UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 40-8968-LR
NuFuels, Inc.	)	
	)	ASLBP No. 26-995-01-MLR-BD01
(Crownpoint Uranium Project In-Situ Recovery	)	
Facility)	)	August 21, 2026

NuFuels, Inc.'s Answer Opposing State of New Mexico's
Petition to Intervene and Request for Adjudicatory Hearing on NuFuels, Inc.'s
Crownpoint Uranium Project In-Situ Recovery Facility License Renewal Application

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NUFUELS, INC. ANSWER OPPOSING THE STATE OF NEW MEXICO'S PETITION TO INTERVENE AND REQUEST FOR HEARING

Pursuant to 10 C.F.R. § 2.309(i)(1), NuFuels, Inc. ("NuFuels") hereby answers and opposes the Petition to Intervene and Request for Hearing ("Petition") filed by the State of New Mexico ("the State") on July 27, 2026,[1] in the Crownpoint Uranium Project In-Situ Recovery Facility license renewal proceeding. The State seeks to intervene in this proceeding and requests that the Nuclear Regulatory Commission ("Commission" or "NRC") conduct a hearing regarding NuFuels' Application[2] to renew Source Materials License SUA-1580. The Petition should be denied because the State has failed to proffer an admissible contention.

The Commission's regulations and case law clearly set forth the requirements that a petitioner must satisfy to demonstrate an admissible contention. As this Answer describes more fully below, the Commission's pleading standards are designed to raise the admissibility

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[1] *State of New Mexico Petition to Intervene and Request for Hearing* (Jul. 27, 2026) (ADAMS Accession No. ML26208A281) (including Exhibit 1 – NMED Letter (ADAMS Accession No. ML26208A282), Exhibit 2 – Declaration of Dr. Abitz (ADAMS Accession No. ML26208A283) ("Abitz Decl."), Exhibit 3 – 2012 Agreement (ADAMS Accession No. ML26208A284)).

[2] NuFuels, Inc., *Crownpoint Uranium Project - License Renewal Application for Source Materials License SUA-1580* (Jan. 22, 2025) (ADAMS Package Accession No. ML25022A289) (the "Application"); NuFuels, Inc., *Crownpoint Uranium Project NRC License SUA-1580 Renewal McKinley County, New Mexico, Environmental Report* (ADAMS Accession No. ML25022A292) (the "ER" or "Environmental Report"); NuFuels, Inc., *Crownpoint Uranium Project NRC License SUA-1580 Renewal McKinley County, New Mexico, Consolidated Operations Plan* (ADAMS Accession No. ML25022A293) (the "Consolidated Operations Plan" or "COP").

threshold for contentions to ensure that hearings focus on concrete issues that are relevant to the proceeding and supported by a solid factual and legal foundation. None of the State's contentions reaches the required threshold. Accordingly, the Atomic Safety and Licensing Board (the "Board") should reject all of the State's contentions and deny its Petition.

I. Factual Background

This proceeding concerns the renewal of Source Material License SUA-1580 (the "License") for the Crownpoint Uranium Project ("CUP"), an in-situ recovery ("ISR") uranium recovery facility located in McKinley County, New Mexico. The CUP consists of four proposed ISR recovery areas: Church Rock Sections 8 and 17, Unit 1, and Crownpoint.

Hydro Resources, Inc. ("HRI"), NuFuels' predecessor, submitted its original application for the License on April 25, 1988. Following its technical and environmental review of the application, the NRC Staff prepared an Environmental Impact Statement pursuant to the National Environmental Policy Act ("NEPA") and issued the Final Environmental Impact Statement ("FEIS"), NUREG-1508, in 1997.[3] The NRC thereafter issued the License on January 5, 1998.[4]

Following issuance of the License, multiple parties petitioned to intervene and requested a hearing before the Board. Because HRI proposed to develop Church Rock Section 8 before commencing operations at the remaining recovery areas, the Board bifurcated the adjudication into two phases. Phase I addressed issues relating to Church Rock Section 8 and the overall validity of the License, while Phase II addressed site-specific challenges concerning Church Rock Section 17, Crownpoint, and Unit 1.

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[3] NRC, NUREG-1508, *Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico* (1997) (ADAMS Accession No. ML082170248).

[4] J.T. Hall (NRC) to B.P. Cotter, Jr. (ASLB), T.D. Murphy (ASLB), *In the Matter of Hydro Resources Inc. Docket 40-8968-ML* (Jan. 5, 1998) (ADAMS Accession No. ML20198D334) (informing ASLB of license issuance).

Phase I generated an extensive administrative record and numerous published decisions from both the Licensing Board and the Commission. During that phase, the parties litigated issues concerning groundwater protection, groundwater restoration, hydrogeologic characterization, groundwater monitoring, financial qualifications, financial assurance, radioactive air emissions, environmental justice, and NEPA compliance.[5] Following the Commission's disposition of the Phase I appeals, the adjudication proceeded to Phase II, which addressed the remaining site-specific challenges applicable to Church Rock Section 17, Crownpoint, and Unit 1. Challenges were categorized into four groups (1) groundwater protection, restoration, and financial assurance; (2) historic preservation; (3) air emission controls; and (4) the adequacy of the environmental impact statement.[6]

The following is a list of the key Board and Commission decisions necessary to understand the history of this proceeding or relevant to this Answer opposing the Petition.

- *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119 (1998) (exercising supervisory authority and stating that disputes concerning another regulator's permitting requirements, in this case the Navajo Nation's permitting authority, should be resolved by that regulator rather than litigated in the NRC adjudication).
- *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-99-9, 49 NRC 136 (1999) (holding that NRC's phased NHPA review was lawful and

[5] *See, e.g., Hydro Resources, Inc.,* CLI-00-8, 51 NRC 227 (2000) (financial qualifications); *Hydro Resources, Inc.,* CLI-00-12, 52 NRC 1 (2000) (groundwater, radioactive air emissions, and technical qualifications); and *Hydro Resources, Inc.,* CLI-01-4, 53 NRC 31 (2001) (NEPA and environmental justice).

[6] *See, e.g., Hydro Resources Inc.*, LBP-05-17, 62 NRC 77 (2005) (addressing site specific issues in Phase II); *Hydro Resources Inc.*, CLI-06-1, 63 NRC 1 (2006) (denying review of LBP-05-17); *Hydro Resources Inc.*, CLI-06-29, 64 NRC 417 (2006) (resolving remaining Phase II issues).

adequate for Church Rock Section 8, and that the NEPA cultural-resources analysis was sufficient).

- *Hydro Resources, Inc*. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-99-30, 50 NRC 77 (1999) (rejecting challenges to HRI's Church Rock Section 8 uranium project; finding reasonable assurance that groundwater and drinking water would be protected via the site geology, monitoring, restoration requirements, and license conditions, and that the NRC's FEIS adequately addressed complied with NEPA) (*aff'd in part in Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174)*,* CLI-01-4, 53 NRC 31 (2001)).
- *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313)*,* LBP-05-17, 62 NRC 77 (2005) (upholding HRI's license for the Section 17, Unit 1, and Crownpoint sites; finding reasonable assurance that groundwater would be protected and restored and that the monitoring and financial-assurance requirements were adequate; and directing revisions to the secondary uranium restoration standard and certain cost estimates). The Commission denied review of this decision in *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-1, 63 NRC 1 (2006).
- *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-05-26, 62 NRC 442 (2005) (rejecting NHPA and NEPA cultural-resource challenges, accepting the phased Section 106 approach under the rules applicable when NRC licensed the project and finding the FEIS cultural-resource discussion adequate). The Commission denied review of this decision in *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483 (2006).

- *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53 (2006) (rejecting the remaining challenges to the adequacy of the Section 17, Unit 1, and Crownpoint FEIS including claims that the FEIS does not adequately consider cumulative effects on groundwater.) The Commission denied review in *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-29, 64 NRC 417 (2006) and rejected the claim that the Presiding Officer failed to consider groundwater migration through mine workings.

Although the NRC license is active, commercial ISR operations were never initiated, and the project has remained in pre-operational status. In 2018, the NRC approved the licensee's name change from HRI to NuFuels.

In accordance with 10 C.F.R. Parts 40 and 51, NuFuels submitted the present Application to renew License SUA-1580, including an updated Environmental Report ("ER"), an updated Consolidated Operations Plan ("COP"), and supporting technical information (collectively, the "Application").[7] Consistent with the renewal framework established by 10 C.F.R. § 51.60(a), the Application incorporates portions of the prior licensing record while updating and supplementing that information to reflect changes relevant to renewal.

The NRC Staff received the renewal Application and issued Requests for Supplemental Information ("RSIs"), to which NuFuels responded.[8] The Staff then accepted the renewal Application and commenced its detailed technical, environmental, and safety evaluations.

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[7] *See supra* n. 1.

[8] *See, e.g.,* J. Leftwich (NuFuels) to K. Haye (NRC), *Responses to Request for Supplemental Information the Acceptance Review of the License Renewal Application, NuFuels, Inc. Crownpoint Uranium Project, McKinley County, New Mexico* (SUA-1580, NRC Docket No. 040-08968) (Jun. 30, 2025) (ADAMS Accession No. ML25182A330); J. Leftwich (NuFuels) to J. Marshall (NRC), *Response to NRC Request for Supplemental Information (RSI) NuFuels Inc. – Churchrock/Crownpoint ISR Project-License NRC License: SUA-1580* (Dec. 11, 2025) (ADAMS Accession No. ML25350C307).

During the course of that review, the Staff issued Requests for Additional Information ("RAIs"),[9] some of which remain pending with NuFuels. Finally, on July 27, 2026, the State of New Mexico filed its Petition, which proffered ten environmental contentions and three safety contentions claiming to challenge various aspects of the renewal Application.

II. Legal Background

A. Standing

The Atomic Energy Act ("AEA") allows individuals "whose interest may be affected by the proceeding" to intervene in NRC licensing proceedings.[10] To be granted a hearing, a petitioner must first demonstrate standing to intervene.[11] In determining whether a petitioner has demonstrated adequate standing, the Commission has long applied judicial concepts, requiring a petitioner to demonstrate (i) an actual or threatened, concrete and particularized injury that is (ii) fairly traceable to the challenged licensing action, and is (iii) likely to be redressed by a favorable decision.[12]

Under § 2.309(d), a petition must identify the petitioner and explain: (1) the nature of the petitioner's right under the AEA to be made a party; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of the licensing decision on that interest.

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[9] *See, e.g.,* R. Sun (NRC) to J. Leftwich (NuFuels), *Request for Additional Information to Support the Review of the NuFuels License Renewal Application for the Crownpoint Uranium Recovery Project. McKinley County, New Mexic*o *(SUA-1580, Docket No. 040-08968)* (Jul. 9, 2026) (ADAMS Accession No. ML26191A309).

[10] 42 U.S.C. § 2239(a).

[11] 10 C.F.R. § 2.309(d).

[12] *Calvert Cliffs 3 Nuclear Project, LLC, et. al.* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) ("[i]n assessing whether a petitioner has standing, we have long applied 'contemporaneous judicial concepts of standing.'").

B. Contention Admissibility Standards

To be granted a hearing, a petitioner must also propose at least one admissible contention that meets the standards of 10 C.F.R. § 2.309(f)(1).[13] Contention admissibility standards are deliberately strict and intended to ensure that hearings are reserved for genuine, material disputes rather than generalized objections or requests for further inquiry. In 1989, the Commission raised its contention-admissibility standards to "obviate serious hearing delays caused in the past by poorly defined or supported contentions."[14] The Commission subsequently explained that, prior to those amendments, "delays – of months or years – occurred, as licensing boards admitted and then sifted through poorly defined or supported contentions."[15] As a result of the heightened standards, each proposed contention must satisfy every requirement of 10 C.F.R. § 2.309(f)(1). Failure to satisfy any one element renders a proposed contention inadmissible. Under the standards in 10 C.F.R. § 2.309(f)(1), each contention must:

> (i) provide a specific statement of law or fact to be raised or controverted for which nonconformance would be contrary to providing reasonable assurance of adequate protection of public health and safety;
>
> (ii) provide a brief explanation of the basis for the contention;
>
> (iii) demonstrate that the issue raised is within the scope of the proceeding;
>
> (iv) demonstrate that the issue raised is material to the findings the NRC must make;
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> (v) provide a concise statement of the alleged facts or expert opinions which support the petitioner's position; and
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> (vi) provide sufficient information to show that a genuine dispute exists on a material issue of law or fact.[16]

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[13] 10 C.F.R. § 2.309(f)(1).

[14] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999).

[15] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Oconee,* CLI-99-11, 49 NRC at 334).

[16] 10 C.F.R. § 2.309(f)(1)(i)-(vi).

Admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].[17] Furthermore, admissible contentions must demonstrate that there is a genuine dispute over a "material" issue of law or fact. The Commission has defined a "material" issue as one where "resolution of the dispute would make a difference in the outcome of the license proceeding."[18] Under this standard,

> [A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that "an 'inquiry in depth' is appropriate.[19]

A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts."[20] Similarly, it is not sufficient to argue that additional studies could have been performed or that a different methodology would have been preferable. Rather, the petitioner must explain why the application, as submitted, is insufficient to permit the NRC to make the findings required by the Atomic Energy Act, NEPA, or the Commission's regulations.

Where a contention relies on expert opinion, the petition itself must explain how that opinion satisfies the Commission's pleading requirements. Although § 2.309(f)(1)(v) expressly

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[17] *Millstone*, CLI-01-24, 54 NRC at 359-60.

[18] *Oconee,* CLI-99-11, 49 NRC at 333-334 (citing Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, Final Rule, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989)).

