{In Archive} Request for Aquifer Exemption in the Goliad Formation , Goliad County

Zona Amerson to: Miguel Flores, Philip Dellinger 09/26/2011 02:44 PM
Cc: Al Armendariz, David Gillespie, Chrissy Mann, "Adam Friedman"

From: "Zona Amerson" <zamerson@blackburncarter.com>
To: Miguel Flores/R6/USEPA/US@EPA, Philip Dellinger/R6/USEPA/US@EPA
Cc: Al Armendariz/R6/USEPA/US@EPA, David Gillespie/R6/USEPA/US@EPA, Chrissy Mann/R6/USEPA/US@EPA, "Adam Friedman" <afriedman@blackburncarter.com>

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Sincerely,

Zona Amerson - Legal Assistant
BLACKBURN CARTER, P.C.
4709 Austin Street
Houston, Texas 77004
(713) 524-1012
(713) 524-5165 fax

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Letter to EPA Region 6 Response to TCEQ 9-26-2011.pdf

Ltr to EPA Re Resp to TCEQ-Ex1.pdf Ltr to EPA Re Resp to TCEQ-Ex3.pdf

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BLACKBURN CARTER
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JAMES B. BLACKBURN, JR
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CHARLES W. IRVINE
ADAM M. FRIEDMAN
MARY B. CONNER
KRISTI J. DENNEY

ADAM M. FRIEDMAN
Sender's E-Mail: afriedman@blackburncarter.com

September 26, 2011

Via Federal Express and Electronic Mail

Miguel Flores *E-mail: flores.miguel@epa.gov*
Environmental Protection Agency, Region 6
Water Quality Protection Division, Director
1445 Ross, Suite 1200
Dallas, Texas 75202

Philip Dellinger, 6WQ-SG *E-mail: dellinger.philip@epa.gov*
Environmental Protection Agency, Region 6
1445 Ross, Suite 1200
Dallas, Texas 75202

RE: Request for Aquifer Exemption in the Goliad Formation, Goliad County

Dear Mr. Flores and Mr. Dellinger:

We were recently provided a copy of the August 29, 2011 letter ("letter") submitted by the Texas Commission on Environmental Quality ("TCEQ") to the Environmental Protection Agency, Region 6 ("EPA-Region 6") regarding TCEQ's request for an aquifer exemption in Goliad County. TCEQ appears to take the position that it is unnecessary to comply with the request for modeling made by EPA-Region 6. Essentially, TCEQ has asked the citizens of Goliad County and EPA-Region 6 to ignore the danger posed by migration of harmful constituents introduced into the groundwater by the mining process. TCEQ supports its position with an extremely narrow interpretation of the applicable regulations and guidance documents for aquifer exemptions. Goliad County strongly disagrees with the TCEQ's position and plans to respond in greater detail in a future letter to EPA-Region 6. However, at this time, the purpose of this letter is to submit an initial response and provide information that demonstrates that the proposed aquifer exemption is in fact hydraulically connected with nearby domestic water wells.

The request for modeling by EPA-Region 6 is consistent with EPA Guidance No. 34. TCEQ incorrectly argues they it is not required to provide modeling pursuant to Guidance No. 34 because the document does not explicitly list modeling among the enumerated items of the Evaluation Criteria. The document addresses this issue directly. Under the Evaluation Criteria Section, just after the list of enumerated items that must be provided by an applicant, Guidance

No. 34 states, "**In addition to the above descriptive information concerning the aquifer, all exemption requests must demonstrate that the aquifer '... does not currently serve as a source of drinking water.'** (40 CFR § 146.04(a))." In other words, after the enumerated list that TCEQ relies on, the document plainly contemplates that more is required. The document spells out what more is required: a demonstration that the aquifer does not currently serve as a source of drinking water. It seems clear that this language provides EPA-Region 6 with the authority to request any information necessary for an applicant to make this demonstration.

