC shall require Atlas Corporation to cleanup contaminated groundwater to the extent necessary to meet relevant standards within 7 years from Atlas' receipt of NRC approval of the revised groundwater corrective action plan . . . Relevant standards shall include the ammonia concentration as identified below as well as other constituents regulated by the NRC and surface water [sic] quality standards for the protection of aquatic life as identified in Utah Administrative Code 51-317, dated December 19, 1997."). If the NRC's current statements that the "groundwater standards" referenced in license condition 41B are not the same as those in the FBO, then the FEIS is based upon a false assumption. The NRC cannot have it both ways.

QUESTION 5

In attempting to differentiate between groundwater contamination that is included and excluded in the current license amendment action, the Staff's answer to the Presiding Officer's initial question 1 and the Staff's accompanying affidavit make a bright-line distinction between the cleanup of existing groundwater contamination at the Atlas site (*i.e.*, groundwater remediation) and the future

effects on groundwater after the reclamation of the Atlas site (*i.e.*, future groundwater contamination). Are the groundwater standards referred to in license condition 41B that the revised CAP must meet applicable to existing groundwater contamination at the Atlas site?

RESPONSE

As set forth above, the NRC Staff's contention that the groundwater standards set in accordance with Criterion 5 of Appendix A to Part 40 of the Commission's regulations are the only "groundwater standards" referenced in license condition 41B is contrary to its statements in the FEIS and elsewhere.

QUESTION 5.a.

If the groundwater standards referred to in license condition 41B are not applicable to existing groundwater contamination at the Atlas site, what is the meaning and purpose of the 7-year compliance period in license condition 41B?

RESPONSE

See answers above.

QUESTION 5.b.

Relying on the Final environmental Impact Statement, the affidavit accompanying the Staff's answer to question 1 briefly refers to the long travel time of contaminants in the groundwater to reach the river from the tailings pile. Due to the long average travel time of groundwater contamination at the Atlas site, can the Staff accurately and objectively differentiate between future contaminants in the groundwater after reclamation of the tailings pile and present or existing contaminants in the ground-water?

RESPONSE

The Grand Canyon Trust concurs in the Staff's answer to Question 5.b.

QUESTION 5.c.

Do actual measured data from the Atlas site permit a precise and accurate delineation between present or existing groundwater contamination and future groundwater contamination?

ANSWER

The Grand Canyon Trust concurs in the Staff's answer to Question 5.c.

QUESTION 6

License condition 41C states that "[b]efore commencing construction of the final radon barrier, the licensee shall provide analyses, appropriately supported by necessary data, showing that the ammonia standards identified in item 2 of the reasonable and prudent alternatives of the FBO will be met over the design life of the reclamation." In part, the Staff's response to the Presiding Officer's initial question 2a states (at 9):

Only to the extent that the licensee is required to submit a revised CAP, as required by License Condition 41B, under which groundwater cleanup would be accomplished within seven years [do license conditions 41A, 41B, and 41C relate to groundwater remediation]. The NRC has not prescribed any requirements on the contents of the CAP through these license conditions. The other requirements imposed by the other License Conditions refer only to reclamation of the site, not remediation of current groundwater contamination.

Do the "ammonia standards" identified in item 2 of the reasonable and prudent alternatives of the FBO provide, inter alia, for a chronic toxicity standard of 0.38 mg/l total ammonia and an acute toxicity standard of 1.93 mg/l total ammonia? Answer yes or no and explain.

RESPONSE

The Grand Canyon Trust agrees that the "ammonia standards" identified in item 2 of the reasonable and prudent alternatives of the FBO provide for a chronic toxicity standard of 0.38 mg/l outside the mixing zone and an acute toxicity standard of 1.93 mg/l in the Colorado River at or below the tailings pile. The Grand Canyon Trust also notes that the NRC has admitted that the reclamation plan must ensure that, after closure, ammonia will not escape and contaminate water in the Colorado River or the mixing zone in excess of the standard set by the FWS. See NRC Answers at 20; FEIS at 4-93 to 4-94. Yet the NRC says that it requires further study before it can know whether ammonia standards will be met by the license amendment. See id. at 21;

FEIS at 4-55 ("a clear determination cannot be made that all ammonia standards identified by FWS can be met because of uncertainties in the flux calculations and incomplete site data.").