[19] *Connecticut Bankers Association v. Board of Governors of Fed. Rsrv. Sys.*, 627 F.2d 245, 251 (D.C. Cir. 1980); *see also Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41, *motion to vacate denied*, CLI-98-15, 48 NRC 45, 56 (1998) ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions.").

[20] 54 Fed. Reg. at 33,171. *See also Duke Power Co., et al.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983) ("[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the [Atomic Energy] Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.").

contemplates reliance on expert testimony, a petitioner may not simply attach an expert declaration and incorporate it by reference, leaving the Board to determine how the declaration supports the individual elements of § 2.309(f)(1).[21] The petition must identify the specific portions of the expert's opinion on which it relies and explain how those opinions establish materiality, factual support, and a genuine dispute with the application. Likewise, the existence of NRC Requests for Additional Information ("RAIs") or Requests for Supplemental Information ("RSIs") does not itself establish an admissible contention.[22] Such requests are part of the ordinary iterative licensing process and may demonstrate that a subject is relevant to the Staff's review, but they are not Staff findings that the application is deficient and cannot substitute for the petitioner's independent obligation to satisfy § 2.309(f)(1).[23]

C. NEPA Standard

The National Environmental Policy Act ("NEPA") is intended to ensure that federal agencies consider the relevant environmental consequences of a proposed action before making its decision. NEPA requires that agencies, including the NRC, prepare an Environmental Impact Statement ("EIS") which takes a "hard look" at the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.[24]

However, NEPA is a "purely procedural statute" that "imposes no substantive environmental obligations or restrictions."[25] It "'does not mandate particular results, but simply

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[21] "[I]t is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply 'infer' unarticulated bases of contentions." *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006).

[22] *Oconee*, CLI-99-11, 49 NRC at 336 ("Petitioners must do more than 'rest on [the] mere existence' of RAIs as the basis for their contention.").

[23] *Id*. ("The NRC's issuance of RAIs does not alone establish deficiencies in the application, or that the NRC staff will go on to find any of the applicant's clarifications, justifications, or other responses to be unsatisfactory.").

[24] *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

[25] *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168, 173 (2025).

prescribes the necessary process' for an agency's environmental review of a project."[26] Ultimately, the agency is not required to select the environmentally preferable alternative, eliminate all adverse effects, or resolve every scientific uncertainty. Under NEPA, "an agency's only obligation is to prepare an adequate report."[27] The existence of residual scientific uncertainty does not, standing alone, establish a material deficiency under NEPA. An EIS "is not intended to be 'a research document.'"[28] Accordingly, NEPA does not demand virtually infinite study and resources.[29] Therefore, it is insufficient for a petitioner to claim that more study or data should be included in the environmental analysis. Instead, a petitioner must explain why the identified uncertainty leaves the NRC without sufficient information to evaluate a reasonably foreseeable environmental effect and make the determination required by NEPA and Part 51.

The U.S. Supreme Court's recent decision in *Seven County* further informs the permissible scope and level of detail of the NRC's NEPA review. The NRC must focus on the environmental effects of the project before it,[30] not separate projects or regulatory actions that are distinct in time or place, undertaken by third parties, and controlled by other sovereigns or agencies.[31] "The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency's decisionmaking process or that it is reasonable to hold the agency responsible for those effects."[32]

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[26] *Seven County*, 605 U.S. at 177 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

[27] *Id*. at 180.

[28] *Entergy Nuclear Generation Co., et. al.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 NRC 202, 208 (2010).

[29] *Entergy Nuclear Generation Co., et. al.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010).

[30] *Seven County*, 605 U.S. at 192 ("Courts should review an agency's EIS to check that it addresses the environmental effects of the project at hand. The EIS need not address the effects of separate projects.").

[31] *Id*. at 188-189.

[32] *Id*. at 187.

For an NRC materials-license proceeding, the applicant's obligations are principally defined by 10 C.F.R. §§ 51.45 and 51.60. Section 51.45 requires the Environmental Report to describe the proposed action and the affected environment, and to discuss the action's impacts in proportion to their significance, unavoidable adverse effects, reasonable alternatives, long-term environmental consequences, and irreversible commitments of resources. The report must balance the environmental effects of the proposed action and alternatives, consider measures for reducing or avoiding adverse effects, contain sufficient data to aid the NRC's independent analysis, and disclose adverse as well as favorable information.[33]

III. Argument

A. Standing

NuFuels does not object to the State of New Mexico's standing demonstration. However, as detailed in the remainder of this section, the State's intervention petition and request for hearing must be denied because the State has failed to proffer an admissible contention.[34]

B. Matters Decided in the Initial Licensing Proceeding Are Either Outside the Scope of this Renewal Proceeding or Subject to Issue Preclusion

Recent Commission precedent in an ISR license renewal proceedings explicitly holds that "a license renewal proceeding looks at any new information or changed circumstances relating to the licensed operation, and unless there is new information or changed circumstances, matters decided in the initial proceeding are outside the scope of a renewal proceeding."[35] Contrary to this standard, the State seeks to raise many issues already reviewed by the NRC Staff in the

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[33] 10 C.F.R. § 51.45(b)–(e).

[34] NuFuels is not responding to the State's request for alternative standing or government participation because the State has failed to proffer an admissible contention, requiring denial of the Petition, and no other party has submitted a petition that would necessitate a hearing.

[35] *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-25-05, __ NRC __, slip op. at 6 (2025). Similar to the circumstances here, the ISR facility in *Powertech* had received its license over ten years prior to the Commission's decision here, but construction of the project had not yet begun. *Id*., slip op at 1-2.

initial license and often already adjudicated before a Board. These contentions are outside the scope of this license renewal proceeding absent a demonstration of new information or changed circumstances, which the State has not provided. Indeed, the State has entirely ignored the relevant history and precedent for its contentions that raise issues from the initial license or prior adjudication. The Board should summarily reject contentions where the State has failed to distinguish or even address relevant history or precedent resolving the issues. [36]

For one example, the State's Petition and its supporting Declaration from Dr. Abitz refer to the "Mobil Section 9 in situ pilot test" in multiple locations across both documents.[37] According to Dr. Abitz's Declaration and his accompanying list of references, this pilot test was documented in a report published nearly 40 years ago in 1988 prior to the issuance of the initial license.[38] Whatever the pilot test's results, it cannot be new information or changed circumstances supporting admission of a contention today.

The Board should also apply collateral estoppel to prevent the reuse of old testimony by the State's declarant, Dr. Abitz, in this case. Collateral estoppel "applies to factual determinations as well as purely legal rulings and holds that 'once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.'"[39] The State of New Mexico was not involved in the prior proceeding, so it is not collaterally estopped from pursuing its claims.[40] However, the State's declarant Dr. Abitz *was* involved in

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[36] *Hydro Res., Inc.*, LBP-06-1, 63 NRC 41, 59 (2006), *aff'd*, CLI-06-14, 63 NRC 510 (2006) (previous decisions have the power to persuade).

[37] *See* Petition at 13, 16; Abitz Decl. at ¶¶ 8, 9, 10, 12, 22, 24 (Contention EC-1) and 45 (Contention SC-3).

[38] Abitz Decl. at ¶¶ 6, 8.

[39] *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-26-6, __ NRC __ slip op. at 22 (2026) (dissent, Chairman Nieh) (citing *Montana v. United States*, 440 U.S. 147, 153 (1979)).

[40] *See Morris v. U.S. Nuclear Regulatory Commission*, 598 F.3d 677 (10th Cir. 2010) (identifying ENDAUM, SRIC, Marilyn Morris, and Grace Sam as the petitioners challenging NRC's licensing decision).

the prior proceeding and is relying on testimony from the prior proceeding to try and support claims here.[41] An expert should not be permitted to resurrect old, previously adjudicated testimony under the name of a new party, and collateral estoppel should apply to the Abitz declaration where it repeats prior evidence.

Finally, even beyond issues resolved on the merits, prior decisions on contention admissibility should be considered persuasive.

C. The State's Environmental Contentions Fail to Meet the Admissibility Standards.

The State's Environmental Contentions, EC-1 to EC-10, fail to meet the NRC's contention admissibility standards for a variety of individual reasons set forth below. However, across these ten environmental contentions, the State only once mentions an environmental impact conclusion from the ER, when it broadly asserts that "[r]estoration feasibility is the central environmental premise of every ISR licensing: every SMALL or not-significant groundwater impact conclusion in the ER depends on it."[42] Otherwise, instead of identifying specific impacts or conclusions, the State resorts to listing sections of the ER that it allegedly disputes.[43] These laundry lists of section references do not provide "references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes" and the State's combination of numerous disparate arguments in a single materiality section is insufficient to establish "supporting reasons for each dispute."[44] The State's wholesale failure to challenge any specific conclusions in the ER is also insufficient to

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[41] Abitz relies on a 2005 Declaration from Dr. Spencer G. Lucas in support of Contentions EC-1, EC-2, SC-1, and SC-2 and a 2005 Declaration from Michael G. Wallace in support of Contention EC-2.

[42] Petition at 15.

[43] *See, e.g.,* Section E of the various contentions list either multiple pages or ER sections.

[44] 10 C.F.R. § 2.309(f)(1)(vi).

establish the materiality of its claims.[45] While the State repeatedly asserts that omitted information must be provided, it fails to establish that any omitted information would make a material difference in the environmental impact analyses.[46]

The State also broadly fails to provide factual and expert support for its various contentions. While the individual contentions are addressed in more detail below, the State plainly lacks any factual or expert support establishing an in-scope dispute in contentions EC-3, EC-4, EC-5, EC-6, EC-8, EC-9, and EC-10. The State's bare references to NRC RAIs, allegations of dated information, or attempts to "reserve[] the right to supplement" its contentions cannot support an admissible contention for the reasons set forth herein.

1. Contention EC-1 [Failure to Demonstrate the Feasibility of Aquifer Restoration] is Inadmissible for Raising Issues Outside the Scope of this Proceeding, for Being Inadequately Supported, and for Failing to Raise a Genuine Dispute on a Material Issue

The State's Contention 1 alleges that the Application uses non-representative data to establish the restoration baseline, fails to evaluate the environmental impacts if restoration meets the ER's "fallback" standards, and relies on NRC data from 2009. This contention is outside the scope of this proceeding because it seeks to raise issues from the initial licensing proceeding, and inadmissible for failing to raise a genuine material dispute with the Application, lacking adequate support, and for raising issues outside the scope of this proceeding.

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[45] *Id*.

[46] *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 325 (In the case of a contention of omission, "the initial burden of showing whether the contention meets our admissibility standards still lies with the petitioner").

a. The State Should Not Be Allowed to Re-litigate the Established Restoration Standards while Ignoring the Relevant Portion of the License

As an initial matter, Contention 1 should be rejected as outside the scope of this license renewal proceeding for attempting to reopen issues that were resolved in the prior proceeding and preserved as a License Condition (LC) on the initial license.[47]

The initial licensing proceeding already addressed the proposed restoration standards, resulting in LC 10.21(A), which established the primary and secondary groundwater restoration goals. LC10.21(A) states in relevant part:

> The licensee shall establish groundwater restoration goals by analyzing three independently collected groundwater samples of formation water from: (1) each monitor well in the well field; and (2) a minimum of one production/injection well per acre of well field. Samples shall be collected a minimum of 14 days apart from each other. Groundwater restoration goals shall be established on a parameter-by- parameter basis, with the primary restoration goal to return all parameters to average pre-lixiviant injection conditions. If groundwater quality parameters cannot be returned to average pre-lixiviant injection levels, the secondary goal shall be to return groundwater quality to the maximum concentration limits as specified in the U.S. Environmental Protection Agency (EPA) secondary and primary drinking water regulations. The secondary restoration goal for barium and fluoride shall be set to the State of New Mexico primary drinking water standard.[48]

This LC addresses the collection of baseline measurements (LC 10.21), while another license condition addresses the upper control limits (UCLs) for specified groundwater parameters (LC 10.22). As was previously decided, these "license conditions – coupled with the procedural protocol mandated in [licensee's] Consolidated Operations Plan (COP) § 8.6 – provide a highly detailed, prescriptive methodology for establishing groundwater baselines and UCLs."[49] The

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[47] *Powertech*, CLI-25-05, __ NRC __ slip op. at 6.

[48] SUA-1580, LC 10.21(A); *see also Hydro Res., Inc.*, LBP-05-17, 62 NRC at 125 (directing the license be revised to reduce the secondary groundwater restoration standard for uranium from 0.44 mg/L to 0.03 mg/L), *review denied*, *Hydro Res., Inc.*, CLI-06-1, 63 NRC 1 (2006).

[49] *Hydro Res., Inc.*, LBP-05-17, 62 NRC at 93 (footnote omitted).

State has failed to address that history or set forth any new information or changed circumstances sufficient to make this an appropriate issue for review on license renewal.

The State has also failed to "identify any flaws, omissions, or irregularities that could erroneously affect the determination of groundwater baselines and UCLs and thereby endanger public health or safety" sufficient to make the issue litigable, if it were not already out of scope.[50] In short, although styled as an environmental contention purportedly seeking to challenge a NEPA analysis, Contention EC-1 is actually an attempt to reopen already resolved safety issues without addressing or disputing the most relevant portion of the existing license: the license conditions discussed above. That alone means the Contention fails to raise a genuine dispute on a material issue and is sufficient reason alone to reject the Contention.

Nonetheless, setting aside the fact that this issue is outside the scope of a renewal proceeding and the State's broad failure to address the relevant portion of the license, each individual claim within Contention EC-1 is also inadmissible either for failing to raise a genuine dispute on a material issue of law or fact, or for raising issues outside the scope of this proceeding.

b. The State's Claims Protesting the Use of Secondary Restoration Goals Are Inadmissible as Contrary to NRC Regulations

Contention EC-1 alleges that the Application fails to comply with 10 C.F.R. Part 40, Appendix A, Criterion 5B(5) because the Application purportedly "fails to demonstrate that groundwater in the Westwater Canyon aquifer production zones can be restored to the primary restoration standards [in Criterion 5B(5)]" and includes a secondary restoration goal.[51]More

[50] *Hydro Res., Inc.*, LBP-05-17, 62 NRC at 93-94.