TCEQ further argues that to make this demonstration, it is only required to "... survey the proposed exempted area to identify any water supply wells which **tap** the proposed exempted aquifer." However, the following sentence of Guidance No. 34 clarifies that "**the area to be surveyed should cover the exempted zone and a buffer zone outside the exempted area. The buffer zone should extend a minimum of 1/4 mile from the boundary of the exempted area.**" When read in its entirety, the guidance document indicates that the EPA clearly contemplated evaluating the risk associated with migration of groundwater outside a proposed exemption boundary. Accordingly, EPA-Region 6 is well within its established policies and authority to request modeling to ensure protection for these adjacent well users.

Notably, TCEQ's letter does not dispute that the water within the proposed aquifer exemption is hydraulically connected to the adjacent domestic water wells. Similarly, UEC's hydrogeology consultant, Dr. Phillip Bennett, testified at his deposition that the B sand at the production zone is continuous beyond the proposed aquifer exemption boundary. After reviewing cross-sections of the proposed Goliad mining site,[1] Dr. Bennett testified that "by looking at the logs, [the sands inside and outside the exemption area] would appear to be connected, and I would expect that they would be a continuous sand." [2] Dr. Bennett further opined that the B sand is continuous to the southeast at least up until the Southeast Fault, which is located some distance beyond the aquifer exemption boundary and nearby domestic water wells.[3] Thus, UEC's own expert has opined about the hydrologic connection. It is Goliad County's position that the requested modeling will simply confirm existence of the already identified hydrologic connection, and that the hydrologic connection is currently grounds for denying the aquifer exemption request. However, Goliad County certainly supports the EPA's decision to ascertain more information as it deems necessary.

Given a hydraulic connection, regional and local flow directions are crucial for determining whether nearby wells are in jeopardy of contamination as a result of the proposed mining. Regionally, groundwater flow in the area of the proposed mining site is generally to the southeast towards the Gulf of Mexico. Local groundwater flow is also generally to the east and southeast, and the two piezometric maps[4] provided for Sand B in the Production Area Authorization Application indicate that some groundwater within PA-1 flows to the west.[5] Accordingly, because the adjacent domestic and agricultural water wells lie in these directions, a large portion, if not all of the approximate fifty (50) wells identified on the area of review map are at risk.

---

[1] See cross-sections, Figures 8.1, 8.2 and 8.3 of the Thomas A. Carothers report submitted to EPA-Region 6 as an enclosure to its August 29, 2011 letter.
[2] See Exhibit 1, Dr. Bennett's deposition transcript at page 148, line 24 – page 149, line 9.
[3] See Exhibit 2, Map depicting the location of the Southeastern Fault.
[4] See Exhibit 3, Figure 5-3 (August 25, 2008) from PA-1; Figure 5-3 (February 17, 2009) from PA-1.
[5] See Exhibit 4, Hearing Transcript at page 686, line11 – page 687, line10.

Until the hydraulic connection and local groundwater flow is modeled, and or until the TCEQ can provide information to counter the existing hydrogeologic makeup of the proposed mining site, Goliad County cannot understand how the proposed exemption satisfies 40 C.F.R. § 146.04(a) as an aquifer that is not currently being used as a source of drinking water. Nor can Goliad County be sure any of the nearby wells are safe from mining activities.

Considering the strong evidence of an existing hydraulic connection, it is not surprising that the TCEQ took great efforts to argue as many reasons as possible that modeling is unnecessary. The TCEQ argued that the requested modeling is "not an evaluation of current conditions but an evaluation of future conditions." Again, the TCEQ's suggestion that adjacent water wells are not relevant to the aquifer exemption inquiry is inconsistent with Guidance No. 34 and basic hydrogeologic principles. Furthermore, even assuming arguendo that the TCEQ's interpretation were correct, the modeling is still vital for the TCEQ to satisfy 40 C.F.R. § 146.4(b), which requires a demonstration that the water within the proposed exemption will not serve as a source of drinking water **even in the future**.