The Grand Canyon Trust notes that because the NRC has admitted that it does not have enough data to know whether the license amendment as proposed will avoid jeopardy to endangered fish, its issuance of the license amendment violated its independent duties under the ESA to avoid jeopardy, conserve the species, and use the best available science. See 16 U.S.C. § 1536(a)(1)-(a)(2).

QUESTION 6.a.

If not, what "ammonia standards" do item 2 of the reasonable and prudent alternatives of the FBO require?

ANSWER

The Grand Canyon Trust concurs with the Staff's answer to Question 6.a.

QUESTION 6.b.

If the ammonia standards identified in item 2 of the reasonable and prudent alternatives of the FBO do not apply to existing groundwater contamination (and river water contamination from the groundwater), explain the meaning of the following provision from item 2 of the reasonable and prudent alternatives of the FBO (at 87): "The Nuclear Regulatory Commission shall require Atlas corporation to meet the following ammonia standards for surface waters [*i.e.*, Colorado River] at or below the Atlas tailings pile".

RESPONSE

This answer again exemplifies the muddle resulting from the Staff's contention that "future" and "existing" groundwater contamination must be dealt with entirely separately. After arguing that the process of meeting ammonia standards in the river is "separate and distinct from the evaluation the Staff will conduct when reviewing the license's CAP," NRC Responses of Sept. 17 at 22, the Staff then concedes that "the Staff must determine what groundwater standard at the point of compliance (the wells located at the edge of the tailings pile) will ensure

that any resulting contamination of the Colorado River or the mixing zone will not be likely to threaten any endangered or threatened species of fish.” Id. at 23. In other words, it’s the same contamination, and the water quality standards must be considered together.

QUESTION 7

In response to the Staff’s answer to the Presiding Officer’s initial question 1, the Petitioners state (at 6) that “[t]he effect of the ESA [Endangered Species Act] and the July 1998 BO, notwithstanding the NRC’s normal practices, is to require the NRC to consider groundwater remediation matters as part of this licensing action.” Further, in response to the Staff’s answer to question 1f, the Petitioners state (at 10) that “due to the terms and conditions of the BO, the NRC is *required* to set groundwater standards in *this* licensing proceeding.” (Emphasis in original.) Is the effect of the ESA and the FBO, as the Petitioners state, to require the NRC to set, in this material license amendment action, standards for existing groundwater contamination? Answer yes or no and explain.

RESPONSE

The Staff is correct that an action agency may, at its peril, ignore an FWS Biological Opinion. The Staff ignores the fact, however, that it has committed to the public to carry out the terms of that FBO in this licensing proceeding. See FEIS at xxx, xxxi-xxxii, 1-1, 2-15, 2-34, 4-51, 4-85, 4-93, 5-19; see also Exhibit A. The terms of the FBO – at least according to the NRC’s representations everywhere but in this intervention – are now part of the terms of the license.

The NRC is simply wrong when it states that the ESA does not substantively require that it address groundwater contamination as part of this proceeding. Formal consultation must consider all “effects of the action,” and under the relevant regulations the “effects of the action” analyzed must encompass both the direct and indirect effects of the action together with other activities interrelated or interdependent with that action. See 50 C.F.R. § 402.02. “Interrelated actions” are those that are “part of a larger action and depend on the larger action for their justification.” Id. Finally, “interdependent actions” are defined as those actions “that have no

independent utility apart from the action under consideration." Id. Here the cleanup of groundwater, whether measured in the river or at the edge of the tailings pile, and reclamation are all part of the same action. Even the Staff concedes that "existing" and "future" contamination cannot be separated. If the NRC has not consulted on the entire action, it cannot undertake any irreversible commitment of resources. See Pacific Rivers Council v. Thomas, 30 F.3d 1050, 1056 (9th Cir. 1994); Thomas v. Peterson, 753 F.2d 754, 764-65 (9th Cir. 1985).