[51] Petition at 12. To the extent that the State and Dr. Abitz are alleging that NuFuels will not meet its license conditions, whether because of NuFuels statements from 2023 regarding difficulty restoring constituents or Dr. Abitz various statements on alternative endpoints, such assertions are not enough to support an admissible

specifically, the State notes that, beyond Criterion 5B(5), the ER has a "secondary goal" "to return water quality to the maximum concentration limits as specified in Section 20.6.2.3103 NMAC or 40 C.F.R. § 141.62 or 143.3." The State then claims that (1) this is a "concession" that restoration to baseline may fail,[52] and (2) the Application fails to evaluate the impacts of these secondary goals.[53] These claims, however, do not raise issues within the scope of this proceeding and otherwise fail to raise a genuine dispute with the Application on a material issue of law or fact because they fail to demonstrate any deviation from NRC rules or requirements.

First, the contention's NEPA claim that the ER fails to "demonstrate" restoration to the primary standards fails to dispute the analysis in the ER and therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iv). NEPA does not require that the ER "demonstrate" any particular outcome, it only requires the preparation of an environmental report that evaluates the significant environmental effects of a proposed project.[54] Here the ER analyzes the environmental impact of NuFuels meeting either the primary or secondary standards, acknowledging that "[i]f the restoration activities are unable to achieve the background or maximum contaminant levels (whichever is greater) in Criterion 5(B)(5), NuFuels will return water quality to the maximum concentration limits as specified in Section 20.6.2.3103 NMAC or 40 C.F.R. § 141.62 or 143.3."[55] On that basis, the ER concludes that "potential impacts to the water quality of the production zone aquifer as a result of ISR operations will be expected to be SMALL and

contention. The NRC assumes that licensees will comply with regulatory requirements and the conditions of their licenses, and speculation of future non-compliance is insufficient to support an admissible contention. *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 ("[T]his agency has declined to assume that licensees will contravene our regulations.").

[52] Petition at 12.

[53] *Id*. at 12-13.

[54] *Seven County*, 605 U.S. at 172.

[55] ER § 4.4.2.1.1.2.1, at 225.

temporary."[56] Aside from a broad claim that "restoration feasibility is the central environmental premise" and "every SMALL or not-significant ground water impact conclusion in the ER depends on it," the State has done nothing to dispute the conclusion that either restoration standard will result in impacts that are small and temporary.

Second, to the extent that the State is alleging NuFuels must meet the primary standards under the NRC's rules, the State fails to raise a genuine dispute on a material issue because it ignores what is expressly permitted in Part 40 Appendix A Criterion 5B(6). That Criterion explicitly allows the use of alternatives to baseline so long as the Commission "finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded."[57] Here, NuFuels has proposed an alternative that meets either the EPA requirements in 40 C.F.R. § 141.62 or 143.3 or the State's own standards in Section 20.6.2.3103 NMAC. The State has not attempted to demonstrate that these separate regulatory regimes applicable to drinking water[58] would allow constituents in concentrations sufficient to pose a substantial present or potential hazard to human health or the environment, such that the Application does not comply with Criterion 5B(6). The State also has not established how compliance with EPA's or the State's own drinking water standards would result in an environmental impact beyond that already analyzed or dispute any specific conclusion in the Environmental Report. Finally, to the extent

[56] *Id.*

[57] 10 C.F.R. Part 40, Appendix A, Criterion 5B(6).

[58] 40 C.F.R. Part 141 Subpart G sets forth national primary drinking water regulations. 40 C.F.R. § 141.62 establishes maximum contaminant levels for inorganic contaminants. 40 C.F.R. § 141.63 establishes maximum contaminant levels for microbiological contaminants. 40 C.F.R. § 141.66(e) establishes maximum contaminant levels for uranium. Section 20.6.2.3103 of the New Mexico Administrative Code provides standards for ground water of 10,0000 mg/l TDS concentrations or less.

that the State is challenging NuFuels ability to meet the secondary standards, the NRC "may properly assume that an applicant or licensee will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities."[59]

The State further doubts the ability of NuFuels to complete remediation as described in the Application because NuFuels has stated to the Department of Energy ("DOE") that sites typically receive an alternative concentration limit for at least one constituent.[60] This likewise fails to raise a genuine dispute on a material issue of fact or law because the ER contemplates and Criterion 5B(6) allows the use of alternative concentration limits. However, it is worth noting that these filings with the DOE discuss NuFuels' efforts to improve the state of the art in groundwater remediation and to prevent the need for alternative concentration limits going forward.

c. The State's Claims Regarding the Need for Additional Data Are Inadmissible as Failing to Raise a Genuine Dispute on a Material Issue with the Application

The State also claims that the Application either disregards historical data, particularly the six-year remediation timeline at one site in the 1980s,[61] or over-relies on historical data like the NRC's "Data on Groundwater Impacts at the Existing ISR Facilities" (NRC 2009b).[62] The Board should not admit Contention EC-1 purely for the purpose of flyspecking the Application's data. Nonetheless, neither of these issues raises a genuine dispute with the Application. The six-year timeline referenced by the State is within the range of the 2.5 to 13.3-year timelines given in

[59] *Progress Energy Florida, Inc.* (Levy County Nuclear Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 217-18 (2013) (citations omitted).

[60] Petition at 14.

[61] *Id*. at 13.

[62] *Id*. at 13-14.

the Application,[63] and the State does nothing to establish why the six-year timeline at a single site from the 1980s should govern over the Application's estimates. The Abitz Declaration argues that this six-year timeline is relevant because the restoration timeline was longer than the production time;[64] however, neither the Contention nor the Declaration specify how a change in the restoration timeline is material to the NRC's decision-making in issuing the renewed license.

The State's challenge to the NRC's 2009 report, *Data on Groundwater Impacts at the Existing ISR Facilities* is similarly flawed.[65] Contention EC-1 states that there is more recent data than included in the 2009 document but fails to point to any specific portion of the Application in dispute. Indeed, the 2009 document is only referenced once as background information in Section 2.2.3.5, where the Application quotes the conclusion of the report:

> Based on a review of historical licensing documentation, the number of excursions reported for the three existing NRC-licensed operating facilities and the duration of the excursions constitute a small percentage of the total number of samples analyzed over that period. The data indicate that excursions have been controlled by the pumping and injection processes. In some cases, the excursions continued for several years. The impact to groundwater was investigated for each long-term excursion and it was determined that the associated impact did not pose a threat to human health or the environment.[66]

While Contention EC-1 asserts that the data in the NRC's report should be updated, the Abitz Declaration acknowledges that not much has changed as "the restoration difficulties the NRC documented in 2009 were not subsequently overcome,"[67] and the State itself is relying on older data from the 1980s. Neither the Contention nor the Abitz Declaration challenge the report's

[63] ER § 2.1.3.1, at 18.

[64] Abitz Decl. ¶ 9.

[65] The State's contention does not establish whether it is challenging NRC, NUREG-1910, *Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities* (May 2009) or NRC, *Data on Groundwater Impacts at the Existing ISR Facilitie*s (2009). This alone is sufficient reason to reject this claim. However, we have assumed that the State intended to challenge *Data on Groundwater Impacts at the Existing ISR Facilitie*s because that document is referenced in the Abitz Declaration.

[66] ER § 2.2.3.5, at 48.

[67] Abitz Decl. at ¶16.

ultimate conclusion that even in the case of long-term excursions there was no threat to human health or the environment.

Finally, the Contention's mere reference to NRC Staff RAIs on related issues[68] does not support admitting the contention.[69] The State cannot rely solely on the existence of Staff RAIs and must show a genuine dispute on a material issue, which it has failed to do here.

d. The State's Claim that the Baseline Measurements Are Invalid Is Inadmissible as Failing to Dispute the Application

Contention EC-1 also alleges that the Application uses non-representative data to establish the restoration baseline based on an analysis of Tables 3.4-7, 3.4-8 and 3.4-14 in the Abitz Declaration.[70] Based solely on those tables, the Abitz Declaration identifies a few values that exceed the MCL and opines that "it is common in the ISR industry to develop baseline in the production area by screening the well only through the ore zone, which has been disturbed and oxidized by well drilling and development."[71] The Declaration observes that "[t]he dissolution of reduced uranium ore minerals is enhanced when mechanical grinding of the drilling increases the surface area of the uranium ore minerals and oxygen is introduced by both the drilling fluid and air lifting to develop the well" before eventually concluding that the ER contains no description of the "of the consequences of using non-representative samples for establishing baseline values in groundwater" in various sections of the ER.[72]

This does not raise a genuine dispute with the Application. First, to the extent that Abitz and the State believe that the baseline values are included in Tables 3.4-7, 3.4-8 and 3.4-14, they

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[68] Petition at 15

[69] *Oconee*, CLI-99-11, 49 NRC at 336.

[70] Petition at 13; Abitz Decl. at ¶20.

[71] Abitz Decl. at ¶20.

[72] *Id*. at ¶¶ 20-23.

are not correct. The ER describes how baseline values will be set in the future[73] and states in part:

> LC 10.21 of SUA-1580 requires NuFuels to establish aquifer restoration goals by analyzing three independently collected samples of formation water from: (1) each monitor well in the well field and (2) a minimum of one production/injection well per acre of well field. Individual well samples will be collected at a minimum of 14 days apart and analyzed for the constituents listed in Table 6.2-1. The restoration goal for each of the constituents will be established by calculating the baseline mean of the data collected. The primary restoration goal will be to restore groundwater to groundwater protections standards contained in Criterion 5(B)(5) on a constituent-by-constituent basis using [Best Practicable Technology (BPT)]. If the restoration activities are unable to achieve the background or MCL, whichever is greater, in Criterion 5(B)(5), NuFuels will return water quality to the maximum concentration limits as specified in Section 20.6.2.3103 NMAC or 40 CFR § 141.62 or 143.3.[74]

The Contention and Dr. Abitz fail to mention, let alone dispute, this method specified in the ER for establishing baseline values in the future, and Dr. Abitz's allegations regarding general practices "common" in the ISR industry do not dispute the content of the Application.

e. The State's Claims Regarding the Groundwater Discharge Permit and NMAC Standards Are Inadmissible and Fail to Raise a Dispute on a Material Issue

Finally, Contention 1 alleges that the State will not issue the groundwater discharge permit, will dispute an EPA aquifer exemption, and will not accept the use of 20.6.2.3103 NMAC, and claims that the "ER must disclose and analyze the impacts of this regulatory reality."[75] This alleged regulatory reality does not raise a genuine dispute on a material issue. If the State does not issue permits, the facility does not receive an aquifer exemption, or the State does not accept the use of its own promulgated standards, then this project will simply fail to

[73] A Board previously affirmed the use of license conditions to set forth a method for establishing baseline values. *See Hydro Res., Inc.*, LBP-05-17, 62 NRC 92-95.

[74] ER § 6.2.1.1, at 304.

[75] Petition at 14-15. To the extent that the State disputes EPA authority over the aquifer exemption, such a dispute regarding the jurisdiction of other regulatory bodies is outside the scope of this NRC proceeding. *See, e.g., Hydro Res., Inc.*, LBP-05-17, 62 NRC at 90 n.5.

move forward. This would not change the conclusions of the ER, and, thus, the State fails to raise a genuine dispute with the Application on a material issue of law or fact.

For all of the foregoing reasons, Contention EC-1 is inadmissible.

2. *Contention EC-2 [Outdated Hydrogeologic Data] is Inadmissible for Lack of Adequate Support and for Failing to Raise a Genuine Dispute on a Material Issue.*

The State's Contention EC-2 alleges that the Application relies on outdated hydrogeologic data and modelling. Contention EC-2 is inadmissible for being inadequately supported and for failing to raise a genuine dispute with the Application as required by 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

Contention EC-2 relies on the existence of NRC Staff RAIs requesting additional hydrogeological data to claim that the Application is inadequate. NuFuels recognizes that the NRC has asked for additional hydrogeologic data, and it will submit that updated data once available as requested. However, it is not enough for the State to repackage the NRC's RAI as a contention without additional justification or support. It is the State's "job to review the application and to identify <u>what</u> deficiencies exist and to explain <u>why</u> the deficiencies raise material safety concerns."[76] Yet, a review of Contention EC-2 indicates that nearly all of its assertions are derived merely from the existence of NRC RAIs.

The only exceptions to the State's use of RAIs are summary references to the Abitz Declaration to assert that "[f]ifteen years of regional drought, water development (including the Navajo-Gallup Water Supply Project, ER § 3.4.3.1.1 at 106), and changed water use are unexamined."[77] This summary reference to information buried in the Abitz Declaration is not

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[76] *Oconee*, CLI-99-11, 49 NRC at 337 (1999).
[77] Petition at 17 (citing Abitz Declaration at ¶¶ 25-31).

enough to make an admissible contention.[78] "[I]t is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves."[79] The State must specifically identify how its claims of unexamined issues raise a genuine dispute with the Application on a material issue of law or fact. Here the State does not even address the ER's analysis of the Navajo-Gallup Water Supply Project and 2012 collaborative study with the Navajo Nation and the City of Gallup, concluding that "there is no discernible risk that ISR activities will adversely affect groundwater allocated for the Navajo-Gallup Water Supply Project" and "existing Gallup, Fort Wingate, Rehoboth, and Navajo Nation water wells will not be impacted by Church Rock Section 8 ISR activities."[80] That analysis, and the updated well information in Section 3.4.3.3.3, remain undisputed.