For the foregoing reasons, Goliad County and its citizens respectfully request that EPA-Region 6 maintain its initial request. If EPA-Region 6 has any questions or would like any additional documentation, please contact me at (713) 524-1012 or by email at AFriedman@Blackbucarter.com.

Sincerely,

BLACKBURN CARTER, P.C.

by Adam Friedman
Adam M. Friedman

Enclosures

c: Al Armendariz, Regional Administrator – *Via E-mail: armendariz.al@epa.gov*
David Gillespie, Assistant Regional Counsel – *Via E-mail: Gillespie.david@epa.gov*
Chrissy Mann, Special Assistant to Regional Administrator – *Via E-mail: Mann.chrissy@epa.gov*

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EXHIBIT 1

SOAH DOCKET NOS. 582-09-3064 AND 582-09-6184

TCEQ DOCKET NOS. 2008-1888-UIC AND 2009-1319-UIC

(CONSOLIDATED)

APPLICATION OF URANIUM ENERGY) CORP. FOR PERMIT NO. UR 03075) AND FOR AQUIFER EXEMPTION AND) FOR PRODUCTION AREA) AUTHORIZATION UR 03075PAA1 IN) GOLIAD COUNTY, TEXAS)	STATE OFFICE OF ADMINISTRATIVE HEARINGS

ORAL DEPOSITION

PHILIP C. BENNETT

Friday, April 16, 2010

ORAL DEPOSITION OF PHILIP C. BENNETT, produced as a witness at the instance of Protestant Goliad County, Texas, and duly sworn, was taken in the above-styled and numbered cause on Friday, April 16, 2010, from 8:38 a.m. to 1:57 p.m., before Evelyn Coder, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Kelly, Hart & Hallman, 301 Congress Avenue, Suite 2000, Austin, Texas 78701, pursuant to the Texas Rules of Civil Procedure.

1 A Yes.
2 Q Is the groundwater in the proposed production
3 zone -- well, let me rephrase that question.
4 Are the Braquet wells, then, in the B
5 sand hydrologically connected with the proposed
6 production zone Sand B that we've identified?
7 A Again, assuming that they are screened in the
8 B sand -- and I apologize. I can't recall if they
9 are, but if they were screened in the B sand, then
10 I've seen no evidence to suggest that they would not
11 be connected to -- hydrologically connected to the
12 production zone.
13 Q Okay. Have you seen evidence to suggest that
14 they are connected?
15 A I did not recall if they were monitored
16 during the pump test, so I just don't know.
17 Q Can you -- can cross-sections be evidence of
18 hydraulic connection between one area of a sand and
19 another area of a sand?
20 A Sure. And I infer that they are, but the
21 way -- the gold standard was did they respond during
22 the pump test, and I don't remember seeing, that they
23 were instrumented up.
24 Q If you flip the page on the exhibit
25 backwards, actually, there's a cross -- I guess a

1 cross-section of logs, and it is E to E prime and E
2 prime to EE prime, which is represented on the figure
3 that we were looking at. Do you see that?
4 A Yes.
5 Q Do you -- is there any evidence to suggest
6 that the sands are not connected?
7 A No. I have no -- by looking at the logs,
8 they would appear to be connected, and I would expect
9 that they would be a continuous sand.
10 Q Did you do an evaluation or come to a
11 conclusion on what the groundwater flow is regionally
12 at the proposed production site?
13 A Be more specific.
14 Q Broader than the --
15 A Right. But what do you mean about
16 groundwater flow? I mean --
17 Q I meant direction.
18 A Okay. I think you just said groundwater
19 flow. And, well, it flows.
20 Q I'm looking for regional groundwater
21 direction of the flow.
22 A Regional groundwater flow direction is
23 southeast -- southeast to -- south to east. You know,
24 it's variable.
25 Q And what about locally at -- do you agree