CONCLUSION

The Staff has been all over the lot in its arguments in this proceeding and in the District Court in Utah. In the District Court, it argued that this licensing proceeding does involve groundwater cleanup. Here it argues that except for a seven-year timeframe, it does not involve groundwater cleanup. At first in this proceeding it argued that the Grand Canyon Trust was too late to request a hearing on any issue. Now it says that the Trust is entitled to request a hearing on the timeframe of groundwater cleanup. In the FEIS, it said it would incorporate all the terms of the FBO into this license amendment. Here it says that it only incorporated one term from the FBO, and that the others will be considered later.

The only fixed star in the Staff's arguments has been that the Grand Canyon Trust cannot challenge the NRC's failure to comply with the Endangered Species Act. According to the Staff, it is always too late, or too early, or the wrong place. The Grand Canyon Trust submits that the Endangered Species Act issues in this case must be decided at some point, and that there be a clear decision on what was or was not included in the current set of license amendments.

Dated this 30th day of September 1999.

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Attorneys for
Grand Canyon Trust, et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of "GRAND CANYON TRUST'S RESPONSES TO THE NRC STAFF'S ANSWERS TO QUESTIONS PRESENTED IN THE PRESIDING OFFICER'S JULY 30, 1999 ORDER" in the above-captioned proceeding have been served on the following by United States mail, and by facsimile or email (indicated by asterisk) on this 30th day of September, 1999:

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EXHIBIT A



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 12, 1999

Mr. Richard Blubaugh
Vice President of Environmental
and Government Affairs
Atlas Corporation
370 Seventeenth Street, Suite 3050
Denver, CO 80202

RECEIVED MAR 15 1999

SUBJECT: FINAL ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Blubaugh:

Enclosed is a copy of volume 1 of the "Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah," (FEIS) NUREG-1531. It is being provided to you for your information. Volume 2 is an appendix which contains copies of all the comments received on the Draft Environmental Impact Statement. Both volumes of the FEIS have been sent to the printer and are expected to be distributed soon. Additionally, we are finalizing a supplement to the "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill," NUREG-1532, which we expect to issue soon.

The FEIS concludes that the Atlas proposed on-site reclamation, with recommended mitigation, will significantly reduce the impact of contaminants entering the Colorado River. A rigorous determination of whether the proposed action will meet ammonia concentration requirements specified in the U.S. Fish and Wildlife Service final biological opinion (FBO) issued in July 1998, cannot be made without additional data and analyses by the applicant. All other environmental aspects of the proposed action are acceptable with the condition that Atlas fulfill the reasonable and prudent alternative (RPA) and the reasonable and prudent measures (RPMs) outlined in the FBO.

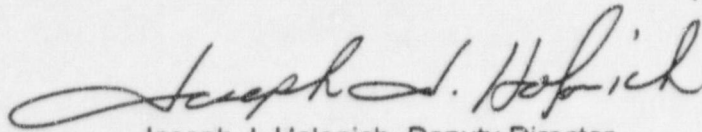
Based on the conclusions in the FEIS, the U.S. Nuclear Regulatory Commission (NRC) is prepared to amend your license to approve your proposal for reclamation with the conditions identified in my March 2, 1999, letter to you. However, before NRC can revise your license, we need an agreement from Atlas to accept those conditions.

R. Blubaugh

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If you have any questions, please contact Dr. Myron Fliegel, NRC's project manager, at (301) 415-6629.

Sincerely,

A handwritten signature in cursive script, reading "Joseph J. Holonich". The signature is fluid and elegant, with a large initial "J" and a prominent "H".

Joseph J. Holonich, Deputy Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-3453
License No. SUA-917

Enclosure: As stated

cc: See attached list

Addressees for Letter Dated: March 12, 1999

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