Indeed, the State's mere assertion of "unexamined" issues or stale data is not enough to form an admissible contention. Beyond merely referencing the dates of information, the State has "failed to provide any information (including expert reports) showing that [the data is stale], or even raising a question as to whether, newer specific data is available, much less that it would be materially different."[81] While the State has provided an expert report in the form of the Abitz Declaration, Dr. Abitz merely asserts that "[g]roundwater levels have *likely* decreased in wells installed at Unit 1 and Crownpoint 2"[82] without addressing the data through 2011 contained in

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[78] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-24-8, 100 NRC 95 (2024) (In rejecting Miami Waterkeeper's contentions, the Board repeatedly emphasized that generalized references to supporting information were insufficient where the petitioner failed to identify the particular portion of the NRC Staff's analysis being challenged and explain why the cited information rendered that analysis inadequate) (Review denied: *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-26-2, slip op. at 7 (Mar. 4, 2026).).

[79] *USEC Inc.*, CLI-06-10, 63 NRC at 457.

[80] ER § 3.4.3.1.1, at 106.

[81] *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-25-3, at 101 NRC 56, 111 (2025).

[82] Abitz Decl. at ¶ 27 (emphasis added).

the ER[83] or providing any other data in support.[84] This is not enough. "[N]either mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention."[85]

The Abitz Declaration is also flawed for simply repeating content from the NRC's RAIs. In fact, it appears that paragraphs 25, 26, and 29 either repeat the content of NRC guidance or the RAIs. Nor do the remaining paragraphs raise a genuine dispute on a material issue either. Instead, Abitz Declaration Paragraphs 27, 28, 30, and 31 are challenges to the existing license conditions, or issues previously adjudicated, and therefore raise issues outside the scope of this proceeding.[86] Paragraph 27 purports to question the Application's "data to support conclusions concerning the local ground-water flow system, based on well borings, core samples, water-level measurements, pumping tests, laboratory tests, soil surveys, and other methods," particularly as it relates to pump tests and drawdown models. However, the information in the Application is not intended to establish the final characterization of groundwater before mining. Indeed, "[p]ursuant to LC 10.23, [NuFuels] must – before injecting lixiviant into the well field – perform

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[83] ER § 3.4.3.3.3, at 112.

[84] Dr. Abitz asserts in a single footnote that "[a]t USGS monitoring location 35423510817073, approximately 5 mi northwest of Crownpoint, the water level in an unidentified aquifer above the Westwater Canyon aquifer decreased over 100 ft between 2009 and the present (www.usgs.gov/apps/ngwmn/index.jsp), indicating it is probable that water in the Westwater Canyon aquifer also decreased." Declaration at n.2. There is no USGS monitoring station with that exact number, but the water level at Station 354235108170703 in McKinley County has lowered about 10 feet since 2009. USGS, Station 354235108170703 Data, available at https://waterdata.usgs.gov/monitoring-location/USGS-354235108170703#dataTypeId=measurements-72019-0&period=periodOfRecord (last accessed Aug. 21, 2026). Water level at the other USGS monitoring station in the McKinley County, Station 354235108170702, has risen a little over 10 feet in the same timeframe. USGS, Station 354235108170702 Data, https://waterdata.usgs.gov/monitoring-location/USGS-354235108170702#dataTypeId=measurements-72019-0&period=periodOfRecord (last accessed Aug. 21, 2026). Since Dr. Abitz did not provide sufficient information to confirm the alleged 100 ft decrease, and the USGS website appears to contradict his claims, the Board should disregard his footnote 2. In addition, any further attempts to buttress this claim on Reply should be stricken since NuFuels will not have an opportunity to examine and contest new information.

[85] *Southern Nuclear Operating Co*. (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007) (citing *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)).

[86] *Powertech*, CLI-25-05, slip op. at 6.

groundwater pump tests to determine if the aquitards overlying and underlying the Westwater Aquifer provide an adequate containment layer."[87] These pump tests are also only one "integral part of a multi-faceted and ongoing process designed to provide a 'reasonable assurance' that vertical excursions of lixiviant outside the Westwater Aquifer will not occur."[88] Neither the Abitz Declaration nor the State address this information in the Application or explain how updating data in the ER would impact the work to be performed as authorized under LC 10.23.

Paragraph 28 likewise claims that the passage of time requires a reevaluation of baseline conditions for remediation. However, as discussed in response to Contention EC-1, the baseline conditions have not yet been established, and will not be established until close to operations as required by LC 10.21.[89] The Abitz Declaration does nothing to challenge that fact or even address the process intended to establish baseline conditions and thus fails to controvert the Application.

Paragraph 30 relies on expert witness testimony from the prior proceeding in this case in an effort to resurrect old claims on the hydrology of the Westwater Canyon aquifer. But the Abitz Declaration entirely ignores that "the hydrogeology of the Westwater Aquifer has been

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[87] *Hydro Res., Inc.*, LBP-05-17, 62 NRC at 100.

[88] *Hydro Res., Inc.*, LBP-05-17, 62 NRC at 100 (citation omitted).

[89] ER § 6.2.1.1, at 304; *see also* ER § 2.1.3.5.1.1, at 31 ("NuFuels will measure baseline water quality by collecting multiple water samples from representative production wells as required by LC 10.21 and described in Section 6.2.1 of this ER and Section 8.6.3 of the COP. NuFuels is committed to using the EPA's, 'Statistical Analysis of Ground-Water Monitoring Data at Resource Conservation and Recovery Act (RCRA) Facilities, Interim Guidance', for the treatment of outliers. However, unlike RCRA facilities, a known local anomaly is present in the rock associated with ISR operations (uranium mineralization, which is typically lognormally distributed), a strong geochemical interface is known to be present, and radionuclide constituents are present in the groundwater that is associated with this anomaly. Radionuclides are expected in a uranium ore body, and it is not reasonable to extract them from the data if they fail the outlier test. NuFuels will work with regulatory authorities to demonstrate that the EPA-sponsored ProUCL statistical program provides more representative baseline values.").

extensively litigated,"[90] and the Abitz Declaration does not address the prior decisions in this case, despite relying on old statements from the 2005 proceeding.

Finally, in Paragraph 31 the Abitz Declaration provides a wish list of tests and additional information but fails to address how those tests or information would change the fact that pump tests and baseline conditions are established at a later date in accordance with LC 10.21 and 10.23. Thus, this paragraph also fails to raise a genuine dispute with the Application and the Abitz Declaration overall does nothing to remedy the failings of Contention EC-2.

For all of the foregoing reasons, Contention EC-2 is inadmissible.

3. Contention EC-3 [Climate Change] is Inadmissible for Failing to Raise a Genuine Dispute on a Material Issue and for Lack of Adequate Support

The State's Contention EC-3 alleges that the Application contains no analysis of climate change or drought "in any respect."[91] More specifically, the Contention asserts that the Environmental Report fails to discuss "neither the effects of the region's hotter and drier climate on aquifer recharge, water availability, evaporation pond performance, and the project's restoration water balance, nor the greenhouse gas emissions of the proposed multi-decade project."[92] Contention EC-3 is inadmissible for lack of adequate support and because it fails to raise a genuine dispute with the Application under 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

Aside from general allegations, the State has provided no information suggesting that climate change or drought undercuts the cumulative impacts and water withdrawal analysis in the ER. The State must do more than merely assert that the ER fails to consider climate change

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[90] *Hydro Res., Inc.*, LBP-05-17, 62 NRC at 116. A presiding officer already determined that the Intervenors' characterization of the Westwater Aquifer as a heterogenous environment containing lengthy channels of high permeability was "without basis," *Hydro Res., Inc.,* LBP-99-30, 50 NRC at 88, and later Boards refused to relitigate this issue.

[91] Petition at 18.

[92] *Id*.

or drought, it must also explain why the missing information is required and how its omission creates a genuine dispute with the existing conclusions in the Application.[93] The State fails to do this. Further, while the Contention makes assertions concerning purported "climate-driven changes" that may occur in the region's climate, and whether "realistic climatic assumptions" are used in the environmental analysis,[94] the State nowhere provides any factual support for its bare assertions that the region's climate will be drier or hotter or alter the conclusions of the ER.[95]

Apparently acknowledging its failure to adequately support Contention EC-3, the State baldly asserts that "[n]o expert declaration is required to establish an omission apparent on the face of the ER."[96] However, the Commission's admissibility standards do require "a concise statement of the alleged facts or expert opinions which support the petitioner's position" and "sufficient information to show that a genuine dispute exists on a material issue of law or fact."[97] It does not suffice to merely cite to other sources of information outside the four corners of the

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[93] *Tennessee Valley Authority* (Clinch River Nuclear Site Early Site Permit Application), CLI-18-5, 87 NRC 119, 122 (2018) (a petitioner must "identify the information that is claimed to be missing and demonstrate why that information is required.").

[94] Petition at 18-19.

[95] The State briefly asserts that "[t]wo decades of Southwestern drought and aridification science postdate the 1997 FEIS and constitute new and significant information requiring analysis." Petition at 18. However, the State does not explain how those two asserted decades of drought would have an impact on this particular project or its environmental impacts, nor does the State provide any information near the license facility to back up its claims. Indeed, the USGS data does not appear to demonstrate any particular trend in groundwater near this licensed facility. *See supra* n.84. To the extent that the State is asserting the ER should study future risks of climate change, NuFuels is not required to speculate on worst case scenarios or engage with remote and speculative impacts. *Nuclear Fuel Servs., Inc.*, LBP-05-8, 61 NRC 202, 208 (2005) (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)).

[96] Petition at 18.

[97] 10 C.F.R. § 2.309(f)(1)(v)-(vi).

Petition, as the State does here.[98] Longstanding precedent holds that mere references to supporting information are not sufficient to support admission of a contention.[99]

Further, the ER affirmatively states that the "meteorology and climatology in the region of the CUP have not changed since the publication of the CUP FEIS in 1997."[100] The Contention provides no information challenging this statement. Having failed to provide new or updated information since issuance of the original license, the State fails to establish a challenge within the scope of license renewal.[101]

The State also fails to address relevant information contained in the ER. While the State asserts that the ER's "meteorology and climatology discussion characterizes regional climate using station records ending in 2010-2011 and contains no discussion of observed or projected change,"[102] the ER actually contains a number of references to climatological factors including high surface evaporation rates with data from 2024,[103] updated information on the frequency of thunderstorms through 2024,[104] updated information on average, minimum, and maximum temperatures through 2024,[105] and updated average precipitation from 2024.[106]

The State claims that the cumulative impacts discussion "is likewise silent" on climate change.[107] But the State must do more than merely assert that climate change may cause

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[98] Petition at 18 ("the sources cited will document the significance of the omitted subject") (referencing an assessment prepared by the U.S. Global Change Research Program); 19 (referring to the "publicly available climate assessments cited above").

[99] *USEC Inc.*, CLI-06-10, 63 NRC at 457 ("But it is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply 'infer' unarticulated bases of contention.").

[100] ER § 3.6.1, at 148.

[101] *Powertech*, CLI-25-05, slip op. at 6.

[102] Petition at 18.

[103] ER § 3.4.1.1, at 99.

[104] ER § 3.6.1.2, at 149.

[105] ER, tbl. 3.6-1, at 152.

[106] ER, tbl. 3.6-2, at 153.

[107] Petition at 18.

additional cumulative impacts from the project. The ER already acknowledges that the project has "the potential to make a significant contribution to cumulative impacts on groundwater in the region, but license conditions attached to SUA-1580 will mitigate these potential impacts."[108] The State does not dispute these statements. More importantly, the State does not address the license conditions intended to mitigate these impacts, including LC 10.27 which requires Applicant to replace the town of Crownpoint water supply wells prior to the commencing operations at the Crownpoint project area, and LC 10.28 which requires Applicant to demonstrate the results of a groundwater restoration demonstration at scale. Having failed to address these mitigating measures, the State fails to raise a genuine dispute with the Application.

The State's unsupported claim that the ER does not address the project's own greenhouse gas emissions also fails. The State fails to address the fact that the ER expressly evaluates transportation and non-transportation-related CO2 emissions across all phases of the project.[109] The ER further explains that these preliminary emissions estimates are based on updated EPA emission rates and are lower than the corresponding estimates in the 1997 FEIS.[110] Thus, contrary to the State's assertion, the ER specifically identifies and quantifies the CO2 emissions from combustion sources associated with the project. The Petition does not acknowledge this analysis or identify any errors in the emissions inventory. Instead, the State simply asserts that no analysis exists. Because that premise is directly contradicted by the ER itself, the contention fails to raise a genuine dispute.

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[108] ER § 2.2.3.5.1, at 49.

[109] ER, tbl. 4.6-1, at 237; *see also* ER, Addendum C, Preliminary Emissions Inventory.

[110] ER § 4.6.1.1.1, at 235.

Furthermore, NEPA requires the evaluation of the "*significant* environmental effects of a proposed project."[111] The State neither alleges nor provides any showing that the project's greenhouse gas emissions will be significant enough to warrant evaluation in the NEPA analysis.

Finally, the State has failed to establish any reason the NRC should require additional climate change or greenhouse gas emissions analysis in light of the Council on Environmental Quality's (CEQ's) withdrawal of its interim guidance on the consideration of greenhouse gas emissions and climate change.[112]

For all of the foregoing reasons, Contention EC-3 is inadmissible.