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EXHIBIT 3

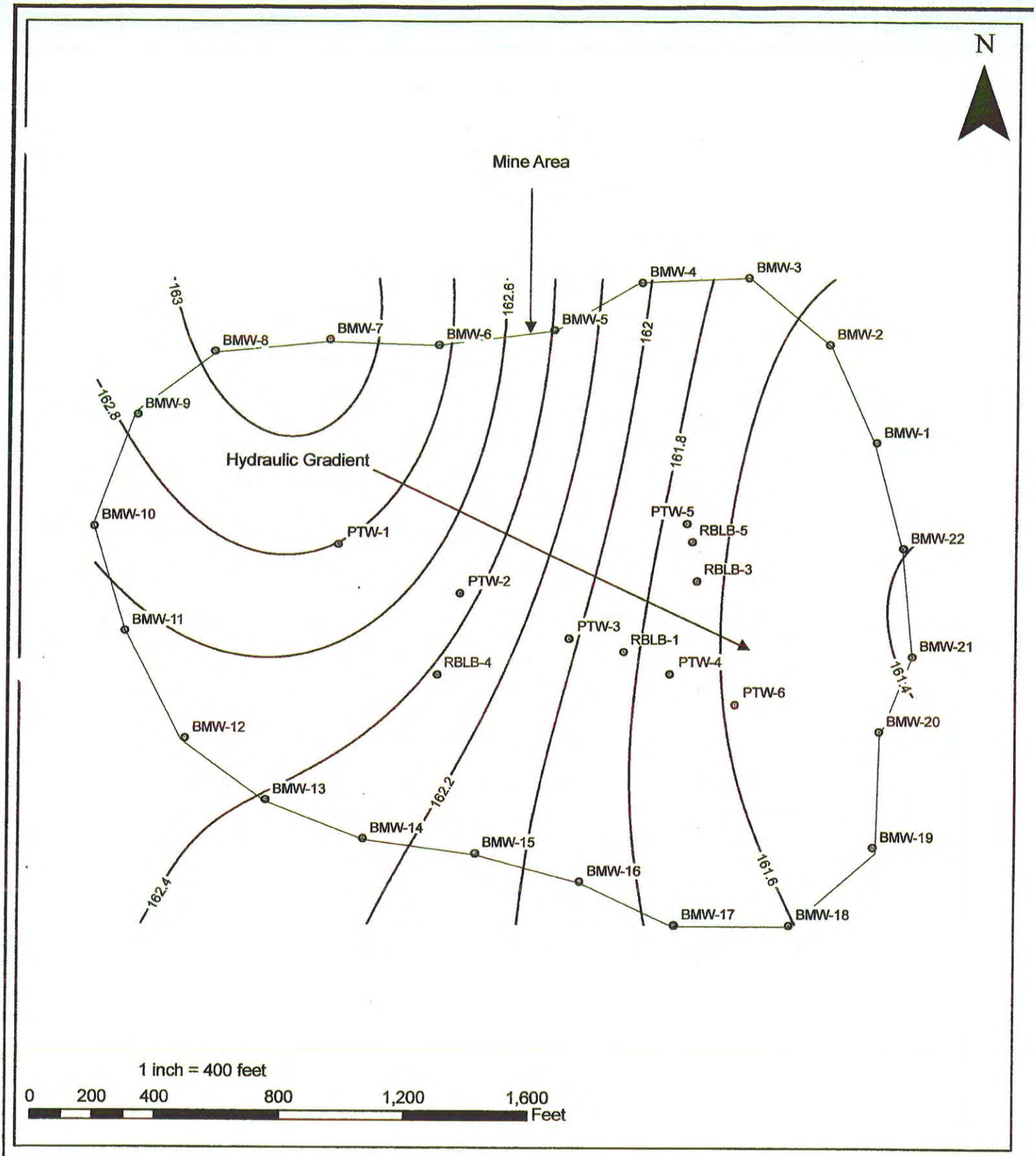

Figure 5-3 **Production Zone Piezometric Map (Sand B)**	Contours (ft) ● Baseline/Monitor Wells	UEC Uranium Energy Corp	**Figure 5-3** Drawn By: J.D. Checked by: J.L., C.H., R.L. Date: August 25, 2008

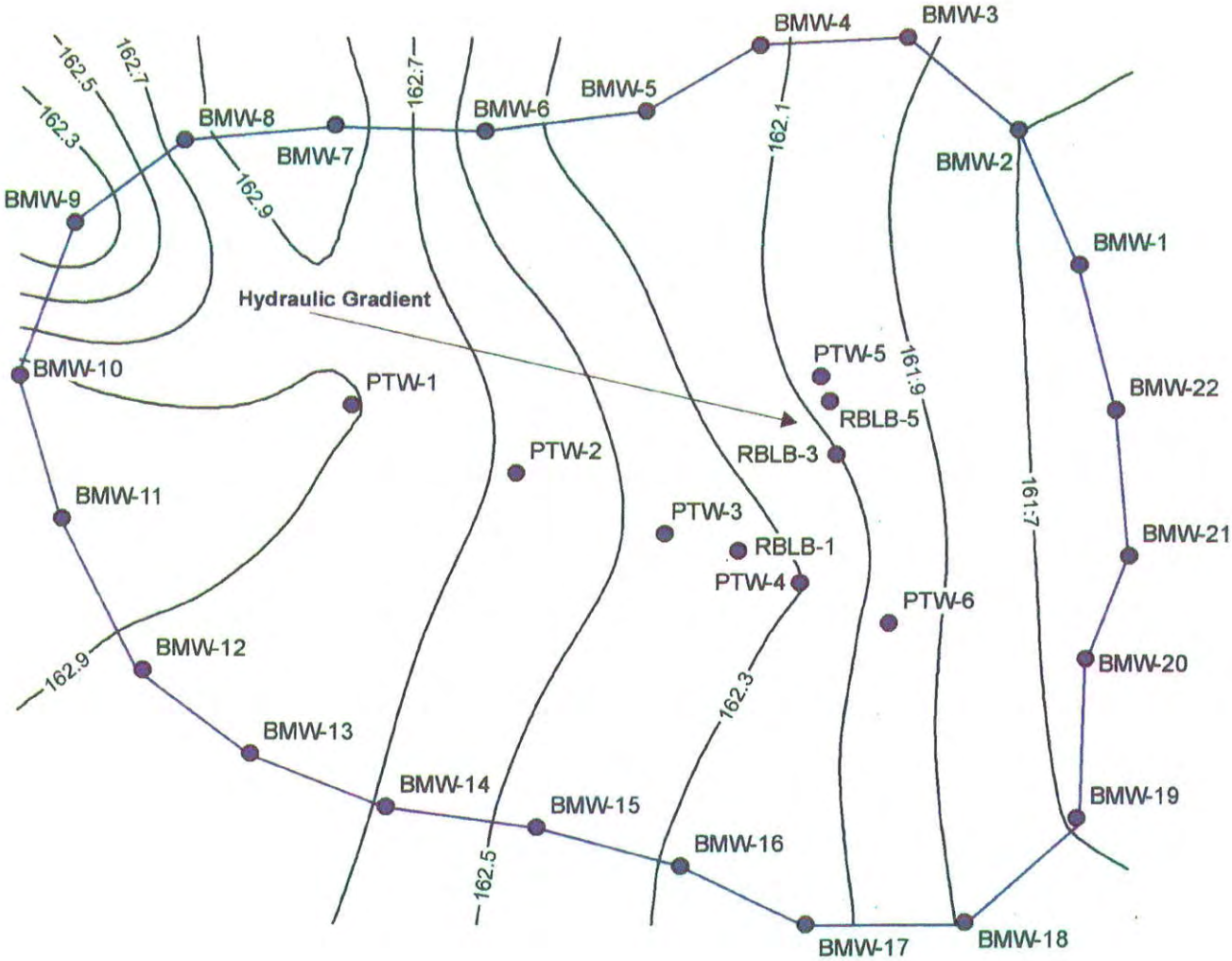

Figure 5-3

Production Zone Piezometric Contours - Sand B

1 inch equals 400 feet

0 105 210 420 630 840 1,050 Feet

Legend

Well - Sand B

Piezometric Contour - Sand B

Mining Area

UEC

Figure 5-3
Drawn By: M. Bell
Checked by: C.H. & J.L.
Date: February 17, 2009

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EXHIBIT 4

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TCEQ DOCKET NO. 2008-1888-UIC
consolidated with
SOAH DOCKET NO. 582-09-6184 and
TCEQ DOCKET NO. 2009-1319-UIC

APPLICATION OF	*	BEFORE THE STATE OFFICE
URANIUM ENERGY CORP	*	
FOR PERMIT NO. UR03075	*	
AND FOR AQUIFER EXEMPTION	*	OF ADMINISTRATIVE
AND FOR PRODUCTION AREA	*	
AUTHORIZATION UR03075PAA1	*	
IN GOLIAD COUNTY, TEXAS	*	HEARINGS

****

CONTESTED CASE HEARING

MAY 5, 2010

VOLUME 3

****

BE IT REMEMBERED that the above-entitled matter came on for hearing on the 5th day of May, 2010, A.D., between the hours of 9:00 a.m. and 4:52 p.m. at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Travis County, Texas, before the HONORABLE RICHARD R. WILFONG and the following proceedings were reported by Dana Montgomery, Certified Shorthand Reporter in Travis County and the State of Texas.

1 per 1,000 gradient reflected across that western
2 portion of the property, but in the opposite direction
3 of this measured data that's in the application.
4 A. But they were measured at different times.
5 Q. Oh, I'm sorry. So which condition is
6 representative of what's going on out there? This one
7 or the one you calibrated to?
8 A. I would argue the one I calibrated to, because
9 this one looks like it's been influenced by something.