4. Contention EC-4 [Environmental Justice] is Inadmissible for Failing to Raise an Issue within the Scope of this Proceeding or a Genuine Dispute on a Material Issue and for Lacking Adequate Support

The State's Contention alleges that the Application fails to perform any environmental justice analysis in violation of 10 C.F.R. §§ 51.45(b) and (c) and 51.60(a).[113] Contention EC-4 should be rejected because it is outside the scope of this proceeding, lacks adequate support, and fails to raise a genuine dispute on a material issue, contrary to 10 C.F.R. §§ 2.309(f)(1)(iii), (v), and (vi).

a. Contention 4 is Outside the Scope of this Proceeding Because the NRC Formally Rescinded its Environmental Justice Policy Statement and Environmental Justice Strategy in 2025.

The Contention rests in part on the incorrect premise that the Application must include a stand-alone environmental justice analysis. The Petition states that EC-4 "challenges the adequacy of the ER's environmental justice analysis – a recognized subject of NRC NEPA

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[111] *Seven County*, 605 U.S. at 172.

[112] *Withdrawal of National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 90 Fed. Reg. 22,472 (May 28, 2025).

[113] Petition at 19.

review. . . ."[114] The State claims that NuFuels' failure to perform an environmental justice impact analysis, and its decision to rely on the 1997 FEIS, is a violation of 10 C.F.R. §§ 51.45(b) and (c) and 51.60(a).[115]

The State's claims are inadmissible because they are outside the scope of this proceeding. On April 30, 2025, the NRC rescinded its Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions as well as its Environmental Justice Strategy.[116] Prior to the recission, the NRC had made commitments to consider environmental justice in its regulatory and licensing actions consistent with the policies stated in Executive Order 12898. However, on January 21, 2025, President Trump issued Executive Order No. 14173, which revoked Executive Order 12898.[117]

Accordingly, the NRC no longer maintains any policy that mandates environmental justice analysis in licensing proceedings; nor do the regulations cited by the State require an applicant to prepare a stand-alone environmental justice analysis. Those regulations require an applicant to describe the affected environment, analyze the environmental impacts of the proposed action, and provide sufficient information to support the NRC's independent environmental review under NEPA. Sections 10 C.F.R. §§ 51.45(b) and (c) and 51.60(a) do not establish environmental justice as a separate licensing criterion. As a result, the alleged failure to prepare a stand-alone environmental justice analysis is outside the scope of this proceeding.

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[114] *Id*. at 20.

[115] *Id*. at 19.

[116] *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions; Environmental Justice Strategy*, 90 Fed. Reg. 17,887 (Apr. 30, 2025).

[117] Exec. Order No. 14173, 90 Fed. Reg. 8,633, 8,634 (Jan. 21, 2025).

b. The 2025 Environmental Report Addresses Environmental Justice.

The State repeatedly asserts that NuFuels failed to perform any meaningful environmental justice analysis (e.g., "[t]he Environmental Report . . . then performs no environmental justice analysis *at all*").[118] Even assuming that environmental justice remains within the scope of the NRC's NEPA review (it is not), EC-4 rests on an inaccurate description of the ER and therefore fails to genuinely dispute the Application.

First, the 1997 FEIS adequately considered the demographic characteristics of the surrounding communities and evaluated whether the environmental impacts of the proposed project would fall disproportionately upon minority and low-income populations. This issue was litigated[119] when intervenors Eastern Navajo Dine Against Uranium and Southwest Research and Information Center claimed that the NRC failed to adequately assess the environmental justice implications of the project. In its order, the Commission stated that "environmental justice considerations are infused throughout this FEIS" and ultimately held that it

> (1) sufficiently highlights issues pertinent to the environmental justice community, including those factors that might amplify the environmental effects of the project, (2) recommends appropriate mitigative measures, and (3) provides adequate information for effective public participation.[120]

Second, the 2025 Environmental Report does not merely recycle demographic information or repeat the environmental justice analysis found in the 1997 report. NuFuels updated the ER by incorporating current population, racial, employment, income, housing, and

[118] Petition at 19 (emphasis added).

[119] *See Hydro Res., Inc.*, CLI-01-4, 53 NRC 31 (2001); *see also* ER § 4.11 at 253 ("The environmental justice of the CUP was litigated as part of Phase I in 1999. During litigation the Licensing Board and Commission addressed the analysis of environmental justice impacts in the community."). Because the adequacy of the environmental justice analysis was previously decided in the prior proceedings, absent new information or changed circumstances—which New Mexico has not raised—the adequacy of the environmental justice analysis is outside the scope of this proceeding for this reason too. *Powertech*, CLI-25-05, slip op. at 6.

[120] *Hydro Res., Inc.*, CLI-01-4, 53 NRC at 71.

health indicators. The ER uses EPA's EJScreen to evaluate block groups within and surrounding the project areas, reporting populations that are 97 to 100 percent people of color and 46 to 79 percent low-income, together with unemployment, per-capita-income, life-expectancy, heart-disease, asthma, cancer, and disability indicators.[121] It also discusses the health disparities experienced by American Indian and Alaska Native populations and expressly recognizes that, because the nearby population is predominantly Navajo and many residents live in poverty, any significant adverse project impact would also constitute an environmental justice impact.[122]

Consistent with the renewal framework established in 10 C.F.R. § 51.60(a), the 2025 ER incorporates the relevant environmental analyses contained in the 1997 FEIS while updating the demographic, socioeconomic, and public health information describing the affected communities.[123] The ER then evaluates the potential environmental impacts of the proposed action by resource area, identifies the potential environmental justice implications of those impacts, and incorporates mitigation measures directed to those resources.[124]

Importantly, after reviewing updated Census, EJScreen, and other demographic information, the ER concludes that "the overall socioeconomic environment of the area has not changed appreciably."[125] Under § 51.60(a), that conclusion supports NuFuels' decision to incorporate the prior environmental justice analysis from the FEIS while updating the underlying demographic information and confirming that the previously identified mitigation measures remain appropriate. To satisfy 10 C.F.R. § 2.309(f)(1), the State must identify a particular underlying environmental impact that the ER omitted or materially understated and explain how

[121] ER, tbls. 3.11-1 and 3.11-2, at 192.
[122] ER §§ 3.10 and 3.11, at 181-193.
[123] ER § 4.11, at 253.
[124] ER § 5.11, at 291.
[125] ER § 3.11, at 192.

the updated community information would have changed circumstances sufficient to undercut the prior Staff analysis.[126] EC-4 does not make that showing. The State identifies no significant environmental change that would require preparation of an entirely new environmental justice analysis rather than the updated analysis presented in the renewal ER. Nor does the State provide any factual or expert support for its claims.

The State may prefer a differently organized or more extensive discussion, but it cannot establish a genuine dispute by mischaracterizing the existing analysis as nonexistent.

For all of the foregoing reasons, Contention EC-4 is inadmissible.

5. Contention EC-5 [Navajo Nation Laws/Orders] is Inadmissible for Failing to Raise an Issue within the Scope of this Proceeding or a Genuine Dispute on a Material Issue and Lacking Adequate Support

The State's Contention EC-5 alleges that the Application fails to address the "Dine Natural Resources Protection Act of 2005, 18 N.N.C. §§ 1301-1303; the Navajo Nation's Radioactive and Related Substances, Equipment, Vehicles, Persons and Materials Transportation Act of 2012, CAU-37-24; and Navajo Nation Executive Order 04-2023."[127] Contention EC-5 should be rejected because it is outside the scope of this proceeding, lacks adequate support, and fails to raise a genuine dispute on a material issue, contrary to 10 C.F.R. §§ 2.309(f)(1)(iii), (v), and (vi).

Earlier intervenors raised the Dine Natural Resources Protection Act of 2005 in prior litigation over this license. As then-licensee HRI argued, and the Board found persuasive, while the DNRPA "may affect [licensee's] ability to mine, it does not touch on a significant

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[126] *Powertech*, CLI-25-05, slip op. at 8 ("[A]lthough [Petitioner] cites to our regulation requiring the licensee to provide "current" information, she cites no legal requirement for a license renewal applicant to provide a wholly new study or analysis regardless of whether circumstances have changed. . . . [Petitioner] did not identify any changed circumstances that undercut the analysis conducted by the Staff 10 years ago.").

[127] Petition at 20.

environmental concern relating to the impact of its proposed mining operations."[128] Instead, the "issue is analogous to the requirement that [licensee] obtain EPA underground injection control permits and aquifer exemptions prior to commencing operations."[129] Indeed, as the Commission later ruled, "if in the end HRI cannot proceed or chooses not to proceed with the proposed project because of the DNRPA, there would be *no* project impacts or benefits at all," "equivalent to the 'no action' alternative discussed in the FEIS."[130]

The same can be said of all of the issues raised in Contention EC-5. At the end of the day, if the licensee cannot obtain all of the required non-NRC permits then the project will not proceed. If the licensee obtains the non-NRC permits, then the project can proceed. The State argues that the ER should "disclose the existence of these enactments, analyze their consequences for the routes, schedules, and activities the ER assumes, and analyze feasible alternatives or mitigation."[131] However, NuFuels is not required to speculate on worst case scenarios or alternatives that will not occur. Instead, NEPA only requires "an estimate of anticipated (not unduly speculative) impacts."[132] The State has not identified a single reasonably anticipated alternative beyond the already captured option where the project simply does not proceed. Thus, the State has failed to raise a genuine dispute on a material issue. The State has also failed to provide any factual or expert support sufficient to raise a dispute with the existing alternatives analysis or a dispute for hearing.

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[128] *Hydro Res., Inc.*, LBP-06-19, 64 NRC at 104, n.40 (review denied in *Hydro Res., Inc.*, CLI-06-29, 64 NRC 417 (2006). Having been resolved in the initial license, this issue would be outside the scope of this renewal proceeding were it not already outside of scope as irrelevant to the NRC Staff review.

[129] *Id*.

[130] *Hydro Res., Inc.*, CLI-06-29, 64 NRC at 422

[131] Petition at 21.

[132] *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005) (emphasis removed).

Indeed, to the extent that the State is asserting a contention of omission where the ER merely needs to include a list of these approvals, the State is doing nothing more than repeating an NRC RAI, which is not enough to support an admissible contention.[133] The mere need to include additional approvals in a list also fails to establish a material dispute for hearing. Any dispute regarding the validity or applicability of these requirements is outside the scope of this NRC proceeding, as the State readily concedes.[134] NuFuels does not plan to debate the existence of Navajo laws or orders, so there is no material dispute on which to hold a hearing.

For all of the foregoing reasons, Contention EC-5 is inadmissible.

6. Contention EC-6 [Outdated Cultural Resource Surveys] is Inadmissible for Failing to Raise a Genuine Dispute on a Material Issue

The State's Contention EC-6 alleges that the Application fails to provide an updated cultural resources analysis and archaeological survey, as requested in an NRC Staff RAI.[135] Contention EC-6 is inadmissible because it merely repeats requests made in NRC staff RAIs without raising a genuine dispute on a material issue, and is otherwise inadequately supported, in contravention of 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

The State's Contention EC-6 essentially summarizes NRC RAIs CUL ER1 through ER6, repeats National Historic Preservation Act (NHPA) Section 106 requirements otherwise found in 36 C.F.R. § 800.6(b)(1)(iv), and complains that NuFuels is not responding quickly enough to RAIs and has submitted one RAI response with an incorrect heading.[136] The State, however, has "not posit[ed] any reason or support of [its] own -- no alleged facts and no expert opinions -- to

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[133] *Oconee*, CLI-99-11, 49 NRC at 336 ("The NRC's issuance of RAIs does not alone establish deficiencies in the application, or that the NRC staff will go on to find any of the applicant's clarifications, justifications, or other responses to be unsatisfactory.").

[134] Petition at 21 ("The contention does not ask the Commission to adjudicate the validity or preemptive effect of Navajo law.").

[135] Petition at 23-24.

[136] *Id*.

indicate that the application is materially deficient."[137] The State generally claims that the Section 8 and Section 17 cultural resources reviews are 30 years old, but it provides no reason to believe that the passage of 30 years will have changed the results of a *historical* survey. In fact, other than copying and pasting text from the NRC Staff RAIs, the State does not refer to or dispute any specific information in the existing survey or statements in the ER.[138]

For example, the State offers no factual information disputing the steps previously undertaken to evaluate cultural resources, or to be taken to prevent further disturbance of potential new cultural resources that may be discovered. This information is succinctly summarized in ER Section 4.8.1.1 as follows:

> As described in Section 3.8 of this ER, the required steps for the areas included in the initial 5-year disturbance plan (Church Rock Sections 8 and 17 and Crownpoint Section 24) have been completed. The disturbance plan is part of the phased Section 106 process approved by NRC, NMSHPO, NNHPD, and BLM. In the letter concluding the Section 106 process, NRC imposed three conditions described in Section 3.8 of this ER: 1) activities are restricted to the areas included in the initial 5-year disturbance plan, 2) fencing is required around eligible properties; and 3) all ground-disturbing activities must be monitored by an archaeologist and discovery of a previously undetected cultural resources must be reported to NRC, NNHPD, and NMSHPO. In addition to these conditions, LC 9.12 of SUA-1580 requires NuFuels to conduct cultural resource inventories prior to disturbances not previously assessed by the NRC and cease work for all activities that result in discovery of previously undocumented cultural artifacts. NuFuels also is required to contact the local SHPO and THPO for consultation.[139]

Although the State claims to dispute ER Section 4.8,[140] the State comes forward with no alleged facts indicating that something was missed in prior historical surveys, or that cultural relics were

[137] *Oconee*, CLI-99-11, 49 NRC at 337.

[138] *See* Petition at 23.

[139] ER § 4.8.1.1, at 242.

[140] Petition at 24.

or likely have been deposited since that time, or that the stated precautionary and mitigation measures are somehow inadequate.[141]

Contention EC-6's lack of factual support contrasts markedly from cases where cultural resource contentions were admitted. For example, in *Crow Butte*, the licensing board admitted a cultural resource contention supported by an expert declaration stating "that known cultural resources on land to the north of the site (including artifact scatters, 'faunal kill and processing sites,' and camps) indicate extensive use of the general area by indigenous people."[142] In other words, the petitioner in that case had pointed to specific factual information indicating that cultural resource artifacts were "bound to be there," even though petitioner had not had the opportunity to look for itself.[143] Similarly, in *Powertech* the Board admitted a contention supported by a declaration from a member of the Oglala Sioux Tribe asserting unstudied cultural resources.[144] In both cases, there was a "litigable contention" because the petitioners came forward with enough information showing "potential cultural objects and sites that were not accounted for in the application."[145] Here, the State has not supported its contention with any expert declaration or any specific factual information indicating that cultural resources artifacts were "bound to be" in any relevant project areas not accounted for in the Application.

The State also fails to reconcile with the history of cultural resource surveys described in the Application, including the NRC's staggered review,[146] and the prior licensing proceedings on that topic. The State complains that NuFuels is deferring further analysis of Crownpoint and

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[141] To the extent the State seeks to challenge to prior resolution of these issues, such challenge is outside the scope of this proceeding absent "new information or changed circumstances." *See Powertech*, CLI-25-05, slip op. at 6.

[142] *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 20 (2014).

[143] *Id*.

[144] *Powertech*, LBP-25-3, 101 NRC at 87-88.

[145] *Crow Butte Res., Inc.*, CLI-14-2, 79 NRC at 21; *Powertech*, LBP-25-3, 101 NRC at 95, n.118.

[146] *See* ER § 3.8, at 170 (summarizing the Section 106 process applied to this license).

Unit 1 under License Conditions 9.12 and 10.28 and asserts that NuFuels' "deferral theory is itself the deficiency; license conditions requiring preconstruction surveys govern when ground may be disturbed; they do not excuse the ER from containing, now, the current inventory and effects assessment that [various NRC regulations and guidance] require to support the licensing decision."[147] However, these license conditions, and the phased review of Sections 8 and 17 prior to Crownpoint and Unit 1, has already been reviewed by the Commission, and the Commission was "not convinced by [then-]Petitioners' argument that the NRC and HRI are prohibited from taking a 'phased review' approach to complying with the NHPA."[148] As the Commission observed, "[t]he statute itself contains no such prohibition, federal case law suggests none, and the supporting regulations are ambiguous on the matter, even when read in the light most favorable to Petitioners."[149] In other words, the Commission has already decided that "phased compliance [with the NHPA] is acceptable under applicable law."[150] The State has provided no reason to deviate from this established precedent.[151]

Finally, the State references correspondence between the NRC Staff and the Advisory Council on Historic Preservation (ACHP) documenting that ACHP stated that an NHPA Section 106 "agreement document will be required."[152] This is an unremarkable proposition that does not raise a dispute with the Application. To the extent that the State purports to challenge the adequacy of the Staff's NHPA Section 106 consultation requirements, such challenge is

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[147] Petition at 23.

[148] *Hydro Res., Inc.*, CLI-98-8, 47 NRC 314, 323-324 (1998).

[149] *Hydro Res., Inc.*, CLI-98-8, 47 NRC 314, 323-324 (1998).

[150] *Hydro Res., Inc.*, (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 13 (1999).

[151] Such phased review was also upheld in *Oglala Sioux Tribe v. NRC*, 45 F.4th 291 (D.C. Cir. 2022). In that case, the petitioners argued that the agency had "impermissibly postponed identifying historic properties" until after operations had begun. However, "the Commission can employ a phased identification and evaluation of historic properties through a programmatic agreement '[w]hen effects on historic properties cannot fully be determined prior to approval of an undertaking.'" *Id.* at 306.

[152] Petition at 23.

premature and does not ripen until issuance of the Staff's draft environmental review document.[153]

For all of the foregoing reasons, Contention EC-6 is inadmissible.

7. *Contention EC-7 [Crownpoint Water Supply] is Inadmissible for Lack of Adequate Support and for Failing to Raise a Genuine Dispute on a Material Issue*

The State's Contention EC-7 alleges that the Application fails to provide an adequate analysis of the impact of the project on the Crownpoint water supply.[154] Contention 7 should be rejected because it lacks factual or expert support and fails to raise a genuine dispute on a material issue and thus fails to meet the requirements of 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

The State first asserts that the ER analysis "fails to provide complete information or satisfy NEPA" because it incorporates "[t]hirty-year-old modeling and baseline studies" which "cannot support present-tense conclusions about a municipal system whose demand, configuration, and hydrologic setting have three decades of unexamined change (*see* Contention EC-2)."[155] As explained previously in response to Contention EC-2, baseline values and hydrogeologic behavior will not be established or finally confirmed until closer to operations in accordance with LC 10.21 and 10.23, so the age of ER data has no relevance to the ultimate baseline values used for remediation. The State also claims that restoration to secondary standards requires further evaluation, but this issue was already litigated and decided as described in response to EC-2 and is not within the scope of license renewal.

The State further argues that "replacement is mitigation, not analysis: the ER nowhere analyzes what replacement entails — the source, quality, capacity, timing, and reliability of

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[153] *Crow Butte Res., Inc.*, CLI-14-2, 79 NRC at 20 n.49 (citation omitted).
[154] Petition at 24.
[155] Petition at 25.

replacement supply for the community; the impacts of drilling and operating replacement wells; or the consequences for the community if restoration of the production zones ultimately achieves only the secondary standards the ER itself contemplates (*see* Contention EC-1)."[156] Setting aside restoration, which is addressed above, these claims bear a remarkable resemblance to other claims raised previously against the project's original Final Environmental Impact Statement. In that case, then-Intervenors

> claim[ed] that while the replacement wells must provide the same quantity of water as existing wells and must meet specific drinking water standards, "this mitigation measure is not supported by any data as to whether there are other locations in or near Crownpoint that might meet these criteria, which regulatory agency, if any, will be responsible for well relocation or oversight of well relocation, whether existing water infrastructure or new infrastructure will be needed and whether building such infrastructure is even feasible."[157]

As the Commission rightly observed in response, "[t]he purpose of addressing possible mitigation measures in an FEIS is to ensure that the agency has taken a 'hard look' at the potential environmental impacts of a proposed action," providing "mitigation measures 'in sufficient detail to ensure that environmental consequences have been fairly evaluated.'"[158] This does not require "'a complete mitigation plan,' or 'a detailed explanation of specific measures which will be employed,'" "or even [be] in final form to comply with NEPA's procedural requirements."'[159] In short, NEPA does not require any more expansive analysis of these mitigation measures.

The State does not address or challenge this relevant precedent, and the rationale still applies today. It is also still true that "if [the licensee] cannot meet the specified water quantity

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[156] *Id*.
[157] *Hydro Res., Inc*, CLI-06-29, 64 NRC at 426; *See also Hydro Res., Inc*., LBP-99-30, 50 NRC at 117.
[158] *Hydro Res., Inc.*, CLI-06-29, 64 NRC at 426.
[159] *Id*. at 426-427.

and quality and related requirements for the replacement water supply wells, it will *not* be able to begin mining at Crownpoint."[160] Thus, any questions as to the feasibility of providing such replacement wells are irrelevant: if the wells cannot be provided, the project will not proceed.

To the extent anything further is needed to dispense with this Contention, EC-7 also lacks supporting factual or expert opinion. The State alleges that the well drawdown model requires updating information on water levels in the municipal wells, but the State does not support that claim with any data aside from general allegations on the passage of time. Some time has passed; however, the original model found that "Crownpoint municipal wells will not be affected even in the worst-case drawdown scenario (i.e., if the currently available drawdown were 457 m [1,500 ft], then 433 m [1,420 ft] would still be available)."[161] With such substantial margin there is no reason to believe that the mere passage of time has reduced available drawdown to the point of affecting the municipal wells. In any event, the State nowhere challenges the ER's statement that wells will not be affected even in a worst-case scenario and otherwise has provided no factual or expert support for its claims.[162] Moreover, the State has not established how this is even a matter of material concern given NuFuels obligation to provide new wells.

For all of the foregoing reasons, Contention EC-7 is inadmissible.

8. Contention EC-8 [Pre-Operational Remediation of Section 17] is Inadmissible for Raising Issues Outside the Scope of this Proceeding

The State's Contention EC-8 alleges that the ER fails to provide an adequate analysis of the pre-operational remediation of Section 17.[163] Contention EC-8 should be rejected because it

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[160] *Id*. at 427.

[161] ER § 4.4.2.1.1.2.1, at 224.

[162] The State's expert merely reiterates his twenty-year old claims that the aquifer is heterogeneous, previously rejected in the prior proceedings, and repeats the State's inaccurate characterization of NuFuels' NEPA obligations. This is not sufficient expert support to save the State's unsupported claims.

[163] Petition at 26.

raises issues outside the scope of this proceeding in contravention of 10 C.F.R. § 2.309(f)(1)(iii). The Contention is also inadequately supported and fails to raise a genuine dispute on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(v) and (vi).

Contention EC-8 alleges that the ER "fails to disclose that NuFuels' remediation of preexisting radioactive contamination at the Church Rock Section 17 project area is a binding contractual precondition to commencing ISR operations at Church Rock Section 8" and that such remediation is "to be performed under the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act ("NNCERCLA"), 4 N.N.C. § 2101 *et seq.*"[164] As such, the Contention is fatally flawed on its face because NEPA does not require an evaluation of environmental impacts from other projects administered by other authorities.

Even where "other projects may be interrelated and close in time and place to the project at hand," as the State alleges here, the determining question is "whether that is a single project within the authority of the agency in question."[165] Contention EC-8 fails on both counts: the pre-operational remediation is (1) a separate action altogether from the NRC licensing action at issue here—renewal of the CUP license—and (2) to be performed under an agreement with the Navajo Nation under Navajo law—not under NRC regulations or authority. Consequently, the State's assertions that the ER omits certain information (e.g., "the volumes, characterization, transport, or disposal destination of remediated spoil"; any transportation impacts from "hauling radium-contaminated material from Section 17"; and "remediation cost"[166]) are outside the scope of this proceeding.

[164] *Id.*
[165] *Seven County*, 605 U.S. at 190.
[166] Petition at 26-27.

The State also asserts that the ER "contain[s] no analysis of the impacts of the remediation itself."[167] That is not accurate. The ER states in part,

> NuFuels has committed to the Navajo Nation to characterize the Church Rock Section 17 site and remove or remediate spoilage with elevated radium-226 to acceptable Navajo Nation Standards. The standards are at levels that do not pose a public or occupational health risk.[168]

The State fails to dispute this statement or otherwise come forward with any factual support challenging this statement or show that the remediation would result in significant environmental impacts not considered in the ER. For these reasons, the Contention fails to raise a genuine dispute and is inadequately supported.

The State also points to the Staff's July 2026 RAI, claims it identifies a "defect" in the ER because ER Table 1.3-1 does not identify any tribal permits, and asserts the Staff has "direct[ed] their addition." The State mischaracterizes the RAI, which actually asks NuFuels to "[p]lease indicate whether there are Navajo Nation, other Tribal, and local agency approvals that should be added to the table."[169] The RAI does not identify any defect, or direct NuFuels to add anything to the Application. Further, while the remediation of Section 17 might be considered a condition-precedent to operations commencing at Section 8, it is not a permit needed to renew the NRC license or to conduct project operations akin to (for one example) an EPA permit for injection wells. In any event, as the State acknowledges, the agreement between NuFuels and the Navajo Nation is mentioned at least twice in the ER. Its purported absence from ER Table 1.3-1 can hardly be deemed a material omission.

For all of the foregoing reasons, Contention EC-8 is inadmissible.

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[167] *Id*. at 27.

[168] ER § 3.12.2.2, at 197.

[169] R. Sun (NRC) to J. Leftwich (NuFuels), *Request for Additional Information to Support the Review of the NuFuels License Renewal Application for the Crownpoint Uranium Recovery Project. McKinley County, New Mexico (SUA-1580, Docket No. 040-08968)* (Jul. 9, 2026) (ADAMS Accession No. ML26191A309), at 2.

9. Contention EC-9 [Site Access and Right of Way] is Inadmissible for Failing to Raise a Genuine Dispute on a Material Issue, Lack of Support, and for Raising Issues Outside the Scope of this Proceeding

The State's Contention EC-9 alleges that the ER fails to discuss site access constraints to Section 8.[170] Contention EC-9 should be rejected because it fails to raise a genuine dispute on a material issue, is inadequately supported, and otherwise seeks to raise issues outside the scope of this proceeding, contrary to the requirements of 10 C.F.R. §§ 2.309(f)(1)(iii), (v) and (vi).

ER Section 3.2 identifies the likely transportation routes for accessing all areas of the project, and ER Section 4.2 summarizes the potential transportation impacts. The State claims that the present lack of access to Section 8—which stems from the lack of a right of way across Navajo Nation lands to access Section 8—renders the transportation impact analysis inadequate, claiming the ER "neither discloses nor analyzes this access deficiency or its consequences . . . ."[171] This is not so. NEPA is governed by a rule of reasonableness, and the State has failed to demonstrate that the transportation analysis is impermissibly unreasonable.

For purposes of conducting an environmental impact analysis, it is entirely reasonable for NuFuels to assume that it will reach an agreement with the Navajo Nation and obtain access to Section 8, and to estimate likely environmental impacts based on having such access.[172] Whether it obtains that access is outside the scope of this license renewal proceeding.[173] What is known—and what the State concedes—is that NuFuels is actively working with the Navajo

[170] Petition at 29.

[171] *Id.*

[172] *Progress Energy Florida, Inc.*, LBP-13-4, 77 NRC at 217-18 (an applicant "may properly assume that [it] will comply with concrete and enforceable conditions and requirements imposed by statutes, regulations, licenses, or permits issued by competent federal, state, or local governmental entities").