10 It doesn't look like a natural gradient, you know,
11 Q. Okay. But this one is similar to the August
12 one, which also has the gradient from east to west, as
13 well. So now we have two sets of measurements
14 consistent with each other, but inconsistent with your
15 modeling. Correct?
16 A. So the August one I'm seeing a gradient from
17 BMW-9 across to BMW-20. Is that --
18 Q. No. If you look at the August measurement, it
19 shows from BMW, what, 7 or 8, there's a high ridge?
20 A. The heads are higher there, yeah.
21 Q. In fact, it's the highest on the site.
22 Correct?
23 A. On the map.
24 Q. Which represents the highest on the site in
25 the BMW area.

1 A. Yes.
2 Q. Okay. And from that high, the water drains to
3 the west as well as to the east, correct, according to
4 that map?
5 A. According to that map.
6 Q. And as well as according to Figure 5-3 dated
7 February 2009, the same thing from BMW-7. Correct?
8 Some of it goes to the west, some of it goes to the
9 east. Yes?
10 A. Yes.
11 Q. Okay. But you calibrated it to one set of
12 data that's not in the prefiled, not in the
13 application, that hasn't been provided to anybody that
14 we know of that shows an opposite direction, consistent
15 with your model. Right?
16 MS. NICHOLS: Objection to
17 characterization of who that data has been provided to
18 in discovery and otherwise. I -- I object to that
19 characterization.
20 Q. Okay. At least it's not in the application?
21 ADMINISTRATIVE LAW JUDGE: Well, sustain
22 the objection as to the representation. You may
23 continue with your questioning.
24 Q. At least it's not in the application. Right?
25 A. That's correct.