[173] *See Hydro Res., Inc.*, CLI-98-16, 48 NRC at 120 ("Whether non-NRC permits are required is the responsibility of bodies that issue such permits, such as the Federal Environmental Protection Agency, the Navajo nation, or state and local authorities. To find otherwise would result in duplicate regulation as both the NRC and the permitting authority would be resolving the same question, i.e., whether a permit is required. Such a regulatory scheme runs the risk of Commission interference or oversight in areas outside its domain. Nothing in our statute or rules contemplates such a role for the Commission.").

Nation to secure access.[174] It may yet be uncertain how or where that access will be established, but the existence of such uncertainty does not invalidate the environmental impact analysis.[175]

Further, the State does not substantively challenge the transportation impact analysis provided or otherwise show that a different access route (were one granted) would result in significantly different environmental impacts than the route analyzed in the ER. And, if it is true as alleged by the State that failure to gain access to Section 8—the "mandatory first phase of the entire project"—would call into question "the feasibility of the proposed action,"[176] those circumstances would be bounded by the no action alternative, which the Contention does not dispute. For these reasons, Contention EC-9 fails to raise a genuine dispute on a material issue and is otherwise inadequately supported.

For all of the foregoing reasons, Contention EC-9 is inadmissible.

10. Contention EC-10 [Partial Project Alternatives Analysis] is Inadmissible for Raising Issues Outside the Scope of this Proceeding and for Failing to Raise a Genuine Dispute on a Material Issue.

The State's Contention EC-10 alleges that the ER fails to address partial project completion or operation alternatives. In other words, the State claims that the ER is deficient for failing to "discuss any reasonable intermediate alternative."[177] Contention EC-10 should first be rejected for the same reasons as similar claims were rejected previously: the State has failed to raise a genuine dispute by failing to demonstrate that the proposed alternatives are not already bounded by the existing analysis, contrary to 10 C.F.R. § 2.309(f)(1)(vi).[178] Contention EC-10 should also be rejected because an alternatives analysis is not required to consider any alternative

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[174] Petition at 29.

[175] *See Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983).

[176] Petition at 29, 31.

[177] Petition at 32.

[178] NuFuels also agrees with the NRC Staff assessment that the State has failed to address earlier alternatives that were incorporated by references. NRC Staff Answer at 30.

that would not achieve the ends of the proposed action. In license renewal the natural alternatives are the action (renewal) and no action (no renewal) alternatives. Therefore, the State's claims here are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

First, the State argues that "[t]he ER does not identify or analyze any intermediate alternative, nor does it discuss any potential alternative's compliance with applicable environmental quality standards and requirements."[179] It appears that the State is ultimately alleging that the ER should evaluate subparts of the existing project, either excluding Church Rock or the areas around the Crownpoint wells or pursuing the project in a different sequence.[180] But these alternatives and their environmental impacts are bounded by the no-action alternative on one end and the full implementation alternative on the other. As the Commission has previously observed, "[i]n the event that HRI proceeds with a much smaller project with two fewer sites, the estimated environmental impacts from mining at the two eliminated sites would not occur," and "[p]otential project benefits (e.g., amount of domestically produced uranium to offset imports, new local jobs, and new additional county and state tax revenues) also would be reduced correspondingly." [181] "It is not apparent, however, why the overall conclusions of the cost-benefit analysis would significantly change."[182] Likewise, here the State has done nothing to establish how any of its proposed alternatives would result in material differences from the existing bounding analysis. This is not enough, "[a]n agency need not 'undertake a 'separate

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[179] The State points to the lack of activity at the site as further reason to perform an expansive alternatives analysis (Petition at 32); however, it is not clear why the absence of activity would drive the need for additional analysis.

[180] Petition at 32. The State also seeks alternative evaluations related to the remediation precondition and right of way issue. Those issues are addressed in the responses to EC-8 and EC-9. The need to obtain state water permits is also already addressed above in EC-1 and would ultimately result in the no action alternative. Failure to obtain well permits would similarly result in the no action alternative.

[181] *Hydro Res., Inc.*, CLI-06-29, 64 NRC at 421.

[182] *Id*. at 421-422

analysis of alternatives which are not significantly distinguishable from alternatives [already] considered, or which have substantially similar consequences.'"[183]

The issues the Contention seeks to raise are also outside the scope of this license renewal proceeding. Environmental reports "'need only discuss those alternatives that . . . will bring about the ends of the proposed action.'"[184] This is because, "'[w]hen the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved.'"[185] Here, the proposed action is renewal of the full scope of the ISR license, which "allows NuFuels to construct and operate ISR facilities in the Crownpoint, Unit 1, Church Rock Section 8, and Church Rock Section 17 project areas in McKinley County, New Mexico."[186] The State's claims that the ER ought to consider a "reduced scope project excluding the Church Rock project areas" or other alternatives that will result in something less than the ends of the proposed action are inconsistent with the Commission's controlling precedent here.

For all of the foregoing reasons, Contention EC-10 is inadmissible.

D. The State's Safety Contentions Fail to Meet the Admissibility Requirements

The State's Safety Contentions, SC-1 to SC-3, fail to meet the NRC's contention admissibility standards for a variety of individual reasons set forth below.

1. Contention SC-1 [Old Church Rock Mine and Monitoring Well Locations] is Inadmissible for Raising Issues Outside the Scope of This Proceeding and for Failing to Raise a Genuine Dispute on a Material Issue

The State's Contention SC-1 alleges that the Application fails to demonstrate adequate confinement and excursion detection given the flooded underground workings of the Old Church

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[183] *Id*. at n.22.

[184] *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 339 (2012) (quoting *Hydro Res., Inc.*, CLI-01-4, 53 NRC at 55).

[185] *NextEra Energy Seabrook, LLC*, CLI-12-5, 75 NRC at 343 (quoting *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991).

[186] ER § 1.2, at 6.

Rock Mine and the location of monitoring equipment.[187] Contention SC-1 should be rejected for raising issues outside the scope of this proceeding and for failing to raise a genuine dispute on a material issue, contrary to 10 C.F.R. §§ 2.309(f)(1)(iii) and (vi).

The State and Dr. Abitz essentially allege that the Old Church Rock Mine could act as a preferential pathway for hydraulic dispersion different from that supporting the use of ring monitors.[188] Thus, it seems that the State is alleging that contamination could flow through the Old Church Rock Mine escaping detection.[189] Dr. Abitz further claims that "contaminated mining fluids in the Church Rock mine workings have migrated into the Westwater Canyon aquifer along paleochannels that are generally no wider than 100 feet," thus "monitoring wells spaced 400 feet apart will inevitably miss excursions moving along narrow preferential flow paths."[190]

Neither the State nor Dr. Abitz, however, demonstrate why this hypothetical would impact drinking water to the point of being material to the NRC's analysis. The subsurface water in this area is not potable.[191] But, as an NRC Judge previously found, the drinking aquifer "can tolerate relatively small toxic areas like the Section 17's old mine workings and still provide high-quality drinking water."[192] Indeed, "[t]he water near the old mine workings is undrinkable yet the aquifer as a whole has not suffered because toxic elements that migrate out of this area are affected by both precipitation and dilution."[193] The water outside the mine area

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[187] Petition at 33.

[188] Petition at 34; Abitz Decl. at ¶ 35. The Petition does not clearly explain the relevance of the characterization of the Old Church Rock Mine workings aside from sweeping claims that excursion detection is relevant to all groundwater protection conclusions and the NRC has sought similar information on preferential pathways. *See* Petition at 34-35.

[189] *Id.*

[190] Abitz Decl. at ¶ 35.

[191] *Hydro Res., Inc.*, LBP-99-30, 50 NRC at 102.

[192] *Id.*

[193] *Id.*

has "outstanding purity."[194] It stands to reason that while "the old mine workings contain highly toxic water, precipitation must occur, so that even if the water 'courses' along channels through the aquifer, uranium would not reach the wells from which pure water currently is being obtained."[195] Neither the State nor Abitz challenge this existing determination or otherwise demonstrate how any hypothetical further contamination of already toxic water could impact public health or safety.[196] At the end of the day, a prior Judge found the water in the Old Church Rock Mine to be toxic while nearby drinking water is clear. Thus, whatever pathways may exist, the existing toxic water in the Mine is not contaminating the drinking water and there is no evidence of "preferential pathways" or other issues that would cause a material change in the existing licensing basis which found a reasonable assurance of the protection of public health and safety. Neither the State nor Abitz show the need for additional analysis on this issue.

Moreover, because the prior licensing proceeding addressed these matters, and neither the State nor Dr. Abitz identify any "new information or changed circumstances," these matters are outside the scope of this license renewal proceeding.[197] Indeed, the most recent information cited by Dr. Abitz in support of SC-1 is the Lucas testimony from the last licensing proceeding in 2005.[198] This is not new information sufficient to make the matter appropriate for review in this license renewal proceeding.

For all of the foregoing reasons, Contention SC-1 is inadmissible.

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[194] *Hydro Res., Inc.*, LBP-99-30, 50 NRC at 104.

[195] *Id.* at 104-105.

[196] This Judge also found that "the water in the channels does not course, that there are no channels, and that the drill holes at Church Rock that sampled the water did not intersect channels," thus "the rock does act as a significant precipitating agent for uranium and other elements." *Id.* at 105. The State and Abitz provide nothing but mere speculation to counter these findings. The judge further found "little chance" that wells spaced 400 feet apart would miss an excursion, further "conclud[ing] that one tier of monitors will be adequate for Church Rock Section 8." *Id.* at 87-88, 96. The State and Abitz also fail to challenge these findings.

[197] *Powertech*, CLI-25-05, slip op. at 6.

[198] Abitz Decl. at ¶¶ 34, 35, 37.

2. *Contention SC-2 [Legacy Boreholes] is Inadmissible for Failing to Raise a Genuine Dispute on a Material Issue*

The State's Contention SC-2 alleges that the legacy boreholes on the site may pose additional risk because the Application "relies merely on surveyed borehole locations and after-the-fact corrective plugging" rather than "pre-operational verification of the plugging and integrity" of legacy boreholes.[199] This purported deficiency allegedly fails "to provide reasonable assurance of production-zone confinement."[200] Contention SC-2 should be rejected for failing to provide sufficient information to show that a genuine dispute exists on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

As an initial matter, the Contention is far from clear (to say the least) what deficiency is being alleged or how the Application fails to meet NRC requirements. The Contention alleges that the issues raised in the Contention demonstrate that the renewal application is "contrary to 10 C.F.R. Part 40, Appendix A, Criteria 5B(2) and 7, and NUREG-1569 § 2.7."[201] The Abitz Declaration contains this same statement.[202] The Contention also alleges that "[c]onfinement integrity is a predicate of the Criterion 5B(2) seepage-control and Criterion 7 monitoring findings and of the reasonable-assurance determination."[203] But the Contention as proffered nowhere explains what this is supposed to mean.

For example, Criterion 5B(2) says nothing regarding confinement integrity or seepage control. Specifically, Part 40 Appendix A Criterion 5B(2) states:

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

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[199] Petition at 35.
[200] *Id.*
[201] *Id.*
[202] Abitz Decl. at Statement of Contention SC-2.
[203] Petition at 36.

> (a) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;
> (b) The constituent has been detected in the groundwater in the uppermost aquifer; and
> (c) The constituent is listed in Criterion 13 of this appendix.[204]

Without further explanation that the State and its Declarant have failed to supply, there is no telling how the Application is allegedly inconsistent with Criterion 5B(2).

The Contention's and the Declaration's bare references to Criterion 7 fare no better. Part 40 Appendix A Criterion 7 states,

> At least one full year prior to any major site construction, a preoperational monitoring program must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.[205]

Thus, Criterion 7 pertains to pre-operational and operational monitoring programs necessary to evaluate compliance, performance, and environmental impacts of operation. It identifies no requirement to "provide reasonable assurance of production-zone confinement" or any other issue identified in the statement of Contention SC-2. Neither the State nor Dr. Abitz have clearly explained the relevance of this Appendix A criterion, or how the license and proposed license renewal are inconsistent with it.[206]

The references to NUREG-1569,[207] Section 2.7 are also unilluminating.[208] NUREG-1569, Section 2.7 is entitled "Hydrology." That section spans approximately eight (8) pages of

[204] 10 C.F.R. Part 40, Appendix A, Criterion 5B(2).

[205] 10 C.F.R. Part 40, Appendix A, Criterion 7.

[206] *See Hydro Res., Inc.*, CLI-99-22, 50 NRC 3 at 8 (1999) ("While, as a general matter, Part 40 applies to [in-situ leach (ISL)] mining, some of the specific requirements in Part 40, such as many of those found in Appendix A, address hazards posed only by conventional uranium milling operations, and do not carry over to ISL mining.").

[207] NUREG-1569, Standard Review Plan for In Situ Leach Uranium Extraction License Applications, Final Report (2003).

[208] Petition at 35; Abitz Decl. at Statement of Contention SC-2)

text and explains, in relevant part, that the NRC staff will review an ISR application for its characterization of hydrology to ensure it is "sufficient to establish potential effects of in situ leach operations on the adjacent surface-water and ground-water resources and the potential effects of surface-water flooding on the in situ leach facility."[209] These pages of text mention "confinement" once in Subsection 2.7.2, Review Procedures, which section directs the NRC reviewer to "evaluate whether the applicant has developed an acceptable conceptual model of the site hydrology and whether the conceptual model is adequately supported by the data presented in the site characterization."[210] The sole mention of "confinement" is in the following sentence: "Also examine pumping tests that are used to investigate vertical confinement or hydraulic isolation between the ore production zone and upper and lower aquifers."[211] This discussion in NUREG-1569 Section 2.7 says nothing about potential pitfalls associated with failing to conduct, for example, "pre-operational verification of the plugging" of legacy boreholes as claimed in the contention. Contention SC-2 simply fails to make any connection between the cited regulations and guidance and the various claims made in the Petition. For these reasons, these claims fail to raise a genuine dispute with the Application on a material issue.

Indeed, nowhere does the contention assert, let alone show, that failed or unplugged borehole(s) would result in any material adverse impacts, or otherwise explain what those purported impacts might be. Even Dr. Abitz's own proposed approach to address his concerns—conducting a "random sample of the surveyed population" because "inspecting every historic exploration hole is generally impracticable"[212] would inevitably mean that allegedly unplugged

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[209] NUREG-1569 at 2-20.
[210] *Id*. at 2-21.
[211] *Id*. at 2-22 (emphasis added).
[212] Abitz Decl. at ¶ 43.

or failed boreholes would go undetected. This suggests that potential adverse impacts from any single borehole failure (if there are any at all) are not material enough to warrant pre-operation inspection of every borehole. The Contention nowhere explains why a partial, random pre-operation verification effort would provide any material increase in safety compared to what is proposed in the Application.

The Contention makes a bare reference to an existing Staff RAI,[213] but as noted previously in this Answer, that alone is insufficient to support the admission of a contention.

Finally, Contention SC-2 should also be dismissed because its substance has already been adjudicated in the proceeding on the initial license, and neither the State nor Dr. Abitz provide new information or allege changed circumstances calling into question those prior determinations.[214] Dr. Abitz asserts that pre-operational verification of boreholes is required because "[a] notation that a well is 'recorded as' plugged is a record of a filing, not of the condition of closing or the plugging procedure used and provides no basis to assess whether the plug remains competent decades later,"[215] and claims that NuFuels failed to provide information required by NUREG-1569, § 2.2.3(1)(e) and § 2.6.3(5).[216] However, alleged concerns over borehole plug competency were previously adjudicated. As discussed in LBP-99-30, an intervenor raised a claim that "if most vertical excursions occur due to artificial pathways, then the 174 or more old boreholes in Section 8 may serve as conduits, and that Staff has not assessed this risk."[217] The Board in that proceeding found "that the Staff has assessed the risk that the boreholes might be conduits and has found it to be small," and the Board concurred with that

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[213] Petition at 36.
[214] *Powertech*, CLI-25-05, slip op. at 6.
[215] Abitz Decl. at ¶ 41.
[216] *Id*. at ¶¶ 39-41.
[217] *Hydro Res., Inc.*, LBP-99-30, 50 NRC at 92.

assessment.[218] Neither the State nor Dr. Abitz have provided any information challenging this prior assessment or otherwise explaining why the Staff's prior assessment is no longer valid.[219] In fact, the most recent information Dr. Abitz relies on for purported support is the Lucas declaration from the initial licensing proceeding in 2005.[220]

For all of the foregoing reasons, Contention SC-2 fails to raise a genuine dispute on a material issue, or otherwise raises issues outside the scope of this renewal proceeding, and is therefore inadmissible.

3. Contention SC-3 [Financial Assurance] is Inadmissible for Raising Issues Outside the Scope of this Proceeding and for Failing to Raise a Dispute on a Material Issue

The State's Contention SC-3 alleges that there is inadequate financial assurance. Contention SC-3 should be rejected for raising issues outside the scope of this proceeding and for failing to raise a genuine dispute with the Application on a material issue in accordance with 10 C.F.R. § 2.309(f)(1)(iii) and (vi).

As an initial matter, Contention SC-3 is styled as a safety contention but purports to challenge only sections of the Environmental Report.[221] Right out of the gate, the Contention's fatal flaw is its failure to dispute the sections of the COP that discuss financial assurance. These sections include COP Sections 1.7, Financial Assurance; 8.7.2, Excursions; 10.4.3, Restoration Demonstration, and 10.7 Necessary Resources for Groundwater Restoration and Plugging. The Contention also falsely asserts that the "ER's entire financial assurance discussion is three sentences" contained in ER Section 2.1.3.8.[222] This statement overlooks the financial assurance

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[218] *Id*.
[219] *See* Petition at 35-36; Abitz Decl. at ¶ 41.
[220] Abitz Decl. at ¶ 44.
[221] *See* Petition at 36-37.
[222] *Id*. at 36.

discussions contained in ER Sections 2.1.3.4.2, Excursion Monitoring; 6.6.6.1.1, Excursion Monitoring and UCLs; and 7.5, Potential Internal Costs of the Project, as well as the lengthy discussion of financial assurance issues and their prior adjudication in Section 1.2.1, Procedural History. The State's failure to address this information means it has failed to genuinely dispute it, contrary to the requirement of 10 C.F.R. § 2.309(f)(1)(vi).

Beyond the broad failure to adequately address information in the Application, the individual claims in Contention SC-3 and the supporting Declaration from Dr. Abitz are inadmissible too. The Contention claims that the Application "contains no current decommissioning and aquifer restoration cost estimate" and "defers" providing such estimate "rather than demonstrates [such estimate] for a 20-year authorization."[223] But there is no requirement that the Application provide one now. Criterion 9 states in relevant parts that "[f]inancial surety arrangements must be established by each [ISR] operator <u>before the commencement of operations</u> to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas" and that the "amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan . . . ."[224]

Indeed, Consistent with Criterion 9, License Condition 9.5 states in part, "[a]s a prerequisite to operating under this license, the licensee shall submit an NRC-approved surety arrangement to cover the estimated costs of decommissioning, reclamation, and groundwater restoration."[225] Because the proposed licensing action is renewal of its license, NuFuels has

[223] Petition at 36-37; Abitz Decl. at ¶ 45.
[224] 10 C.F.R. Part 40, Appendix A, Criterion 9(a) (emphasis added).
[225] SUA-1580, LC 9.5.

committed (in COP Section 1.7, Financial Assurance) to "provide financial Assurance (FA) for closure, including surface and subsurface restoration, and reclamation. The amount of the FA will be determined by the NRC based on cost estimates for completion of the approved reclamation plan by a third party in the event that NuFuels defaults."[226] NuFuels has further committed that the "amount of FA will also be subject to" approval by the New Mexico Environment Department ("NMED") and/or EPA, and its form will meet applicable requirements.[227] Likewise, COP Section 10.7 states in part that,

> as a prerequisite to operating under NuFuels NRC License, NuFuels must submit an approved FA arrangement to NRC to cover the estimated costs of groundwater restoration. This same document will be filed for approval with NMED as well. Generally, these financial assurance amounts shall be determined by the NRC and NMED based on cost estimates for a third party completing the work, in case the licensee defaults.[228]

In sum, Criterion 9 requires a financial assurance demonstration, including NRC-approved cost estimates, <u>prior to operations</u>, which NuFuels has committed to provide. The Contention's claims that NuFuels must provide this information sooner are inconsistent with Criterion 9 and thus fail to raise a genuine dispute on a material issue of law or fact with the Application.

These claims are also outside the scope of this proceeding because the commitment to provide the financial assurance arrangement prior to operations is established in the existing license.[229] The State has come forward with no new information or alleged changed

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[226] COP at COP-26.

[227] *Id*. at COP-26.

[228] *Id*. at COP-175.

[229] SUA-1580, LC 9.5.

circumstances concerning that arrangement, which it must do to challenge in this license renewal proceeding any matter decided in the initial proceeding.[230]

The Contention's assertions that the Application inappropriately omits the costs of off-site disposal of Atomic Energy Act Section 11e.(2) byproduct material[231] fall flat. NuFuels' license expressly provides that the financial assurance surety to be provided will "cover[] the above-ground decommissioning and decontamination, the cost of off-site disposal, soil and water sample analyses, and groundwater restoration activities associated with the site."[232] NuFuels has committed in the Application (1) "to develop and maintain an agreement for the disposal of 11e.(2) by-product material with a facility licensed by the NRC or an Agreement State to accept such material" "[p]rior to beginning operations"[233]; (2) "to decontaminating to unrestricted release standards, or disposing of, all contaminated 11e.(2) byproduct material prior to final reclamation"[234]; (3) that the financial assurance for closure will include "surface and subsurface restoration, and reclamation"[235]; and (4) that the amount of the financial assurance will be "determined by the NRC based on cost estimates for completion of the approved reclamation plan."[236] The Contention's claims that the financial assurance will not account for 11e.(2) byproduct material disposal simply are not genuine.

The same goes for the Contention's bare assertion regarding liquid waste disposal in as-of-yet unpermitted disposal wells.[237] Such permitted disposal is part of surface and subsurface

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[230] *Powertech*, CLI-25-05, slip op. at 6.
[231] Petition at 36-37; Abitz Decl. at Statement of Contention SC-3 and ¶ 48.
[232] SUA-1580, LC 9.5 (emphasis added).
[233] COP at p. COP-26.
[234] *Id*. at COP-61.
[235] *Id*. at COP-26.
[236] *Id*. at COP-26 (emphasis added).
[237] Petition at 37.

restoration, and reclamation, and will be addressed in financial assurance to be provided in advance of operations. To the extent that unanticipated circumstances arise, annual financial assurance reviews and adjustments are provided to address them (e.g., the financial assurance "will be reviewed annually by the NRC and adjusted to reflect expansions in operations, changes in engineering design, and inflation").[238]

For the same reasons previously explained in response to Contention EC-8, the claim that the Application fails to address financial assurance for any costs associated with the 2012 "contractually required NNCERCLA remediation of Church Rock Section 17"[239] is outside the scope of this proceeding. As detailed in response to Contention EC-8, pre-operational remediation is not within the scope of the NRC license renewal sought here, thus NuFuels need not provide any financial assurance for it. But even if it were within scope, the Contention fails to adequately challenge information in the Application. The Contention claims that the 2012 agreement "could not have appeared" in Restoration Action Plans (RAPs) approved in 2011.[240] But this claim overlooks both the License Condition obligation and commitment in the Application to perform annual reviews of and adjustments to the Financial Assurance.[241] The Contention nowhere challenges the annual updates or otherwise explains why such updates would be insufficient to include NNCERCLA remediation if it were properly within scope (it is not).

Dr. Abitz attempts to raise experience from other sites as additional reason to reopen financial assurance right now. However, Dr. Abitz has done nothing to demonstrate that those

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[238] COP at COP-26.
[239] Petition at 36; Abitz Decl. at Statement of Contention SC-3 and ¶ 48.
[240] Petition at 37.
[241] SUA-1580, LC 9.5; COP at COP-26, COP-176.

other sites, in Ohio, South Carolina, Idaho, Wyoming, have any applicability to the New Mexico site at issue here. The only potentially relevant site raised by Dr. Abitz is Mobil Section 9. Dr. Abitz claims that "NuFuels states that aquifer restoration costs for each area will be based on 9 pore volumes to achieve restoration goals (COP 10.4.3 at 171), yet the Mobil Section 9 pilot test did not achieve restoration after processing 16 pore volumes over a period of 6 years."[242] Dr. Abitz provides no support for the implication that Mobil Section 9 would support a required 16 pore volumes at this site, which is particularly notable given that Dr. Abitz is contradicting Board findings on the initial license. In the initial licensing proceeding here, HRI

> multiplied the result of its pore volume calculation by a factor of 9 (i.e., nine circulations or flushes of the pore volume) to determine water treatment and disposal volumes and costs. The flare factors were calculated by engineers working for Uranium Resources, Inc. (URI), the parent company for HRI, based upon operating experience at other restoration demonstrations and commercial operations. Specifically, *the methods utilized to calculate the pore volumes are generally consistent with the methods used for the Mobil Section 9 Pilot Restoration Project conducted near Crownpoint, New Mexico, between 1979 and 1986*.[243]

While intervenors in the initial licensing proceeding disputed the 9 pore volume as "unrealistic and unreasonable" "when compared with 'real-world experience,'"[244] the Commission, and prior Boards, have rejected that argument.[245] Indeed, Judge Bloch "noted that the 9 pore volume estimate was based upon the Staff's professional judgment, and reflected an increase from HRI's initial estimate of 4 pore volumes."[246] In addition, "the number of pore volumes could be increased in the future if, at any time, it was determined that proper restoration

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[242] Abitz Decl. ¶ 45.

[243] *Hydro Res., Inc.*, LBP-04-3, 59 NRC 84, 91 (2004) (internal citations omitted) (emphasis added).

[244] *Id.* at 91.

[245] *Id.* at 91-92; *see Hydro Res., Inc.*, CLI-00-8, 51 NRC at 244 (agreeing with the Presiding Officer that expert testimony challenging the nine-pore-volume estimate was "unconvincing").

[246] *Hydro Res., Inc.*, LBP-04-3, 59 NRC at 91.

would require greater pore volumes."[247] The Commission then agreed that "the Staff could require HRI to increase the pore volumes and surety amount prior to HRI commencing operations if necessary."[248]

Given that this issue was decided in the initial proceeding, and the State and Abitz provide no "new information or changed circumstances," sufficient to reopen the matter on renewal, these claims are not admissible.

For all of the foregoing reasons, Contention SC-3 is inadmissible.

IV. Conclusion

For the reasons set forth above, the Board should reject the State's Petition to Intervene.

Respectfully submitted,

/Signed electronically by Anne Leidich/

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[247] *Id.*
[248] *Id.*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 40-8968-LR
NuFuels, Inc.	)	
	)	ASLBP No. 26-995-01-MLR-BD01
(Crownpoint Uranium Project In-Situ Recovery	)	
Facility)	)	August 21, 2026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NuFuels, Inc. Answer Opposing the State of New Mexico's Petition to Intervene and Request for Hearing have been served through the E-Filing system on the participants in the above-captioned proceeding, this August 21, 2026.

Respectfully submitted,

/Signed electronically by Anne Leidich/

Anne Leidich